

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

March 9, 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. Nomination and election of new Chairperson (to begin presiding over meeting immediately upon election)
- V. Nomination and election of new Vice Chairperson
- VI. Introductory Remarks
- VII. Approval of Minutes from February 2, 2023
- VIII. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 23-001
 - b. RQO 23-003
 - c. RQO 23-004
 - d. RQO 23-005
 - e. RQO 23-006
- IX. Items Pulled from Consent Agenda
 - a.
- X. Executive Director Comments
- XI. Commission Comments
- XII. Public Comments
- XIII. 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**

FEBRUARY 2, 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:

Andrea Nadler, Senior Board Meetings Specialist

I. Call to Order

The chair called the meeting to order at 1:38 p.m.

II. Pledge of Allegiance

Commissioner Kridel led the Pledge of Allegiance.

III. Roll Call

All members were present.

IV. Introductory Remarks

No remarks were made.

V. Approval of Minutes

MOTION to approve the January 12, 2023, minutes. Motion by Commissioner Cruise, seconded by Vice Chair Kugler, and carried 5-0.

VI. Processed Advisory Opinions (Consent Agenda)

a. RQO 23-002

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

VII. Items Pulled from Consent Agenda

No items were pulled from the consent agenda.

VIII. Executive Director Comments

Ms. Kelley provided the following updates:

1.

On January 28, 2023, Ms. Kelley and Ms. Levesque acted as moderators at the 2023 Regional High School Ethics Bowl. Ms. Kelley congratulated the winning team from Archimedian Upper Conservatory.

2.

On February 8, 2023, the final hearing for C22-005 would be held with John Cleary serving as the COE's advocate.

3.

On February 15, 2023, Ms. Kelley and Ms. Giger were scheduled to meet with Commissioner Barnett for an ethics overview training.

4.

Ms. Kelley informed the commission that annual visits to Palm Beach County municipalities had commenced and that visits to Hypoluxo, Boynton Beach, and Glen Ridge had taken place in January. The goal was to visit the remaining 36 municipalities over the course of the year.

5.

The next COE meeting was scheduled for March 9, 2023.

IX. Commission Comments

1.

Commissioner Cruise thanked Ms. Kelley and Ms. Levesque for their support of the High School Ethics Bowl.

2.

Commissioner Cruise asked Ms. Kelley about the procedure for including a proposed new municipality in the rotation of scheduled visits, and Ms. Kelley explained the process.

3.

Chair Romano apologized to Commissioner Cruise for having missed the Ethics Bowl.

X. Public Comments

No comments were made.

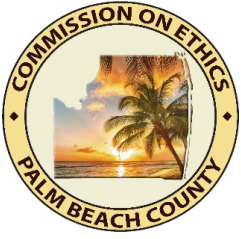
XI. Adjournment

MOTION to adjourn. Motion by Vice Chair Kugler and carried 5-0.

At 1:43 p.m., the vice chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



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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

February 3, 2023

Ms. Samantha Erisey, Animal Control Officer II
Palm Beach County Animal Care and Control
Animal Cruelty/Special Investigations Unit
7100 Belvedere Road
West Palm Beach, FL 33411

Re: RQO 23-001

Dear Ms. Erisey,

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 applying for and/or accepting an educational scholarship that you became aware of only because of a training you delivered related to your position as a County employee?

BRIEF ANSWER:

The Code does not preclude you from applying for and accepting a scholarship if it is awarded to you, even though you only learned about it through a work assignment, as long as the guidance provided in this opinion is followed, including the filing of the appropriate gift form. The COE cannot provide an opinion regarding any additional County policies or procedures related to this query.

FACTS:

You are a sergeant with Palm Beach County Animal Care and Control (PBCACC). In addition to your full-time employment with PBCACC, you are also a full-time student working toward your master's degree. As a part of your work duties, you delivered an educational talk to PEO Sisterhood. After the presentation, PEO Sisterhood reached out to you and provided the details about a scholarship opportunity sponsored by their organization. The scholarship has specific qualifications, and each applicant must follow the same process. PEO Sisterhood has stated that the scholarship opportunity is not based on your presentation nor is it any type of repayment; rather, it is because they routinely look for women who are pursuing educational goals who may qualify for scholarships sponsored by their group. The scholarship in question is highly competitive and is distributed by PEO International, who is wholly responsible for choosing the recipient. PEO Sisterhood has no say in who receives the scholarship; however, every applicant must be nominated by a local chapter. Assuming you meet the criteria for the scholarship, they would like you to be their nominee.

