

Honesty - Integrity - Character

**Palm Beach County
Commission on Ethics**

300 North Dixie Highway
West Palm Beach, FL 33401

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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

December 8, 2022 – 1:30 p.m.

Governmental Center,

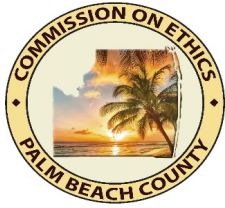
301 North Olive Avenue, 6th Floor

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. Pledge of Allegiance
- III. Roll Call
- IV. Introductory Remarks
- V. Executive Session-C22-005
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 22-025
 - b. RQO 22-026
- 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.



Palm Beach County Commission on Ethics

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Michael H. Kugler, Vice Chair
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November 7, 2022

Jennifer Cirillo, MBA, CPRE
Director, Parks and Recreation
Palm Beach County Parks and Recreation Department
2700 6th Avenue South
Lake Worth, FL 33461

Re: RQO 22-025
Spousal Employer Vendor/Sub-contract with Vendor

Dear Ms. Cirillo,

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 a prohibited conflict arise under the Palm Beach County Code of Ethics (Code) for you, as the Director of Palm Beach County Parks and Recreation (P&R), if your spouse:

- 1) is employed by a company who is a certified vendor for the county, and
- 2) participates in the actual construction of projects for the P&R Department, as an employee of a company sub-contracted for that specific portion of the job.

BRIEF ANSWER:

A conflict of interest does not arise for you if your spouse is employed by a County vendor who performs work for the County, both as a contractor or sub-contractor, as long as the requirements of the Code as described in this advisory opinion are followed.

FACTS:

You are the newly appointed Director of the P&R Department. Your spouse is employed by D.W. Recreation Services, Inc. (DWRS). DWRS is a vendor of the County and at times acts as a sub-contractor on projects related to P&R. Neither you nor your spouse have any ownership interest in DWRS.

In your role as Director, specifically related to larger construction projects, you sign and approve documents regarding budget availability, as well as sign procurement requisition documents for projects; however, the projects themselves are managed by the County's Facilities Development and Operations Department (FDO).¹ The FDO also oversees the bidding procedure and awarding of contracts for each project. Once FDO is ready to move forward with the design and/or construction of the project, they send a budget availability statement to P&R. As Director, you are the authorized signor of this document which is used to verify that P&R has the budget to pay for the service FDO is procuring, but you do not oversee or participate in FDO's procurement process in any way. When the contracted work begins, FDO provides staffing to manage each individual project, while P&R supplies a liaison from its Planning and Development Division.

¹ Parks & Recreation is not considered a construction department per the County's Purchasing Code.

For smaller improvements, such as shade projects, benches, or other similar park fixtures, procurement goes through the County's purchasing department.² The P&R staff directly purchases equipment from a vendor, complying with County purchasing policies. If appropriate, the scope of work and quote will include installation; other times, the fixture will be purchased and the parks team will complete the installation. If the quote from a vendor includes installation, you do not know in advance who will perform the actual work. Certain vendors perform their own installations, while other vendors may have the sub-contractor of their choice complete the installation. It is during this part of the process that DWRS may become involved in a P&R project as a sub-contractor. Your spouse's company is not a vendor from which P&R staff would directly purchase equipment.

In your position, you are not in any way involved in discussions or decisions involving DWRS. If at any time you are presented with a situation where DWRS is listed as a sub-contractor, you would neither participate in those discussions nor be a signor or endorser of those projects.

ANSWER:

As a County employee, 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 Section 2-443(a)(1-7), which includes your spouse or your spouse's employer.³ The Code also prohibits you from using your official position to corruptly secure a special benefit for anyone, including your spouse or your spouse's employer. Corruptly is defined as an act that is done with a wrongful intent and that is inconsistent with the proper performance of your public duties.⁴

Based on the facts provided, there is no prohibited conflict of interest per se under the Code based solely on your spousal relationship, as long as you do not use your official position as the P&R Director in any way to give a special financial benefit to your spouse or your spouse's employer.⁵ Here, you stated you understand that the Code prohibits you from being involved in discussions or decisions to select DWRS for County projects and that you must refrain from any discussion or decision making or acting as a signor or endorser of a project if DWRS were ever listed as a sub-contractor as those actions would give a special financial benefit to your spouse's employer. In addition, you are reminded that the Code also prohibits you from participating in the selection process for any contract or transaction where your spouse's employer, DWRS, is listed as a vendor. You are also prohibited from influencing others to take some action which would give DWRS a special financial benefit. However, as long as you do not improperly use your official position to give DWRS a special financial benefit, a conflict of interest would not arise for you, your spouse would not be prohibited from continuing to work for DWRS, and DWRS would not be prohibited from continuing to operate as a certified-County vendor and perform sub-contracting work for other vendors of the County, including for the P&R Department.

LEGAL BASIS:

The legal basis for this opinion is found in § 2-442, §2-443(a), and §20443(b) of the Code:

Sec. 2-442. Definitions.

Outside employer or business includes:

- (2) Any entity located in the county or which does business with or is regulated by the county or municipality as applicable, in which the official or employee has an ownership interest. For

² Projects under \$100,000.

³ Sec. 2-443(a).

