

*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](mailto:ethics@pbcgov.org)**

**Commissioners**

Rodney G. Romano

Michael H. Kugler

Peter L. Cruise

Carol E. A. DeGraffenreidt

Michael S. Kridel

**Executive Director**

Christie E. Kelley

**General Counsel**

Rhonda Giger

**Intake and Compliance Manager**

Gina A. Levesque

**Investigator**

Mark A. Higgs

**Investigator**

Abigail Irizarry

# *Agenda*

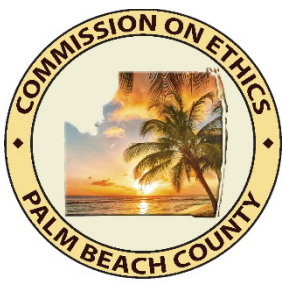
June 2, 2022 – 1:30 p.m.

Governmental Center,  
301 North Olive Avenue, 6<sup>th</sup> Floor  
Commissioners Chambers

- I. Call to Order
- II. Pledge of Allegiance
- III. Introductory Remarks
- IV. Swearing-in ceremony for Michael S. Kridel, appointed by the Palm Beach Chapter of the Association of Certified Fraud Examiners. Swearing-in by Chief Judge Glenn D. Kelley, 15<sup>th</sup> Judicial Circuit of Florida
- V. Roll Call
- VI. Processed Advisory Opinions (Consent Agenda)
  - a. RQO 22-006
  - b. RQO 22-008
  - c. RQO 22-009
  - d. RQO 22-010
- VII. Items Pulled from Consent Agenda
  - a.
- VIII. Executive Director Comments
- IX. Commission Comments
- X. Public Comments
- XI. 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

## **Commissioners**

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

## **Executive Director**

Christie E. Kelley

May 27, 2022

Mr. Norman Ostrau, Ethics Officer  
City of West Palm Beach  
401 Clematis Street  
West Palm Beach, FL 33402

Re: RQO 22-006  
Conflict of Interest

Dear Mr. Ostrau,

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 Commissioner Cathleen Ward's outside employer from continuing to represent Neighborhood Renaissance, Inc. (NRI) when NRI has contracts with the city of West Palm Beach (City) and periodically has matters come before the City Commission?

### **FACTS:**

You are the City's Ethics Officer and are requesting this advisory opinion on behalf of Commissioner Ward. Commissioner Ward is a non-equity partner in a law firm and currently represents NRI, a not-for-profit affordable housing developer and property manager, on matters relating to their development projects. The law firm also assists in the closings of NRI's residential purchases and sales and issues title insurance policies related to such closings. Commissioner Ward personally signs the title commitments, reviews the closing documentation, and signs the owner and lender title policies. Her law firm does not prepare purchase or sale agreements.

The City has numerous conveyance agreements conveying City-owned property to NRI in accordance with the City's Housing Assistance Incentives Program. Under this program, NRI constructs single family homes and then sells the homes to families earning less than 80% of the area median income in the county. The transfer documents include a 10-year affordability clause. Such agreements from the City to NRI are neither prepared nor negotiated by Commissioner Ward's law firm. After the property is sold, NRI has a continuing obligation to monitor the affordability clause, but the commissioner's law firm has never been hired to enforce or monitor this clause. In some instances, the City has requested subordinate position mortgages to be placed on the property in accordance with the Home Investments Partnership Program, but this documentation is internally prepared by the City.

Currently, the commissioner's law firm is not engaged as counsel to assist in the closing on any property conveyances between NRI and the City. The last closing of a conveyance from the City to NRI that her law firm was involved in occurred on March 26, 2022 for property located at 630 5<sup>th</sup> Street, which was prior to Commissioner Ward being sworn in as a commissioner. Currently, the only commercial transaction where Commissioner Ward's law firm is working for NRI involves completing title work and reviewing the development and construction agreements for a property located in Gadsden County, Florida.

NRI currently has a pending application with the City to abandon a right-of-way, which will go to the City Commission for consideration; the commissioner's law firm is not representing NRI in the right-of-way issue.

An additional agreement between NRI and the City for the property located at 630 5<sup>th</sup> Street that was executed on April 8, 2021 for a request for a second amendment relating to the proposed developments of the project. However, the amendment will be sent directly to the mayor for execution as permitted by Resolution 22-21 authorizing execution of any ancillary documents necessary to accomplish the purposes of the Agreement.