ANSWER:

Section 2-442 of the Code defines a gift as “the transfer of anything of economic value,” and Section 2-444(e) prohibits you from accepting a gift of any value in exchange for the past, present, or future performance of an official act or legal duty. You are also prohibited from accepting any gift as a thank you gift or otherwise in appreciation for the performance of any specific official act by you.¹

Here, the scholarship would likely be considered a gift.² However, even though you became aware of the scholarship during a work related function, it would not be considered a gift received in exchange for an official act or as a thank you gift because you are applying for the scholarship based on standardized criteria that is also required of any other applicant, and the award of the scholarship is not guaranteed. You are reminded that if you are awarded the scholarship, you would be prohibited from giving any quid pro quo or taking, failing to take, or influencing others to take or fail to take any action in exchange for the scholarship provided by PEO Sisterhood or PEO International.

While the Code does not prohibit you from applying for or accepting the scholarship, you must pay attention to the amount awarded and accepted. Under the Code, you are prohibited from accepting any gifts with a value over \$100 in the aggregate per calendar year from any County vendor or lobbyist or principal or employer of a lobbyist who lobbies the County.³ Moreover, 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 your personal benefit.⁴ If the scholarship is not from a County vendor or lobbyist or principal or employer of a lobbyist who lobbies the County and the value of the scholarship exceeds \$100, then the filing a gift form will be required.⁵ The rationale for the gift reporting requirement is grounded in the desire to increase transparency and accountability and to remove the appearance that gifts are made to obtain the good will of public officials and employees.

Finally, the Code does not prohibit you from outlining your professional experience by including your County employment and title on your resume or on the application. A resume is a general listing of a person's relevant employment experience and education information. While the mere listing of this employment information on a resume or on the application would not be a violation of the Code, you are reminded that you are prohibited from otherwise using your official position in some manner to influence or attempt to influence the selection of your application or to corruptly secure a special benefit for anyone, including yourself.⁶

IN SUMMARY, based on the facts provided, you are not prohibited by the Code from applying for or accepting this scholarship as long as you do not improperly use your official

¹ RQO 10-031; RQO 11-008

² While there are several exceptions to what meets the official definition of a gift in Sec. 2-444, none of the exceptions seem to apply to the facts as they have been presented.

³ Sec. 2-444(a)(1)

⁴ Sec. 2-444(c)

⁵ Sec. 2-444(f)(2)(b)

⁶ Sec. 2-443(a); Sec. 2-443(b)

position in any way to obtain the scholarship. Further, as a reminder, if the value of the scholarship exceeds \$100, you must confirm that the grantor of the scholarship is not a County vendor or a lobbyist or principal or employer of a lobbyist who lobbies the County. Similarly, you must be mindful that you may not accept the scholarship from any person or entity based on any quid pro quo or special consideration given in exchange for providing the scholarship or for the past, present, or future performance or non-performance of any public action or legal duty. Additionally, a gift form will be required if the amount of the scholarship exceeds \$100. Finally, your County employer may have its own additional policies and procedures that apply to this issue. While the Commission on Ethics addresses questions concerning the Code of Ethics, the responsibility for interpreting other 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)(1), §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.
 - 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.

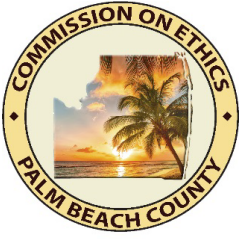
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Christie E. Kelley,
Executive Director

RG/gal



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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

February 23, 2023

Ms. Nicole Karuzas
Nicole's Getaways Dream Vacations
14620 96th Lane N.
West Palm Beach, FL 33412

Re: RQO 23-003
Advisory Board Voting Conflict

Dear Ms. Karuzas,

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:

As a member of the Palm Beach County Zoning Commission (PBZC), would a conflict of interest arise for you if clients of your travel agency who are also vendors of the county appear before the PBZC?

