

Honesty - Integrity - Character

**Palm Beach County
Commission on Ethics**
300 North Dixie Highway
West Palm Beach, FL 33401
561.355.1915
FAX: 561.355.1904
Hotline: 877.766.5920
E-mail: ethics@pbcgov.org

Commissioners
Rodney G. Romano
Michael H. Kugler
Peter L. Cruise
Carol E. A. DeGraffenreidt
Vacant

Executive Director
Christie E. Kelley

Intake and Compliance Manager
Gina A. Levesque

General Counsel
Rhonda Giger

Investigator
Mark A. Higgs

Investigator
Abigail Irizarry

Agenda

May 5, 2022 – 1:30 p.m.
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Meeting will begin at 1:30pm
Executive Session will begin at 1:40pm
Regular Agenda will resume
immediately following Executive Session

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Executive Session C22-001
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 22-005
 - b. RQO 22-007
- VI. Items Pulled from Consent Agenda
 - a.
- VII. Executive Director Comments
- VIII. Commission Comments
- IX. Public Comments
- X. Adjournment

If a person decides to appeal any decision made by this Commission with respect to any matter considered at this meeting or hearing, (s)he will need a record of the proceedings, and that, for such purpose, (s)he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.



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Palm Beach County Commission on Ethics

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Michael H. Kugler, Vice Chair
Carol E.A. DeGraffenreidt
Peter L. Cruise
Vacant

Executive Director

Christie E. Kelley

April 25, 2022

Diana Grub Frieser, City Attorney
City of Boca Raton
201 West Palmetto Park Road
Boca Raton, FL 33432

Re: RQO 22-005
Voting conflict

Dear Ms. Grub Frieser,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows:

QUESTION:

Does the Palm Beach County Code of Ethics (Code) prohibit two City of Boca Rotan (City) council members from participating in discussions or voting on a resolution authorizing the reimbursement of the City deputy mayor's legal fees when the legal fees were incurred defending a complaint that involved the City deputy mayor's endorsement of the two council members' reelection campaigns?

FACTS:

You are the City Attorney and are requesting an advisory opinion on behalf of Council Members Monica Mayotte and Yvette Drucker. On February 8, 2021, in anticipation of an upcoming election for two council member seats, Deputy Mayor Andrea Levine O'Rourke endorsed candidates Mayotte and Drucker, and both were reelected. The deputy mayor communicated her endorsement through an email she sent to certain City residents through her personal email account and identified herself as the deputy Mayor in the email. On March 1, 2021, a complaint was filed with the Florida Elections Commission against the deputy mayor related to the endorsements in the email. The deputy mayor retained legal counsel to represent her with respect to the complaint and on January 27, 2022, the Florida Elections Commission found the complaint legally insufficient and closed the matter.

Based on the finding of legal insufficiency, the deputy mayor is seeking reimbursement from the City of the legal expenses she incurred, and a resolution authorizing the reimbursement will come before the City Council.

ANSWER:

The Code prohibits public officials from using their official positions in any manner which would result in a special financial benefit, not shared with similarly situated members of the general public, to certain persons or entities, including to themselves.¹ Similarly, the Code also prohibits public officials from voting on an issue or participating in any matter coming before their board which would result in a special financial benefit to any of the persons or entities specified in Section 2-443(a)(1-7), including to themselves.²

¹ Section 2-443(a), *Misuse of official position or employment.*

² Section 2-443(c), *Disclosure of voting conflicts.*

As the COE previously held in RQO 13-022, the recipient of the financial benefit is the determining factor regarding whether an official is prohibited from participation and voting. The plain language of Section 2-443(a) and Section 2-443(c) make it clear that for an official to be required to abstain from participating in discussions or voting on an issue, the official must be in a position where his or her action would result in a "special financial benefit" being given to himself or herself, or one of the other persons or entities listed under Section 2-443(a)(1-7). In other words, participation and voting is only prohibited if the recipient of the financial benefit is a person or entity listed in Section 2-443(a)(1-7).