⁴ Sec. 2-443(b).

⁵ Sec. 2-442, Definitions.

purposes of this definition, an "ownership interest" shall mean at least five (5) percent of the total assets or common stock owned by the official or employee or any combination of the official or employee's household members, spouse, child, step-child, brother, sister, parent or step-parent, or a person claimed as a dependent on the official or employee's latest individual federal tax return.

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:
- (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.
- (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.

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.

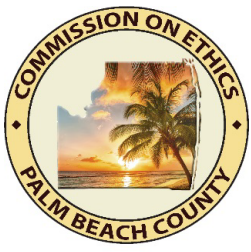
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Christie E. Kelley,
Executive Director

RG/gal



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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

November 3, 2022

Ms. Sarah Alexandra Cohen
Assistant County Attorney
Palm Beach County Attorney's Office
300 N. Dixie Highway, Suite 381
West Palm Beach, FL 33401

Re: RQO 22-026
Outside business/Vendor

Dear Ms. Cohen,

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 your outside business from supplying goods to a current vendor of Palm Beach County (County), specifically Discover the Palm Beaches (DTPB)?

BRIEF ANSWER:

Generally, the Code would not prohibit your outside business from selling goods to a vendor of the County as long as certain requirements are met. However, because DTPB is funded nearly entirely by the County, any sale from your outside business to DTPB is the equivalent of an indirect contract with the County and would thus be prohibited, unless an exception applies.

FACTS:

You are an attorney for the County. You also own and manage a limited liability corporation (LLC) called "Sarah's Slow Jam" (SSJ). SSJ is a single-member LLC, which supplies small batch jams and jellies on a seasonal basis. SSJ would like to sell its product to DTPB.

DTPB has been contracted by the County to provide tourism marketing services under the County's Tourist Development Plan and is funded nearly entirely by the County.¹ Because of this contractual relationship, DTPB is considered a County vendor. In your role as a County attorney, you have no involvement or oversight of the contract between DTPB and the County and play no role in the funding process.

ANSWER:

Section 2-443(d) of the Code prohibits public officials or 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.² The Code defines an "outside business" as any entity located in the County, or which does business with or is regulated by the

¹ Based on the information provided, a very small portion of DTPB's budget is privately funded.

² §2-443(d), *Contractual relationships*.

County or a municipality as applicable, in which the official or employee has an ownership interest. "Ownership interest" means at least five percent of the total assets or common stock is owned by the official or employee or any combination of the official or employee's household members, spouse, child, step-child, brother, sister, parent or step-parent, or a person claimed as a dependent on the official or employee's latest individual federal tax return. Under this definition, SSJ qualifies as your outside business. Therefore, SSJ is prohibited from entering into any contract or other transaction with the County, directly or indirectly, unless an exception applies.

The COE has previously held that a prohibited indirect contract exists where an employee's outside business enters into any contracts or transactions with an entity where they would be providing their goods or services to their public employer or where their public employer would pay for the employee's goods or services through the employee's contract with that entity.³ Therefore, based on the facts provided, because DTPB is a County-funded entity and County funding would be used to purchase the goods from SSJ, SSJ would be prohibited from entering into such a contract or transaction with DTPB as this would create a prohibited indirect contract between SSJ and the County, unless an exception applies.

Section 2-443(e) provides specific exceptions in which this prohibition may be exempted for public employees. Under the facts provided, it appears that one possible exception would apply to your situation - where the total amount of contracts or transactions does not exceed \$500 in the aggregate per calendar year.⁴ Under this exception, SSJ could sell its product to DTPB as long as the total amount of the contracts or transactions between SSJ and DTPB is \$500 or less in the aggregate per calendar year.

Further, you are reminded that although the Code does not prohibit you from owning a business in your private capacity, you have an ongoing responsibility to refrain from using your official position with the County to give a special financial benefit to yourself or your outside business.⁵ This includes using your position to influence another person to take some action, which would give a special financial benefit to yourself or your outside business, soliciting business during your county work hours, or identifying yourself as a county employee in an attempt to obtain a customer, including providing any written or verbal communication using your title or position with the County. Therefore, you must also take great care not to misuse your governmental employment in any way to give a special financial benefit to yourself or your outside business. Finally, you also must ensure that you comply with any of the County's additional rules regarding outside employment.

LEGAL BASIS:

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

Sec. 2-442. Definitions.

Outside employer or business includes:

- (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; or
- (2) Any entity located in the county or which does business with or is regulated by the county or municipality as applicable, in which the official or employee has an ownership interest. For purposes of this definition, an "ownership interest" shall mean at least five (5) percent of the

³ RQO 10-038; RQO 11-012, RQO 16-001, RQO 16-006, RQO 19-019, RQO 20-003.

⁴ §2-443(e)(4), *Exceptions and waiver*

⁵ §2-443(a), *Misuse of public office or employment*

total assets or common stock owned by the official or employee or any combination of the official or employee's household members, spouse, child, step-child, brother, sister, parent or step-parent, or a person claimed as a dependent on the official or employee's latest individual federal tax return.

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;
- (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:
- (4) The total amount of the contracts or transactions in the aggregate between the outside employer or business and the county or municipality as applicable does not exceed five hundred dollars (\$500) per calendar year.

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