

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

Michael S. Kridel

Danielle A. Sherriff

Executive Director

Christie E. Kelley

General Counsel

Rhonda Giger

Intake and Compliance Manager

Gina A. Levesque

Investigator

Mark A. Higgs

Investigator

Abigail Irizarry

Agenda

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

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Introductory Remarks
- V. Approval of Minutes
 - a. July 7, 2022
 - b. August 4, 2022
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 22-019
 - b. RQO 22-020
 - c. RQO 22-021
- 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.

**OFFICIAL MEETING MINUTES
OF THE
PALM BEACH COUNTY COMMISSION ON ETHICS (COE)
PALM BEACH COUNTY, FLORIDA**

JULY 7, 2022

**THURSDAY
1:30 P.M.**

**COMMISSION CHAMBERS
WEISMAN GOVERNMENTAL CENTER**

MEMBERS:

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

STAFF:

Rhonda Giger, General Counsel
Mark A. Higgs, COE Investigator II
Abigail Irizarry, COE Investigator II
Christie E. Kelley, COE Director III
Gina A. Levesque, COE Intake and Compliance Manager

CLERK OF THE CIRCUIT COURT & COMPTROLLER'S OFFICE STAFF PRESENT:

Danielle Freeman, Deputy Clerk

I. CALL TO ORDER

The chair called the meeting to order at 1:31 p.m.

Chair Romano stated the roll call would take place after the swearing in.

(CLERK'S NOTE: The swearing-in took place at this time.)

IV. Swearing-in of Danielle Sherriff, by Chief Judge Glenn D. Kelley, 15th Judicial Circuit of Florida, to complete the term of Carol E.A. DeGraffenreidt, which ends 02/28/2024 (appointed by the Palm Beach County Association of Chiefs of Police)

(CLERK'S NOTE: The Pledge of Allegiance was performed at this time.)

II. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Commissioner Cruise.

III. INTRODUCTORY REMARKS

Commissioner Sheriff said she looked forward to serving on the commission.

The commission welcomed Commissioner Sherriff to the COE committee.

(CLERK'S NOTE: The clerk called the roll at this time.)

V. ROLL CALL

Present Chair Rodney Romano, Vice Chair Michael H. Kugler,
Commissioner Peter Cruise, and Commissioner Sherriff

Absent Commissioner Michael S. Kridel

(CLERK'S NOTE: The original order of the agenda was restored at this time.)

VI. APPROVAL OF MINUTES

MOTION to approve the April 7, 2022 and May 5, 2022 minutes. Motion by Vice Chair Kugler, seconded by Commissioner Cruise, and carried 4-0.

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

a. **RQO 22-011**

b. **RQO 22-012**

c. **RQO 22-013**

d. **RQO 22-014**

e. **RQO 22-015**

MOTION to approve the consent agenda. Motion by Commissioner Cruise, seconded by Vice Chair Kugler, and carried 4-0.

VIII. ITEMS PULLED FROM CONSENT AGENDA

There were no items pulled from consent.

IV. EXECUTIVE DIRECTOR COMMENTS

Christie Kelley, Executive Director, made the following comments:

- Ms. Kelley congratulated Commissioner Sherriff and welcomed her to the commission.
- During the week of June 6, 2022, through June 10, 2022, staff successfully completed ten code of ethics trainings for the Town of Palm Beach. Additionally, the customer service satisfaction surveys regarding the COE's office performance were utilized during the training with satisfactory results. Staff would continue to use the feedback from the surveys for improvement.
- The education and communications coordinator position were still included in the proposed budget. The next budget workshop would be held on July 12, 2022.
- On July 6, 2022, Rhonda Giger, General Counsel, conducted her first live training on gift law issues for BCC staff. Ms. Kelley went on to say the training went well and Ms. Giger did a great job.
- Ms. Kelley congratulated Gina Levesque, Intake and Compliance Manager, on earning the certified fraud examiners credential from the Association of Fraud Examiners. Ms. Levesque was now a certified fraud examiner along with Investigators Abigail Irizarry and Mark Higgs.

Commissioner Cruise stated that two of his students who attend FAU sent him positive feedback on the training Ms. Kelley provided.

IX. COMMISSION COMMENTS

1. Commissioner Sherriff expressed gratitude to the commission for the privilege of serving on the COE committee. In addition, she gave a brief summation on her career background and stated that she looked forward to working with everyone.
2. Chair Romano and Vice Chair Kugler shared their prior working experience with Commissioner Sherriff and commended her on her career to date.