Based on the facts provided, Council Members Mayotte and Drucker are not prohibited from voting on the reimbursement resolution coming before the City Council, because the resolution does not give either one of them a special financial benefit; the deputy mayor will be receiving the financial benefit.

LEGAL BASIS:

The legal basis for this opinion is found in §2-443(a) and §2-443(c) of the Code:

Sec. 2-443. Prohibited conduct.

- (a) ***Misuse of public office or employment.*** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
 - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
 - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
 - (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
 - (5) A customer or client of the official or employee's outside employer or business;
 - (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner—"substantial" for these purposes shall mean at least ten thousand dollars(\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
 - (7) A civic group, union, social, charitable, or religious organization, or other organization of which he or she (or his or her spouse or domestic partner) is an officer or director. However, this subsection shall not apply to any official or employee who is required to serve on the board of directors of any organization solely based on his or her official position (ex-officio), regardless of whether he or she has voting rights on the board, and who receives no financial compensation for such service on the board of directors, and otherwise has no personal ownership interest in the organization.
- (c) ***Disclosure of voting conflicts.*** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in

violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The Palm Beach County Commission on Ethics does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Christie E. Kelley
Executive Director

CEK/gal



CITY OF Boca Raton

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VIA EMAIL & US MAIL

March 29, 2022

Christie E. Kelley, Executive Director
Palm Beach County Commission on Ethics
2633 Vista Parkway
West Palm Beach, Florida 33411

Re: Request for Advisory Opinion

Dear Ms. Kelley:

As the City Attorney for the City of Boca Raton ("City"), and on behalf of Deputy Mayor Andrea O'Rourke and Council Members Monica Mayotte and Yvette Drucker, elected members of the City Council ("Officials"), I am requesting an advisory opinion from the Palm Beach County Commission on Ethics ("PBCCOE").

We also requested an informal opinion on this matter from the Florida Commission on Ethics ("FCOE"), a copy of that request is attached hereto.

I. Facts

On February 8, 2021, in anticipation of an upcoming election for two Council Member seats, Deputy Mayor O'Rourke endorsed candidates Mayotte and Drucker (and both were reelected). The Deputy Mayor communicated her endorsement through an email she sent to certain City residents (through her personal email account and identified herself as the Deputy Mayor). On March 1, 2021, a complaint was filed with the Florida Elections Commission ("Election Commission") against the Deputy Mayor related to the email/endorsements. The Deputy Mayor retained counsel to represent her with respect to the complaint and on January 27, 2022, the Election Commission found the complaint legally insufficient and closed the matter.

Based on the finding of legal insufficiency, the Deputy Mayor is seeking reimbursement from the City of the legal expenses she incurred, and a resolution authorizing the reimbursement will be before the City Council. Council Members Mayotte and Drucker seek to confirm they do not have a voting conflict with respect to the resolution (as the underlying complaint involved the Deputy Mayor's endorsement of their campaigns). Additionally, the Deputy Mayor seeks to confirm whether, in light of the opinions issued by the FCOE, she has a voting conflict with respect to the vote on the resolution.

II. Request for Opinion

a. Opinion for Council Members Mayotte and Drucker

Section 2-443(c) of the Palm Beach County Code of Ethics ("PBC Code") provides:

County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7). ...

March 29, 2022
Page 2

Section 2-443(a) does not permit an official to take an action that will provide a special financial benefit to themselves (or to a list of other individuals/entities). Here, neither adoption nor rejection of the resolution to authorize reimbursement of legal expenses incurred by the Deputy Mayor would result in "special financial benefit" to Council Members Mayotte or Drucker (nor to any of the other people/entities listed in Section 2-443(a)), and even if it did (which it does not) any potential benefit from the endorsement ended with the election (which was in March 2021).

Please advise if the above analysis, which concludes that Council Members Mayotte and Drucker have no voting conflict with respect to the reimbursement resolution, is correct.

b. Opinion for Deputy Mayor O'Rourke

As noted in the City's contemporaneous request for opinion sent to the FCOE, Section 112.313(5), Florida Statutes, provides:

No public officer shall be prohibited from voting on a matter affecting his or her salary, expenses, or other compensation as a public officer, as provided by law. ...