**ANSWER:**

The Code prohibits a public official from using his or her official position in any manner, including influencing or attempting to influence others to take some action, to give a special financial benefit to specified persons or entities.<sup>1</sup> The Code also prohibits a public official from participating in discussions or voting on a matter which would give a special financial benefit to the same specified persons or entities.<sup>2</sup> Among those specified persons or entities is the official's outside employer or a customer or client of the official's outside employer. A customer or client is any entity to which an official's outside employer has supplied services in excess of \$10,000 during the previous 24 months.<sup>3</sup> Financial benefit, in the context of the Code, constitutes economic gain or loss.<sup>4</sup> The Code further prohibits a public official from using his or her official position to corruptly secure or attempt to secure a special benefit, privilege, or exemption for himself, herself, or any other person or entity.

Based on the facts submitted, because Commissioner Ward's law firm has provided services in excess of \$10,000 over the previous 24 months to NRI, NRI is a customer or client of her outside employer. Therefore, Commissioner Ward is prohibited from using her official position as a City Commissioner in any way, including participating in discussions or voting on any matter, which gives her law firm or NRI a special financial benefit. For example, the City's abandonment of the right-of-way on property owned by NRI would give NRI a special financial benefit. Therefore, she would be prohibited from participating in discussions and voting on that matter when it comes before the City Commission because it would give a special financial benefit to a customer or client of her outside employer. Additionally, she would also have to refrain from participating in discussions and voting on any future conveyances of property between the City and NRI as well as refraining from influencing the process in any way.

When faced with a voting conflict, Commissioner Ward must publicly disclose the nature of the conflict before the City Commission discusses the issue, refrain from participating in the discussions and voting on the matter, and file a state voting conflict form (8B) with the clerk and submit a copy to the COE.<sup>5</sup>

In addition, because NRI would be considered a City vendor, Commissioner Ward must also be mindful that Section 2-443(d), *Contractual* relationships, prohibits her and her law firm from entering into any contractual relationships with NRI where she or her law firm would be providing goods or services to the City through its contract with NRI.<sup>6</sup> This would create an indirect contract between Commissioner Ward and the City and would violate the Code.

Whether a conflict of interest exists depends on the facts and circumstances of each situation. Because Commissioner Ward has an ongoing relationship with NRI, best practices dictate that she carefully reviews any matter coming before the City Commission to ensure that none of her actions as a city commissioner give a special financial benefit to NRI, and that she will not be performing any work for the City through NRI's contract with her law firm. If there is ever any doubt about her vote on a particular matter, we recommend she seek an additional advisory opinion.

**LEGAL BASIS:**

The legal basis for this opinion is found in §2-443(a), §2-443(b), §2-443(c), and §2-443(d) of the Code:  
**Sec. 2-443. Prohibited conduct.**

<sup>1</sup> Sec. 2-443(a), *Misuse of public office or employment*

<sup>2</sup> Sec. 2-443(c), *Disclosure of voting conflicts*

<sup>3</sup> Sec. 2-442, *Definitions*

<sup>4</sup> RQO 10-013

<sup>5</sup> Sec. 2-443(c), *Disclosure of voting conflicts*


<sup>6</sup> RQO 10-038, RQO 16-001, RQO 16-006, RQO 19-019

- (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;
  - (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;
- (b) **Corrupt misuse of official position.** An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.
- (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) 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 88 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).
- (d) **Contractual relationships.** No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable. This prohibition shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality. This prohibition also shall not apply to officials or employees who purchase goods from the county or municipality on the same terms available to all members of the public.

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



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# 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

May 16, 2022

Ed Beardsley, Battalion Chief  
Delray Beach Fire Rescue  
501 W. Atlantic Ave  
Delray Beach, FL 33444

Re: RQO 22-008  
Outside employment

Dear Chief Beardsley,

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 working as an independent contractor for a company that is a vendor of your public employer?

### **BRIEF ANSWER:**

The Code does not prohibit you from working as an independent contractor for a vendor of your public employer as long as you do not perform any work, directly or indirectly, for your public employer and your work is performed outside of your municipal work hours.

