

Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

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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

February 2, 2023 – 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 from January 12, 2023
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 23-002
- 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 ETHIS (COE)
PALM BEACH COUNTY, FLORIDA**

JANUARY 12, 2023

**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:

Liana Figueroa, Finance Manager
Andrea Nadler, Senior Board Meetings Specialist

I. CALL TO ORDER

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

II. PLEDGE OF ALLEGIANCE

Vice Chair Kugler led the Pledge of Allegiance

III. ROLL CALL

Present: Vice Chair Michael H. Kugler, Commissioner Peter L. Cruise,
Commissioner Michael S. Kridel, Commissioner Danielle A. Sherriff

Absent: Chair Rodney G. Romano

IV. INTRODUCTORY REMARKS

Commissioner Sherriff wished her colleagues a Happy New Year. Vice Chair Kugler echoed Commissioner Sherriff's sentiments.

V. APPROVAL OF MINUTES

MOTION to approve the November 3, 2022, minutes. Motion by Commissioner Sherriff, seconded by Commissioner Cruise, and carried 4-0.

MOTION to approve the December 8, 2022, minutes. Motion by Commissioner Cruise, seconded by Commissioner Kridel, and carried 4-0.

VI. 2022 ANNUAL REPORT PRESENTATION

Ms. Kelley presented the annual report.

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

- a. RQO 22-027
- b. RQO 22-028
- c. RQO 22-029
- d. RQO 22-030 (modified)

MOTION to approve the consent agenda as published. Motion by Commissioner Cruise, seconded by Commissioner Sherriff, and carried 4-0.

VIII. ITEMS PULLED FROM CONSENT AGENDA

No items were pulled from consent.

IX. EXECUTIVE DIRECTOR COMMENTS

Ms. Kelley provided the following updates:

1. The COE was accepting applications for the position of Education and Communications Coordinator.
2. Ms. Kelley and Ms. Giger planned to meet with newly sworn-in BCC Commissioner Michael Barnett to provide Code of Ethics training.
3. The hearing regarding Lynne Hubbard was scheduled for January 25, 2023, at 9:00 a.m.

X. COMMISSION COMMENTS

Commissioner Cruise thanked his colleagues and staff who would be acting as judges and moderators at the upcoming High School Ethics Bowl at Florida Atlantic University.

XI. PUBLIC COMMENT

Suzette Rodriguez, a District 3 resident, discussed concerns about her commissioner's responsiveness regarding an issue she had raised

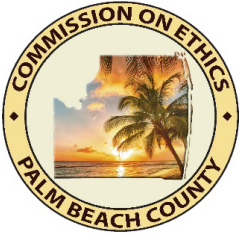
XII. Adjournment

MOTION to adjourn. Motion by Commissioner Kridel, seconded by Commissioner Cruise, and carried 4-0.

At 1:57 p.m., the vice chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



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

Honesty - Integrity - Character

January 27, 2023

Ms. Tammi Walton
Palm Beach County Library System
3650 Summit Boulevard
West Palm Beach, FL 33406

Re: RQO 23-003
Gift Law

Dear Ms. Walton,

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 an employee of Palm Beach County (County), from sharing the details of a fundraiser via a "GoFundMe" page with your co-workers when the funds raised are intended for your benefit?

BRIEF ANSWER:

The Code does not preclude you from providing information or soliciting donations from other County employees as long as all of the requirements outlined in this opinion are adhered to. The COE cannot provide an opinion regarding County policies or procedures related to this query.

FACTS:

You are a County employee working in the Library System. You created a "GoFundMe" page that is intended to solicit donations to contribute to expenses incurred during your pet's recent surgery and illness. You would like to circulate a flyer with the details of the fundraiser and provide the link to the "GoFundMe" page to both your immediate co-workers in the Library System as well as to County employees in other departments. The fundraiser is not associated with a non-profit organization. The proceeds of the page will go directly to you and will be used to offset personal costs incurred. You would not use County resources or equipment to share the information.

ANSWER:

The Code prohibits public officials and employees from using their official position in any manner, which would result in them receiving a special financial benefit, not shared with similarly situated

members of the general public.¹ A financial benefit is defined as anything of value.² As such, you are prohibited from using your name and official county title or position in any fundraising efforts for the “GoFundMe”. Lending your name and county title or position to the fundraising effort would per se constitute using your official public position to give a special financial benefit to yourself. This applies to you, as well as anyone indirectly soliciting on your behalf. Therefore, any solicitations would need to be in your personal name without reference to your county title or connection to your county position.