The FCOE reached the conclusion, in CEO 88-46, that no voting conflict exists for a water and sewer district commissioner with respect to entitlement to reimbursement of attorneys' fees he incurred successfully defending against a complaint before the FCOE, as the reimbursement was provided by law.¹ (See also CEO 21-2). This decision

¹ The summary in CEO 88-46 included the following statement of the law as to a public official's entitlement to the payment of his/her attorney's fees:

A water and sewer district commissioner is not prohibited by Section 112.3143, Florida Statutes, from voting on issues concerning the reimbursement of legal fees and costs which he incurred in connection with a complaint filed against him with the Commission on Ethics. Section 112.313(5), Florida Statutes, allows a public officer to vote on matters affecting his expenses, as provided by law. The common law provides that a public officer is entitled to representation at the public expense in a lawsuit arising from performance of official duties while serving a public purpose.

The COE also included in CEO 88-46 the following explanations for their conclusions:

We previously advised that this provision clearly permitted a public officer to vote on a matter affecting his travel expenses, as provided by Section 112.061, Florida Statutes, regardless of the more general prohibition contained in Section 112.3143. See CEO 85-19. In our view, Section 112.313(5) also would permit a public officer to vote to reimburse himself for legal fees when such reimbursement is "provided by law."

The Florida courts previously have concluded that payment of attorney's fees by a governmental unit may be authorized under certain circumstances in view of the common law principle that public officers are entitled to a defense at the expense of the public in defending against unfounded allegations of official misconduct, arising from performance of official duties and while serving a public purpose, notwithstanding the absence of statutory authorization.

For these reasons, we conclude that a common law authorization for the payment of attorneys [sic] fees would be "as provided by law" for purposes of Section 112.313(5).

Moreover, in CEO 21-2 (relating to a vote correcting a pension issue that affected four members of a county commission and sixteen employees), the COE logically concluded:

The eligible class of resolution beneficiaries include four out of the five members of the County Commission—the *sole collegial body possessing the authority to address the inequity*. While the votes/measures involving the proposed retirement compensation resolution would be a part of a process causing gain or loss to the County Commission members who are a part of a class of eligible elected officers and SMS class County employees, we find that such a retirement compensation

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relies on Section 112.313(5), Florida Statutes, and concludes that, the general prohibition on voting on a matter that provides a public officer with a "special financial gain or loss" (in Section 112.4143(3)(a), Fla. Stat.), was superseded by Section 112.313(5), Fla. Stat, that authorizes a public officer to vote to reimburse himself/herself for incurred legal fees when such reimbursement is provided by law. This conclusion makes real sense in that, without it, city council members and other members of governing bodies in Palm Beach County would not be able to vote on matters, as here, that are "provided by law" and also benefit the members (such as a vote on a local government budget item that impacts member salaries or expenses, or on reimbursement of travel expenses for a governmental trip that may involve numerous members of the governing body). As such, when votes are necessary for governmental functions and are "provided by law," the FCOE opinion provides the rationale for the conclusion that no voting conflict should exist.

Please advise regarding the issue of whether Deputy Mayor may vote on the reimbursement resolution.

For convenience and informational purposes, we request that a copy of this letter be included in the record and provided to each member of the COE for their review in connection with this inquiry. Additionally, in the event you have any questions or require additional information regarding this request, please send such questions/requests to me at dgfrieser@myboca.us and we will provide a written response as soon as possible.

Thank you for your assistance in this matter.

Sincerely,



Diana Grub Frieser
City Attorney, City of Boca Raton

cc: Mayor and City Council Members (in accordance with Ord. No. 5431)
Leif J. Ahnell, C.P.A., C.G.F.O., City Manager
Mary Siddons, City Clerk (for posting on City website; Ord. No. 5431)

Attachment: Request for Informal Advisory Opinion to the Florida Commission on Ethics

q:\ethics\2022\request for opinion pbccoe final.docx

resolution would constitute "other compensation" under Section 112.313(5), Florida Statutes, derived by virtue of their public positions.