### **FACTS:**

You are an employee of the city of Delray Beach (City), serving as a battalion chief with Delray Beach Fire Rescue. As a battalion chief, your job duties entail supervising line firefighters and coordinating strategies and tactics on emergency incidents. The shift schedule for this position is 24 hours on and 48 hours off and is considered an operations level or "combat firefighter" position. Budget management or working with purchasing contracts does not fall within your regular duties.

The International Public Safety Data Institute (IPSDI) recently offered you a position as a trainer for their public safety software. The position with IPSDI would involve you training organizations and its members on how to use the software. You would not be involved in sales, contract management, or handling of finances in anyway. All of your work for IPSDI would occur when you are off duty.

IPSDI is currently a vendor of the City, which utilizes IPSDI's software to analyze fire response data. The software requires a monthly subscription to utilize. Delray Beach Fire Rescue has four divisions: Administration, Operations, Fire & Life Safety, and Ocean Rescue. The contract with IPSDI is negotiated and administered through the City's Purchasing Division, with input from the Administration Division. You work in the Operations Division, which does not have purchasing powers or responsibilities. The Assistant Chief of Administration does not serve as your direct report or supervisor; your supervisor is the Assistant Chief of Operations. You would not be performing any work or trainings for the City. You stated that both your supervisor and the head of your department were willing to sign the part-time outside employment waiver, if needed. Therefore, you want to ensure that this employment is allowed and that you do not violate the Code.

**ANSWER:**

The Code prohibits public officials and employees, their outside business, or their outside employer from entering into a contract or other transaction for goods or services, directly or indirectly, with their public employer, unless an exception applies.<sup>1</sup> The Code defines an "outside employer" as any entity of which the public official or employee is a "member, official, director, proprietor, partner, or employee."<sup>2</sup> The COE has previously held that persons employed as independent contractors are not considered "employees" under the Code.<sup>3</sup> Therefore, because you will be working as an independent contractor for IPSDI and not as an employee, IPSDI is not your "outside employer." Because IPSDI is not your outside employer, the contractual relationship provision of the Code does not prohibit you from working for IPSDI, even though it is a vendor of the City, as long as you do not perform any work, directly or indirectly, for the City through your contract with IPSDI and your work is performed outside of your City work hours.

Although you stated that your work with IPSDI would not involve performing any work for the City, you are reminded that the COE has previously held that Section 2-443(d) of the Code prohibits you from entering into any contractual relationships with a vendor of your public employer (IPSDI) if you would be providing good or services to your public employer (the City) through that contract.<sup>4</sup> This would create an indirect contract between you and the City and, thus, violate Section 2-443(d) of the Code.

Additionally, because you would not be an employee of IPSDI, you would not be eligible for the part-time outside employment waiver (Employee Conflict of Interest Waiver). The outside employment waiver process in Section 2-443(e)(5), Exceptions and waiver, applies when a public employee's outside employer has a contract for goods or services with his or her public employer. Because IPSDI is not considered your outside employer since you will be working as an independent contractor, the part-time outside employment waiver provision does not apply your situation.

Further, although you are not prohibited from working as an independent contractor for IPSDI, you will have an ongoing responsibility to refrain from using your official position as a City employee, in any way, to give a special financial benefit to yourself or a customer or client of yours. As such, you are prohibited from soliciting business for yourself or a customer or client of yours during your municipal work hours and from identifying yourself as a City employee, including providing any written or verbal communication using your municipal title or position, to attempt to obtain business for yourself or a customer or client of yours. The Code defines a customer or client as any entity to which you have provided over \$10,000 in goods or services during the previous 24 months. Once you receive over \$10,000 from IPSDI over a 24-month period, then IPSDI would be considered your customer or client, and you would be prohibited from using your official position with the City in any way to give a special financial benefit to IPSDI.

Finally, you stated that you have already notified your supervisors about this opportunity, you are reminded that you must ensure that you comply with the city's rules regarding outside employment.

**LEGAL BASIS:**

The legal basis for this opinion is found in the §2-442, §2-443(a), §2-443(d), and §2-443(e)(5) of the Code:

**Sec. 2-442. Definitions.**

Customer or client means any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).

Outside employer includes:

<sup>1</sup> Section 2-443(d), *Contractual relationships*

<sup>2</sup> §2-442, *Definitions*.