X. PUBLIC COMMENTS

There were no public comments.

XI. ADJOURNMENT

MOTION to adjourn. Motion by Commissioner Cruise, seconded by Vice Chair Kugler, and carried 4-0.

At 1:39 p.m., the chair declared the meeting adjourned.

APPROVED: October 6, 2022

Chair/Vice Chair

**OFFICIAL MEETING MINUTES
OF THE
PALM BEACH COUNTY COMMISSION ON ETHICS (COE)
PALM BEACH COUNTY, FLORIDA**

August 4, 2022

**THURSDAY
1:30 P.M.**

**COMMISSION CHAMBERS
WEISMAN GOVERNMENTAL CENTER**

MEMBERS:

Rodney G. Romano, Chair
Michael H. Kugler, Vice Chair
Peter L. Cruise
Michael S. Kridel
Danielle A. Sherriff

COUNTY STAFF PRESENT:

Rhonda Giger, General Counsel
Mark A. Higgs, COE Investigator II
Abigail Irizarry, COE Investigator II
Christie E. Kelley, COE Director III
Gina A. Levesque, COE Intake and Compliance Manager

CLERK OF THE CIRCUIT COURT & COMPTROLLER'S OFFICE STAFF PRESENT:

Danielle Freeman, Deputy Clerk

I. CALL TO ORDER

The chair called the meeting to order at 1:30 p.m.

(CLERK'S NOTE: The clerk called the roll at this time.)

IV. ROLL CALL

All members were present.

(CLERK'S NOTE: The order of the agenda was restored at this time.)

II. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Commissioner Sherriff.

III. INTRODUCTORY REMARKS

No introductory remarks were made.

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

a. RQO 22-016

MOTION to approve the consent agenda as published. Motion by Vice Chair Kugler, seconded by Commissioner Cruise, and carried 5-0.

VI. ITEMS PULLED FROM CONSENT AGENDA

No items were pulled from consent.

VII. PRESENTATION TO FORMER COMMISSIONER DEGRAFFENREIDT

Chair Romano presented a plaque to former Commissioner DeGraffenreidt in honor of her service with the COE.

VIII. EXECUTIVE DIRECTOR COMMENTS

Christie Kelley, COE Director III, provided the following updates:

- it had been agreed that meetings of the Office of Inspector General (IG) would take place after COE meetings that did not require an executive session;
- General Counsel Rhonda Giger had conducted two make-up ethics trainings for employees with the Town of Palm Beach who were unable to attend the June sessions; and
- since March, staff had attended 31 meetings of the 39 municipalities in Palm Beach County.

Ms. Kelley also thanked COE Intake and Compliance manager Gina Levesque for updating the COE website.

IX. COMMISSION COMMENTS

1. Vice Chair Kugler thanked former Commissioner DeGraffenreidt for her service with the COE and wished her well in her future endeavors.
2. Commissioner Cruise thanked former Commissioner DeGraffenreidt for attending with her son.
3. Commissioner Sherriff wished former Commissioner DeGraffenreidt well.

4. Chair Romano said that he was happy for former Commissioner DeGraffenreidt and wished her luck.

X. PUBLIC COMMENTS

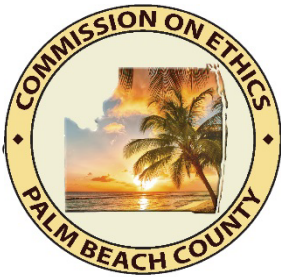
There were no public comments.

XI. ADJOURNMENT

At 1:36 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

Honesty - Integrity - Character

September 21, 2022

Ms. Julia Botel, Ed. D.
Riviera Beach City Council, District 4
600 W. Blue Heron Blvd.
Riviera Beach, FL 33404

Re: RQO 22-019
Solicitation of Donations

Dear Ms. Botel,

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:

Would it violate the Palm Beach County Code of Ethics (Code) if you, as a city of Riviera Beach (City) council member, solicit donations on behalf of two non-profit organizations?

BRIEF ANSWER:

No. The Code does not prohibit you from soliciting donations on behalf of a non-profit organization as long as certain factors are met.

FACTS:

You are a City council member. You have been asked to share an informational email which includes a request for donations on behalf of the Youth Recreation Association of Palm Beach County (YRAPBC), a 501(c)(3) non-profit organization. You do not serve as an officer or director of YRAPBC. You would also like to solicit donations on behalf of Friends of the Riviera Beach Schools (FRBS), which is also a registered 501(c)(3) non-profit organization. Although you are no longer officially associated with FRBS, you were involved in its creation and were a prior member of its board of directors.