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VIA EMAIL & US MAIL

March 29, 2022

Kerrie J. Stillman, Executive Director
The Florida Commission on Ethics
P. O. Drawer 15709
Tallahassee, FL 32317-5709

Re: Request for Informal Advisory Opinion

Dear Ms. Stillman:

As the City Attorney for the City of Boca Raton ("City"), and on behalf of Deputy Mayor Andrea O'Rourke and Council Members Monica Mayotte and Yvette Drucker, elected members of the City Council, I am requesting an informal advisory opinion from the Florida Commission on Ethics ("COE").

I. Facts

On February 8, 2021, in anticipation of an upcoming election for two Council Member seats, Deputy Mayor O'Rourke endorsed candidates Mayotte and Drucker (and both were reelected). The Deputy Mayor communicated her endorsement through an email she sent to certain City residents. On March 1, 2021, a complaint was filed with the Florida Elections Commission ("Election Commission") against the Deputy Mayor related to the email/endorsements. The Deputy Mayor retained counsel to represent her with respect to the complaint and on January 27, 2022, the Election Commission found the complaint legally insufficient and closed the matter.

Based on the finding of legal insufficiency, the Deputy Mayor is seeking reimbursement from the City of the legal expenses she incurred, and a resolution authorizing the reimbursement will be before the City Council. Council Members Mayotte and Drucker seek to confirm they do not have a voting conflict with respect to the resolution (as the underlying complaint involved the Deputy Mayor's endorsement of their campaigns). Additionally, the Deputy Mayor seeks to confirm she does not have a voting conflict with respect to the vote on the resolution.

II. Request for Opinion

a. Informal Opinion for Council Members Mayotte and Drucker

Section 112.4143(3)(a), Florida Statutes provides:

No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss. ...

Neither adoption nor rejection of the resolution to authorize reimbursement of legal expenses incurred by the Deputy Mayor would result in "special private gain or loss" to *Council Members Mayotte or Drucker* (nor to any relative, business associate or employer of either of them). The resolution addresses reimbursement of legal expenses, not the earlier endorsement, but, in any event, receipt of an endorsement in connection with candidacy for office does not qualify as a "special private gain or loss," and even if it did (which it does not), any potential benefit from the endorsement ended with the election (which was in March 2021).



March 29, 2022
Page 2

Please advise if the above analysis, which concludes that the Council Members have no voting conflict with respect to the reimbursement resolution, is correct.

b. Informal Opinion for Deputy Mayor O'Rourke

Section 112.313(5) provides:

No public officer shall be prohibited from voting on a matter affecting his or her salary, expenses, or other compensation as a public officer, as provided by law. ...


Applying the above statutory provision, in CEO 88-46, the COE concluded that Section 112.313(5) permits a public officer to vote to reimburse himself/herself for legal fees when such reimbursement is provided by law. In that opinion, the COE confirmed that a water and sewer district commissioner can vote (i.e., has no voting conflict) on the issue of reimbursement of legal expenses he incurred in successfully defending against a complaint filed with the COE. (See also, CEO 21-2).

As the reimbursement of the Deputy Mayor's legal expenses would be provided by law (See *Thornber v. City of Fort Walden Beach*, 568 So. 2d 914 (Fla. 1990)), the statute appears to be applicable to the reimbursement resolution. Please advise if this analysis, which concludes that the Deputy Mayor may vote on the resolution, is correct.

In the event you have any questions or require additional information regarding this request, please send such questions/requests to me at dgfrieser@myboca.us and we will provide a written response as soon as possible.

Thank you for your assistance in this matter.