If you solicit donations in your personal name only, the Commission on Ethics wants you to be mindful of several prohibitions. Under Sec. 2-444(e) of the Code, you are prohibited from accepting a gift of any value in exchange for the past, present, or future performance of an official act or legal duty. In addition, the Code also prohibits you from accepting any gifts with a value over \$100 in the aggregate per calendar year from any vendor, lobbyist, or principal or employer of a lobbyist who lobbies, sells, or leases to the County.³ In addition, you are prohibited from accepting any gift as a thank you gift or otherwise in appreciation for the performance of any specific official act by you.⁴

Further, while the Code does not prohibit you from soliciting or accepting donations of any amount for this cause, in your personal name only, from persons and/or entities who are not County vendors or lobbyists or principals or employers of lobbyists who lobby the County, no quid pro quo or other benefit may be given for an official act or the past, present, or future performance of a public duty. The Code also prohibits you from soliciting a gift of any value from any person or business entity that you know is a vendor of the County where the gift is for the personal benefit of the official or employee.⁵ Finally, you are reminded that the Code prohibits you from using your official position to corruptly secure a special benefit of any kind for anyone, including yourself.⁶

Here, because you are soliciting donations to cover your own out-of-pocket costs, any donation you receive would likely be considered a gift, unless one of the exceptions to the gift reporting requirement applies.⁷ One such exception is a personal gift. A personal gift is one that is given to the employee by a personal friend or co-worker and the circumstances show that the motivation for the gift was a personal or social relationship, and not an attempt to influence the employee in the performance of her official duties.⁸ Thus, any gift you may receive in excess of \$100 must be properly analyzed to see if it meets the definition of a gift, and if necessary, reported according to the Code.⁹

In sum, based on the facts provided, the Code does not prohibit you from either soliciting donations or from circulating the details of your “GoFundMe” page amongst your County co-workers as long as it is done in your personal name only without any reference to your County title or position. While the Code does not prohibit the solicitation of donations of any amount, in your personal

¹ Sec. 2-443(a)(1)

² Sec. 2-442

³ Sec. 2-444(a)(1)

⁴ RQO 10-031; RQO 11-008

⁵ Sec. 2-444(c)

⁶ Sec. 2-443(b)

⁷ Sec. 2-442

⁸ Sec. 2-444 (f)(2)(a)

⁹ Sec. 2-444(f)(2)(b)

name only, from a person or entity that is not a County vendor, lobbyist, or principal or employer of a lobbyist for the stated purpose, you must be mindful that no solicitation may be made or donation accepted from any person or entity based on any official quid pro quo or the past, present, or future performance or non-performance of any public action or legal duty. You are also reminded that you must pay close attention to the amount donated by any individual, as a gift form will be required if the amount donated is over \$100 and the contribution meets the definition of a gift. Finally, the County may have policies and procedures that address this issue. While the Commission on Ethics addresses questions concerning the Code of Ethics, the responsibility for interpreting county policies lies with your supervisor or department head.

LEGAL BASIS:

The legal basis for this opinion is found in §2-442, §2-443(a), §2-443(b), and §2-444 of the Code:

Sec. 2-442. Definitions.

Financial benefit includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value. This term does not include campaign contributions authorized by law.

Gift shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise of these, or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single setting or a meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift may consult, among other sources, Florida Statutes, §112.3148, and the Florida Administrative Code as may be amended.

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;

(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.

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.
- (c) No county commissioner, member of a local governing body, mayor or chief executive officer 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 a gift of any value 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, where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee. No advisory board member or any other person or business entity on his or her behalf, shall knowingly solicit a gift of any value 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 recipient's advisory board or any county or municipal department as applicable that is subject in any way to the advisory board's authority, influence or advice, where the gift is for the personal benefit of the advisory board member, another advisory board member, another official or employee, or any relative or household member of the official or employee.
- (e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:
- (1) An official public action taken or to be taken, or which could be taken;
 - (2) A legal duty performed or to be performed or which could be performed; or
 - (3) A legal duty violated or to be violated, or which could be violated by any official or employee.
- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
- (2) All other officials and employees who are not reporting individuals under state law.
 - a. Personal gifts. All officials and employees who are not reporting individuals under state law are not required to report gifts in excess of one hundred dollars (\$100) so long as those gifts are given to the official or employee by a personal friend or co-worker and the circumstances demonstrate that the motivation for the gift was the personal or social relationship rather than an attempt to obtain the goodwill or otherwise influence the official or employee in the performance of his or her official duties. Factors to be considered in determining whether a gift was motivated by a personal or social relationship may include but shall not be limited to: whether the relationship began before or after the official or employee obtained his or her office or position; the prior

history of gift giving between the individuals; whether the gift was given in connection with a holiday or other special occasion; whether the donor personally paid for the gift or sought a tax deduction or business reimbursement; and whether the donor gave similar gifts to other officials or employees at or near the same time. If the personal friend or co-worker is a vendor, lobbyist or principal or employer of a lobbyist that lobbies the county or municipality as applicable, then the official or employee shall not accept a gift in excess of one hundred dollars (\$100) in accordance with subsections (a)(1) and (b)(1).

- b. All other gifts. All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics no later than January 31 of each year for the previous calendar year (January 1 through December 31). All officials or employees, who are not reporting individuals under state law and who do not receive a gift in excess of one hundred dollars (\$100) during a given reporting period shall not file an annual gift disclosure report. The annual gift disclosure report shall be created by the county commission on ethics and shall be in a form substantially similar in content as that required by state law. The county code of ethics' definition of gift and exceptions thereto shall be used by non-state-reporting individuals in completing and filing annual gift disclosure reports required by this section.

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. 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