ANSWER:

Section 2-443(a) of the Code prohibits public officials or employees from using their official position or office in any way to give a special financial benefit, not shared with similarly situated members of the general public, to specified persons or entities. Among those specified persons or entities is a non-profit organization of which the official or employee is an officer or director.¹ Thus, if you serve as an officer or director of FRBS or YRAPBC, then you would be prohibited from using your official position as a City council member to give the organization a special financial benefit. Based on the facts provided, you are no longer an officer or director of FRBS, and you are not an officer or director of YRAPBC. Because you are not an officer or director of either of these organizations, this section of the Code does not apply to you. Therefore, the Code does not prohibit you from using your official position to give a special financial benefit to FRBS or YRAPBC. As such, you are not prohibited from lending your name and official title as a City council member to a fundraising effort on behalf of FRBS or YRAPBC.

¹ Sec.2-443(a)(7)

Section 2-443(b) of the Code also prohibits officials or employees from using their official position or office to corruptly secure to special benefit for others. The Code defines corruptly as acting with a wrongful intent that is inconsistent with the proper performance of the one's public duties.² Therefore, as a council member, you must ensure that you refrain from improperly using your official position in any way to corruptly secure a special benefit of any kind for YRAPBC or FRBS.

To the extent that the gift law is concerned with regards to charitable solicitations, the Code generally prohibits you, or any other person or entity on your behalf, from soliciting or accepting any gift with a value greater than \$100 in the aggregate per calendar year, from a vendor, lobbyist, or any principal or employer of a lobbyist who lobbies the City. However, the Code has an exception to this prohibition for charitable solicitations. Under Section 2-444(h), the Code allows officials and employees to solicit or accept donations over \$100, directly or indirectly, on behalf of a non-profit organization from anyone, including a vendor, lobbyist, or any principal or employer of a lobbyist, as long as the person or entity solicited does not have a pending application or award of any nature before the public entity the official or employee serves and a charitable solicitation log is maintained.

Therefore, you are not prohibited from soliciting or accepting donations on behalf of either FRBS or YRAPBC from anyone, including City vendors or lobbyists or principals or employers of lobbyist who lobby the City. However, you must ensure that no person or entity with a pending application or bid before the City is solicited and a log of any solicitations or donations from any vendor, lobbyist, or principal or employer of a lobbyist of the City is maintained. The charitable solicitation log must be submitted to the COE within 30 days of a fundraising event or within 30 days of the solicitation, if not related to an event. The rationale behind limiting the manner in which charitable solicitation from vendors, lobbyists, or principals or employers of lobbyists of a public entity may occur is grounded in the desire to increase transparency and to help avoid the appearance that these donations are made to obtain improper access or to gain the good will of public employees or officials. With that in mind, you are reminded that you must take great care that any donations accepted on behalf of either FRBS or YRAPBC do not result in any quid pro quo or other special consideration to the person or entity making the donation.³

LEGAL BASIS:

The legal basis for this opinion is found in §2-443(a), §2-443(b), §2-444(a)(1), and §2-444(h) 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, or attempt to do any of these things, 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;
 - (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.
- (b) **Corrupt misuse of official position.** An official or employee shall not use or attempt to 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.

² Sec. 2-443(b)

³ Sec. 2-444(e)

Sec. 2-444. Gift law.

- (a)(1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist, or any principal or employer of a lobbyist who lobbies, sells, or leases to the county or municipality as applicable
- (h) **Solicitation of contributions on behalf of a non-profit charitable organization.**
- (1) Notwithstanding the prohibition on gifts as outlined in subsections (a) and (b), the solicitation of funds by a county or municipal official or employee for a non-profit charitable organization, as defined under the Internal Revenue Code, is permissible so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited. The solicitation by an official or employee as contemplated herein, is expressly prohibited if made to any person or entity with a pending application for approval or award of any nature before the county or municipality as applicable.
- (2) To promote the full and complete transparency of any such solicitation, officials and employees shall disclose, on a form provided by the commission on ethics, the name of the charitable organization, the event for which the funds were solicited, the name of any person or entity that was contacted regarding a solicitation or pledge by the official or employee, and the amount of the funds solicited or pledged if known. The form shall be completed legibly and shall be filed with the commission on ethics. The form shall be filed within thirty (30) days from the occurrence of the event for which the solicitation was made, or if no event, within thirty (30) days from the occurrence of the solicitation.