Sincerely,



Diana Grub Frieser
City Attorney, City of Boca Raton

cc: Mayor and City Council Members (in accordance with Ord. No. 5431)
Leif J. Ahnell, C.P.A., C.G.F.O., City Manager
Mary Siddons, City Clerk (for posting on City website; Ord. No. 5431)



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VIA EMAIL & US MAIL

March 29, 2022
(Revised on April 18, 2022)

Christie E. Kelley, Executive Director
Palm Beach County Commission on Ethics
2633 Vista Parkway
West Palm Beach, Florida 33411

Re: Request for Advisory Opinion

Dear Ms. Kelley:

As the City Attorney for the City of Boca Raton ("City"), and on behalf of Council Members Monica Mayotte and Yvette Drucker, elected members of the City Council, I am requesting an advisory opinion from the Palm Beach County Commission on Ethics ("PBCCOE").

We also requested an informal opinion on this matter from the Florida Commission on Ethics ("FCOE"), a copy of that request is attached hereto.

I. Facts

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Based on the finding of legal insufficiency, the Deputy Mayor is seeking reimbursement from the City of the legal expenses she incurred, and a resolution authorizing the reimbursement will be before the City Council. Council Members Mayotte and Drucker seek to confirm they do not have a voting conflict with respect to the resolution (as the underlying complaint involved the Deputy Mayor's endorsement of their campaigns).

II. Request for Opinion - Opinion for Council Members Mayotte and Drucker

Section 2-443(c) of the Palm Beach County Code of Ethics ("PBC Code") provides:

County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7). ...

Section 2-443(a) does not permit an official to take an action that will provide a special financial benefit to themselves (or to a list of other individuals/entities). Here, neither adoption nor rejection of the resolution to authorize

March 29, 2022
(Revised on April 18, 2022)
Page 2

reimbursement of legal expenses incurred by the Deputy Mayor would result in "special financial benefit" to Council Members Mayotte or Drucker (nor to any of the other people/entities listed in Section 2-443(a)), and even if it did (which it does not) any potential benefit from the endorsement ended with the election (which was in March 2021).

Please advise if the above analysis, which concludes that Council Members Mayotte and Drucker have no voting conflict with respect to the reimbursement resolution, is correct.

For convenience and informational purposes, we request that a copy of this letter be included in the record and provided to each member of the COE for their review in connection with this inquiry. Additionally, in the event you have any questions or require additional information regarding this request, please send such questions/requests to me at dgfrieser@myboca.us and we will provide a written response as soon as possible.

Thank you for your assistance in this matter.

Sincerely,



Diana Grub Frieser
City Attorney, City of Boca Raton

cc: Mayor and City Council Members (in accordance with Ord. No. 5431)
Leif J. Ahnell, C.P.A., C.G.F.O., City Manager
Mary Siddons, City Clerk (for posting on City website; Ord. No. 5431)



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March 29, 2022
(Revised on April 18, 2022)

Christie E. Kelley, Executive Director
Palm Beach County Commission on Ethics
2633 Vista Parkway
West Palm Beach, Florida 33411

Re: Request for Advisory Opinion

Dear Ms. Kelley:

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We also requested an informal opinion on this matter from the Florida Commission on Ethics ("FCOE"), a copy of that request is attached hereto.

I. Facts

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II. Request for Opinion - Opinion for Council Members Mayotte and Drucker

Section 2-443(c) of the Palm Beach County Code of Ethics ("PBC Code") provides:

County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7). ...

Section 2-443(a) does not permit an official to take an action that will provide a special financial benefit to themselves (or to a list of other individuals/entities). Here, neither adoption nor rejection of the resolution to authorize

March 29, 2022
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Page 2

reimbursement of legal expenses incurred by the Deputy Mayor would result in "special financial benefit" to Council Members Mayotte or Drucker (nor to any of the other people/entities listed in Section 2-443(a)), and even if it did (which it does not) any potential benefit from the endorsement ended with the election (which was in March 2021).

Please advise if the above analysis, which concludes that Council Members Mayotte and Drucker have no voting conflict with respect to the reimbursement resolution, is correct.

For convenience and informational purposes, we request that a copy of this letter be included in the record and provided to each member of the COE for their review in connection with this inquiry. Additionally, in the event you have any questions or require additional information regarding this request, please send such questions/requests to me at dgfrieser@myboca.us and we will provide a written response as soon as possible.