<sup>3</sup> RQO 11-020

<sup>4</sup> RQO 10-038, RQO 16-001, RQO 16-006, RQO 19-019

- (1) Any entity, other than the county, the state, or any other federal, regional, local, or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced. For purposes of this definition, "compensation" does not include reimbursement for necessary expenses, including travel expenses;

**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;
  - (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;
- (d) *Contractual relationships.* No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable. This prohibition shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality. This prohibition also shall not apply to officials or employees who purchase goods from the county or municipality on the same terms available to all members of the public.
- (e) *Exceptions and waiver.* In addition, no official or employee shall be held in violation of subsection (d) if:
  - (5) Notwithstanding any provision to the contrary, subsection (d) shall not be construed to prevent an employee from seeking part-time employment with an outside employer who has entered into a contract for goods or services with the county or municipality as applicable provided that:
    - a. The employee or relative of the employee does not work in the county or municipal department as applicable which will enforce, oversee or administer the subject contract; and
    - b. The outside employment would not interfere with or otherwise impair his or her independence of judgment or otherwise interfere with the full and faithful performance of his or her public duties to the county or municipality as applicable; and
    - c. The employee or relative of the employee has not participated in determining the subject contract requirements or awarding the contract; and
    - d. The employee's job responsibilities and job description will not require him or her to be involved in the outside employer's contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance; and
    - e. The employee demonstrates compliance with applicable merit rules regarding outside employment and obtains written permission from his or her supervisor; and
    - f. The employee has obtained a conflict of interest waiver from the chief administrative officer and the employee's department head of the county or municipality based on a finding that no conflict exists. The employee shall submit the request for waiver in writing and under oath. The request for the waiver shall be signed by the employee under oath or affirmation on an approved form provided by the commission on ethics. The document shall contain written acknowledgment of compliance with the provisions of subsection (5)a. through (5)e. of this subsection, together with such pertinent facts and relevant documents that support such waiver. A waiver under this subsection must be approved by both the employee's supervisor



and chief administrative officer of the county or municipality. The county or municipality shall record such waiver in the employee's personnel file and shall submit a copy of the waiver and all related documents to the commission on ethics. The commission on ethics in its discretion may elect to review, comment on, or investigate any waiver. The commission on ethics review or investigation shall not delay an employee's ability to take the part time employment.

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.

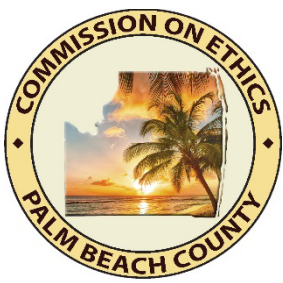
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Christie E. Kelley  
Executive Director

CEK/gal



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# 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

May 23, 2022

Mr. Alan Gerwig  
Alan Gerwig & Associates, Inc.  
12798 W. Forest Hill Blvd., Ste. 201  
Wellington, FL 33414

Re: RQO 22-009  
Contractual Relationship

Dear Mr. Gerwig,

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:**

Are you prohibited from serving as a member of the Advisory Committee for the Palm Beach County Office of Equal Business Opportunity (OEBO) given you are President of Alan Gerwig & Associates, Inc. (AGA) when AGA has an ongoing contractual relationship with Palm Beach County (County) and has been qualified by the OEBO as a County Certified Small Business since 2003?

### **BRIEF ANSWER:**

You are not prohibited from serving as a member of the OEBO Advisory Committee because the advisory committee is purely advisory and does not have any role in the oversight of the subject contract(s). However, the existence of the contractual relationship with the County must be disclosed at a public meeting of the BCC at the time of your appointment.

### **FACTS:**

In general, you would not be entitled to an advisory opinion because you are not currently under the jurisdiction of the Code of Ethics (Code). COE Rule of Procedure 2.2 states, in relevant part, that only persons who are under the jurisdiction of the Code may request an advisory opinion regarding the interpretation or application of the Code. However, if you accepted appointment to the OEBO Advisory Committee, you would be considered an official and would be subject to the Code. Because you are seeking an opinion proactively to avoid any potential issues, the COE will make an exception and provide an opinion.

You are considering an appointment to the Advisory Committee of the Palm Beach County OEBO. You are also a current vendor of the County and hold several different contracts to provide a variety of work on projects requiring structural design services. Additionally, your firm has been qualified as a Certified Small Business by OEBO since 2003.