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 assume they are true for purposes of this advisory opinion. This opinion is not applicable to any conflict under state law, or with any relevant provision within the rules of The Florida Bar. Inquiries regarding possible conflicts under state law or bar rules should be directed to the State of Florida Commission on Ethics or The Florida Bar.

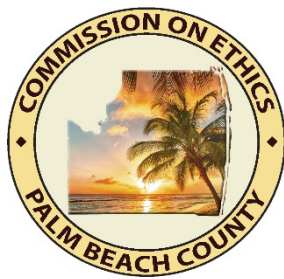
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Christie E. Kelley
Executive Director

RG/gal



Palm Beach County Commission on Ethics

Commissioners

Rodney G. Romano, Chair
Michael H. Kugler, Vice Chair
Peter L. Cruise
Michael S. Kridel
Danielle A. Sherriff

Executive Director

Christie E. Kelley

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September 21, 2022

Aimee Kelley, Commissioner
City of Boynton Beach
100 E. Ocean Ave.
Boynton Beach, FL 33435

Re: RQO 22-020
Conflict of Interest

Dear Commissioner Kelley,

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 in discussions and voting on the hiring of a specific finalist for City Manager, when that candidate and your spouse are both currently employed by the Boynton Beach Police Department (BBPD)?

BRIEF ANSWER:

No. You are not prohibited from participating in the hiring process and voting on the hiring of this candidate because there is no recognized voting conflict which would result in a special financial benefit to any prohibited persons or entities.

FACTS:

You are a Commissioner for the city of Boynton Beach (City), and your spouse is a police captain for the City's police department. Your spouse has worked for the BBPD for 24 years. Recently, the City conducted a national search for a city manager. The final candidate for the position of city manager has worked at the BBPD for 18 years. The city manager position does not directly supervise your spouse. You stated that there would not be any special financial gain or loss to either you or your spouse if this specific candidate becoming the City Manager.

ANSWER:

The Code prohibits you from using your official position to give a special financial benefit, not shared with similarly situated members of the general public, to any of the persons or entities listed in §2-443(a), *Misuse of public office or employment*. Among those specified persons or entities are yourself, your spouse, or someone who is known to you to work for your spouse's outside employer.¹ Similarly, the Code prohibits you from voting on an issue or participating in any matter coming before the City Commission which would give a special financial benefit, not

¹ Sec. 2-443(a)

shared with similarly situated members of the general public, to any of those same persons or entities.² Financial benefit is defined as economic gain or loss.³

Based on the facts provided, your involvement in the hiring process, including voting on whether to hire this specific candidate as well as the ratification of the final contract, would not result in a financial benefit to either you or your spouse. The Code would only prohibit you from participating in discussions or voting on this matter if facts and circumstances showed that the hiring of this candidate would provide a unique benefit to you or your spouse. However, there is nothing in the facts provided that indicate there would be any personal gain to you or your spouse resulting from a vote to hire this specific candidate.

We must next determine if your participation and vote on this matter would result in a special financial benefit being given to someone who works for your husband's outside employer, which would violate Section 2-443(a)(4). Based on the facts provided, the final candidate for the city manager position is employed by BBPD, where your husband also works. However, Section 2-442 of the Code specifically exempts local and municipal government entities from the definition of outside employer. Because the City is a municipal government entity and BBPD is a department within the City, BBPD is exempt from the Code's definition of outside employer. Therefore, although both your husband and the final candidate work for BBPD, Section 2-443(a)(4) does not apply. As such, you are not prohibited from participating in and voting on this matter when it comes before the City Commission.

You are also reminded that §2-443(b), *Corrupt misuse of official position*, prohibits officials from using their official position to corruptly secure or attempt to secure a special privilege, benefit, or exemption for themselves or anyone else. The Code defines corruptly as done with a wrongful intent and for the purpose of obtaining a special benefit for any person resulting from some act which is inconsistent with the proper performance of the official's public duties. Therefore, you also must ensure you do not use your position as a councilmember to take some action, including voting, which would corruptly secure a special privilege, benefit, or exemption for yourself or anyone else. 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 that a corrupt misuse or voting conflict would occur by your participation or vote.