Thank you for your assistance in this matter.

Sincerely,



Diana Grub Frieser
City Attorney, City of Boca Raton

cc: Mayor and City Council Members (in accordance with Ord. No. 5431)
Leif J. Ahnell, C.P.A., C.G.F.O., City Manager
Mary Siddons, City Clerk (for posting on City website; Ord. No. 5431)



Honesty - Integrity - Character

Palm Beach County Commission on Ethics

Commissioners

Rodney G. Romano, Chair
Michael H. Kugler, Vice Chair
Carol E.A. DeGraffenreidt
Peter L. Cruise
Vacant

Executive Director

Christie E. Kelley

April 18, 2022

Mr. David Swigler
2300 N. Jog Rd.
West Palm Beach, FL 33411

Re: RQO 22-007
Conflict of Interest

Dear Mr. Swigler,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows:

QUESTION:

Does the Palm Beach County Code of Ethics (Code) prohibit you from participating as a committee member for the Environmental Resources Management (ERM) Department's upcoming Consultants Competitive Negotiation Act (CCNA) solicitation?

FACTS:

You are an engineer with the County at ERM. ERM is preparing to advertise a CCNA annual contract for Coastal & Marine Engineering Professional Services. The CCNA provides for competitive selection of consultants based on professional qualifications. You have been identified as the engineer to represent ERM during the shortlist committee meeting and potentially during the selection committee meeting. The shortlist committee will be comprised of 5 members and the selection committee will be comprised of 7 members.

You began your employment with the county approximately 18 months ago, after working in the private sector. Your previous employment was with an engineering firm that currently holds a CCNA contract with ERM, and the firm will likely be submitting on the upcoming advertisement. While working at the engineering firm, you were directly involved in the work that was performed for ERM during the current CCNA contact period. You believe this work may be included in the firm's qualifications package and will likely be considered at some point by the shortlist and selections committees during the evaluation process.

ANSWER:

The Code prohibits public officials and employees from using their official position in any manner which would result in a special financial benefit to any of the persons or entities specified in Sec. 2-443(a)(1-7). Among those specified persons or entities is an outside business or outside employer of the official or employee. However, a former employer is not one of the persons or entities listed in Sec. 2-443(a)(1-7).

Based on the facts submitted, you have been employed with the county for approximately 18 months and no longer worker for the engineering firm. Therefore, the engineering firm is now your former outside employer. Although your former outside employer will likely be submitting a bid for the CCNA solicitation, the Code does not prohibit you from participating on the shortlist or selection committees for the CCNA contract as long as your participation will not give a special financial benefit to any other prohibited persons or entities listed in Sec. 2-443(a)(1-7).

Although there may be no per se prohibited conflict of interest under the Code, an appearance of impropriety may exist due to the engineering firm being your former outside employer. If you are concerned about this potential appearance of impropriety, you may choose to decline serving on the shortlist and selection committees for the CCNA contract. If you choose to serve on the committees, you must take great care to not use your official position with ERM in any way to corruptly secure a special benefit for anyone, including a former employer.

LEGAL BASIS:

The legal basis for this opinion is found in §2-443(a) of the Code:

Sec. 2-443. Prohibited conduct.

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
 - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
 - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
 - (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
 - (5) A customer or client of the official or employee's outside employer or business;
 - (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner—"substantial" for these purposes shall mean at least ten thousand dollars(\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
 - (7) A civic group, union, social, charitable, or religious organization, or other organization of which he or she (or his or her spouse or domestic partner) is an officer or director. However, this sub-section shall not apply to any official or employee who is required to serve on the board of directors of any organization solely based on his or her official position (ex-officio), regardless of whether he or she has voting rights on the board, and who receives no financial compensation for such service on the board of directors, and otherwise has no personal ownership interest in the organization.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The Palm Beach County Commission on Ethics does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Christie E. Kelley,
Executive Director

CEK/gal