Recently you were approached about serving on the Advisory Committee for the OEBO. The Advisory Committee is comprised of 15 member citizens that are representational of trade groups and members of the general business community. Four of the 15 members must be business owners who are certified by the County as small businesses. These member citizens are nominated by the Director of the OEBO and

are appointed by the Palm Beach County Board of County Commissioners (BCC). According to Section 2-80.28(f) of the Palm Beach County Code, the Advisory Committee holds public meetings approximately four times per year. Their function is to review the administration of the various programs and policies that promote Small/Minority/Women Business Enterprise (S/M/WBE) participation in County opportunities and to identify any needed modifications to the programs, policies, and procedures established by EBO Code. The OEBO Advisory Committee presents these findings and recommendations to the OEBO, the County Administrator, and the Board. Additionally, the Advisory Committee is tasked with improving the efficacy of the OEBO by identifying ways to improve the program through education and community outreach, as well as staying informed about emerging issues, which may impact involvement in the program. The OEBO Advisory Committee does not provide any regulation, oversight, management, or policy-setting recommendations regarding any contract(s) between you and the County.

**ANSWER:**

In general, Section 2-443(d), Contractual relationships, prohibits a public officials or employee from entering into any contract or other transaction for goods or services with his or her respective county or municipality, unless an exception applies. As a member of the Advisory Committee appointed by the County, you would be considered an official under the Code. However, this prohibition does not apply to an advisory board member if certain criteria are met. Here, the contractual relationships prohibition would not apply to you as an advisory board member if the OEBO Advisory Committee is purely advisory and does not have any role in the oversight of the subject contract(s) and the subject contract(s) are disclosed at a public meeting of the BCC.

It must first be determined whether the OEBO Advisory Committee is purely advisory. A purely advisory board is authorized only to make recommendations to another board or a government administrator. A board with any measure of final decision-making authority is not purely advisory. Based on the limited statutory authority granted to the OEBO Advisory Committee, it appears their role is purely advisory.

Next, it must be determined whether the OEBO Advisory Committee has contract oversight. A board has contract oversight if it plays any role in the oversight, regulation, management, or policy-setting recommendations regarding the subject contract(s). Based on the facts provided, the OEBO Advisory Committee does not provide any oversight of the subject contracts.

Because the OEBO Advisory Committee is purely advisory and does not exercise contract oversight, you are not prohibited from serving on the advisory committee as long as the existence of the subject contract(s) is disclosed at a duly noticed public meeting of the BCC. The disclosure should occur at the time of your appointment to the OEBO Advisory Committee.

Although you are not prohibited from serving on the OEBO Advisory Committee, you are reminded that the Code also prohibits you from using your official position as a member of the advisory committee to take any action, or influence others to take some action, which results in a special financial benefit to you or your outside business, AGA.<sup>1</sup> The COE has previously opined that financial benefit, in the context of the Code, constitutes economic gain or loss.<sup>2</sup> For a financial benefit to be "special", the benefit must inure uniquely to you or AGA, rather than benefiting every business certified by the County as a small business equally. Therefore, you must ensure that any recommendations that you make as an OEBO Advisory Committee member will not give a financial benefit that inures uniquely to you or AGA.

<sup>1</sup> Section 2-443(a), *Misuse of public office or employment.*

<sup>2</sup> RQO 10-013

**LEGAL BASIS:**

The legal basis for this opinion is found in §2-442 and §2-443(d) of the Code:

**Sec. 2-442. Definitions.**

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "official" shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies, and members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi-judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.

**Sec. 2-443. Prohibited conduct.**

(d) **Contractual relationships.** No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable. This prohibition shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality. This prohibition also shall not apply to officials or employees who purchase goods from the county or municipality on the same terms available to all members of the public. This prohibition shall also not apply to advisory board members provided the subject contract or transaction is disclosed at a duly noticed public meeting of the governing body and the advisory board member's board provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted but assumes they are true for purposes of this advisory opinion. This opinion 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

RG/CEK/gal



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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

May 27, 2022

Ms. Phillis Maniglia, Council Member  
Town of Loxahatchee Groves  
P.O. Box 13  
Loxahatchee Groves, FL 33470

Re: RQO 22-010  
Conflict of Interest/Voting Conflict

Dear Ms. Maniglia,

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, as a Loxahatchee Groves (Town) Council Member, from voting on issues related to the pending inverse condemnation litigation which claims the Town widened B Road north onto private property without compensating the affected property owners, considering in your capacity as a realtor you have (both past and present) represented clients living or owning property on B Road?