LEGAL BASIS:

The legal basis for this opinion is found §2-443(a), §2-443(b), 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, or attempt to do any of these things, 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 Sec. 2-443(c)

³ RQO 10-013

- (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 person.
 - (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;
- (b) Corrupt misuse of official position. An official or employee shall not use or attempt to 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)(1) through (7) above. The term "participate" as used in this section shall be defined as: "To take any action, or to influence others to take any action, or to attempt to do any of these things, in order to affect the passage or defeat of the specific matter before the voting body in which the official is required to abstain from voting." 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 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.

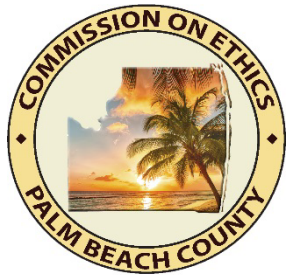
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Christie E. Kelley,
Executive Director

RMG/gal



Palm Beach County Commission on Ethics

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Peter L. Cruise
Michael S. Kridel
Danielle A. Sherriff

Executive Director

Christie E. Kelley

Honesty - Integrity - Character

September 22, 2022

Helene Hvizd, Assistant County Attorney
Palm Beach County Attorney's Office
301 N. Olive Avenue, Suite 601
West Palm Beach, FL 33401

Re: RQO 22-021
Outside Employment

Dear Ms. Hvizd,

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 a Palm Beach County employee, who serves as the Ryan White CARE Council Coordinator for the county from working in her private capacity as an independent contractor for a company where she would co-facilitate trainings to benefit other CARE Council Coordinators, Ryan White Program Administrators, or other staff?

BRIEF ANSWER:

The Code does not prohibit the employee from working as an independent contractor in her private capacity during non-work hours as long as she follows the requirements of the Code as described in this advisory opinion.

FACTS:

You are an Assistant County Attorney and are requesting an opinion on behalf of Neeta Mahani, a Palm Beach County employee. Ms. Mahani works as the CARE Council Coordinator for the county's Ryan White Program. The Ryan White Program, which receives grant funding from the U.S. Department of Health and Human Services' Health Resources and Services Administration (HRSA), is a nationwide, comprehensive system of care for people living with HIV, who are uninsured or underinsured. JSI Research & Training Institute, Inc. (JSI), which is an organization that contracts with HRSA, approached Ms. Mahani and requested her services as a consultant based on her expertise and accomplishments in the workplace, specifically related to her coordination of the Ryan White Program. The work would include co-facilitating six separate learning and collaboration sessions on best industry practices. Any consulting work would occur outside her county work hours. While JSI's offices are in Atlanta, Georgia, Ms. Mahani's portion of the training would be delivered remotely (from her home) using her personal computer. These trainings are offered to participants free of charge. JSI is currently not a vendor of the county.

ANSWER:

Section 2-443(d), *Contractual relationships*, prohibits Ms. Mahani and her outside consulting business from entering into any contract or other transaction to provide goods or services to the county, directly or indirectly. Additionally, the COE has previously held that Section 2-443(d) also prohibits her or her outside business from entering into any contractual relationships with a vendor of the county if she would be providing goods or services to the county through that contract.¹ This would create an indirect contract between Ms. Mahani and the county and would violate the Code.

Based on the facts provided, the company that Ms. Mahani would be working for as an independent contractor, JSI, is not a vendor of the county. Therefore, as long as neither she nor her outside business

¹ RQO 10-038, RQO 16-001, RQO 16-006, RQO 19-019

enter into any contract or other transaction for goods or services with the county or with a county vendor, other than where an exception applies, and she performs her consulting work outside her county work hours and does not use any county resources, software, or equipment, the Code does not prohibit her from working as an independent contractor for JSI.

Although the Code does not prohibit this type of work in her private capacity, Ms. Mahani would have an ongoing responsibility to refrain from using her official position as the CARE Council Coordinator in any way, including influencing others to take some action, to give a special financial benefit to herself or her outside business.² As such, she must refrain from soliciting business during her county work hours or identifying herself as a county employee in an attempt to obtain a customer, including providing any written or verbal communication using her title or position with the county. Here, it should be noted that, based on the facts provided, Ms. Mahani did not use her official position to solicit or otherwise approach anyone about retaining her as an independent contractor. JSI approached Ms. Mahani because of her reputation in the industry.

Finally, Ms. Mahani is reminded that she must ensure that she complies with the county's rules regarding outside employment.

LEGAL BASIS:

The legal basis for this opinion is found in §2-443(a) and §2-443(d) 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, or attempt to do any of these things, 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;
- (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 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 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

RG/gal

² Section 2-443(a), Misuse of public office or employment