**BRIEF ANSWER:**

You are not prohibited from participating in discussions or voting on these matters because the possibility of a special financial benefit is too remote and speculative.

**FACTS:**

You are an elected councilmember for the Town and are requesting this advisory opinion. The Town is approximately 12.5 square miles with approximately 3,695 residents. You own one home within the Town and reside therein. Your home does not abut B Road or B Road north. You are a realtor working as an independent contractor and licensed broker for Saddle Trails Realty Inc. You have both present and past clients on B Road and have acted as both a seller's and buyer's agent, as well as a rental agent. You currently have one B Road listing as a seller's agent.

In January of 2022, the owners of six separate properties along B Road north joined together and brought suit against the Town. The claim alleges that the Town, during the course of road improvement projects, widened B Road north beyond its lawful boundaries

and encroached upon their private land, thereby giving rise to their inverse condemnation lawsuit. The lawsuit is still pending. You have never, nor do you currently, represent any of the lawsuit's named Plaintiffs.

**ANSWER:**

The Code prohibits public officials from using their official position 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.<sup>1</sup> 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 themselves.<sup>2</sup>

In the context of the Code, financial benefit constitutes economic gain or loss.<sup>3</sup> In determining whether an action would result in a special financial benefit being given to a person or entity, the COE has held that any such financial benefit must be direct and immediate, rather than remote and speculative.<sup>4</sup> Similarly, the Florida Commission on Ethics has also determined that where there is uncertainty at the time of a vote as to whether a measure directly affects a person or entity, any private gain or loss based on the vote is remote and speculative, and thus the official will not be precluded from casting such vote.<sup>5</sup>

Here, based on the facts provided, any economic gain or loss related to the outcome of the lawsuit, will have no greater impact on you than on any other resident of the Town. Thus, it is remote and speculative as to whether a vote related to the inverse condemnation lawsuit would result in you receiving a special financial benefit. The lawsuit is based on the width increase of B Road north, which was undertaken by the Town, and seeks damages on behalf of several plaintiffs representing six lots. It appears that any decision by the Town related to the claim will either benefit or harm all Town residents equally. Although the resolution of the claim in favor of the plaintiffs may provide a financial enrichment to them individually by making them whole for their loss of property; it may also have a negative impact on the value of the individual properties as each lot would be reduced in size. However, regardless of whether the plaintiffs may receive a financial gain or loss as a result of this lawsuit, because none of the plaintiffs are your customer or client, you are not prohibited from voting on issues related to the lawsuit. Further, nothing in the current facts indicates that your employment as a realtor provides a unique circumstance wherein your personal gain or loss by this vote would exceed significantly that of other residents. Considering this, the possibility of any special financial benefit to you is even further removed.

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

<sup>2</sup> Section 2-443(c), *Disclosure of voting conflicts.*

<sup>3</sup> RQO 10-013

<sup>4</sup> RQO 12-063

<sup>5</sup> CEO 85-77CEO 05-15; CEO 91-61; CEO 12-19

Additionally, because this lawsuit is still pending, and any future resolution is unknown, the impact on the involved properties is remote and speculative at best. To the extent that resolution of the pending litigation will affect the entire B Road corridor, that impact, if any, will also be borne by the Town as a whole; whether that be in a more easily travelled public roadway or by the settling of the lawsuit with taxpayer funds. Because there is no direct causal relationship between any vote and a special financial benefit being given to you as a realtor, any discussion or vote by you on this matter would not be a violation of either §2-443(a), *Misuse of public office or employment*, or §2-443(c), *Disclosure of voting conflicts*.

Finally, you must also keep in mind that §2-443(b), *Corrupt misuse of official position*, also prohibits public officials from using their official position to corruptly secure or attempt to secure a special privilege, benefit or exemption for themselves or others. Corruptly means done with a wrongful intent and for the purpose of obtaining any benefit resulting from some act which is inconsistent with the proper performance of the official's duties. Based on the facts provided, as long as you analyze and review this matter the same as you would any other matter prior to voting, there is no indication a corrupt misuse would occur by this vote.

**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;

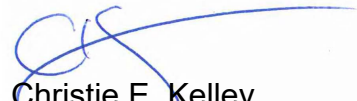
(c) ***Disclosure of voting conflicts.*** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the 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 assumes 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/RG/gal