BRIEF ANSWER:

Based on the facts submitted, a prohibited conflict of interest does not arise based solely on a professional relationship that is unrelated to your duties as a member of the PBZC. However, were any of your clients to come before the PBZC, abstention from any discussion or vote may be required if certain factors are met.

FACTS:

You are a newly appointed member of the PBZC. You also own and operate a travel agency franchise called "Dream Vacations." Prior to your appointment to the PBZC, you have established business relationships with individuals who use your travel agency, and these individuals may appear before the PBZC.¹ You do not have personal relationships with any of your clients; your contact with them have been solely related to travel sales. When a travel-related business transaction occurs, a client contacts you, and you book their trip through a vendor. You then submit payment to the vendor on behalf of your client. According to your website, travel agent commissions are automatically built into the price of the transaction paid by your clients and the vendor then provides that commission to you for each transaction.

The PBZC provides recommendations to the Palm Beach County Board of County Commissioners on a number of zoning-related applications and makes final decisions regarding certain variance applications. Because it has final decision-making authority, PBZC is not a board that is purely

¹ The customers and/or their companies or employers you have referenced in your question to the COE are also certified vendors of the county. Further, the COE did not analyze each of those clients individually in this opinion because the likelihood you will encounter this same issue with future clients seems probable.

advisory. You believe that clients of your outside business will likely appear before the PBZC. The capacity of these appearances is unknown at this time, but it is anticipated they will be representing either their own businesses or the interests of their employers.

ANSWER:

As an appointed official, the Palm Beach County Code of Ethics (Code) prohibits you from using your official position as a PBZC member to give a special financial benefit, not shared with similarly situated members of the general public, to yourself, your outside business, or a customer or client of your outside business.² Similarly, you are also prohibited from voting on or participating in a matter that gives a special financial benefit to yourself, your outside business, or a customer or client of your outside business.³ A customer or client is defined as a person or entity to whom you or your outside business has supplied goods or services with a value in excess of \$10,000 over the previous 24 months.⁴

Based on the facts provided, the Code does not prohibit you from providing travel-related services in your private capacity to county vendors who may appear before the PBZC as long as you will not be providing any goods or services to the county through that contract or transaction.⁵ However, when a person or entity who utilizes your travel agency services will be appearing before the PBZC, you must determine whether they meet the Code's definition of customer or client. The Code would prohibit your participation in any discussions or votes that may come before the board involving any persons or entities who are determined to be a customer or client of your travel agency.⁶ Here, although the vendor provides you a commission for each transaction, because these commissions are automatically built into the price of the transaction, the COE is of the opinion that your travel agency clients are ultimately paying you for your services. Consequently, you will be required to carefully calculate the value of the goods or services your travel agency has provided to any of these individuals who appears before the PBZC.⁷

If the \$10,000 threshold has been met, then a prohibited conflict of interest would exist for you. As such, voting on or participating in any issue involving customers or clients of your travel agency or attempting to influence other PBZC members would constitute a misuse of office and a voting conflict. When faced with such a voting conflict, the Code requires you to 1) disclose the nature of your conflict before the PBZC discusses the matter; 2) abstain from any discussion or vote or otherwise participate in the matter; and 3) file a state voting conflict form (Form 8B), submitting a copy to the PBZC's clerk and the COE. Here, "participate" would mean that you may not take part in any presentation or discussion regarding the matter with your fellow members of the PBZC.

If the value of the goods or services supplied by your travel agency to the person or entity appearing before the PBZC does not meet the requisite \$10,000 monetary threshold, then they would not be considered a customer or client of your outside business under the Code. Were this situation to

² Sec. 2-443(a)(1), (4), & (5)

³ 2-443(c)

⁴ Sec. 2-442

⁵ RQO 10-038, RQO 16-001, RQO 16-006, RQO 19-019

⁶ While each issue coming before the PBZC will need to be examined individually for any conflict issues, this prohibition would apply even if your customer or client is representing their employer or another entity, and their employer or other entity is not a customer or client of your outside business, where the matter would ultimately result in your customer or client receiving a special financial benefit.

⁷ Despite the fact that you are compensated by the vendor and not the client or customer of your private business, the Code requires that you consider the value of commission received for the travel booked through your agency in your calculations.

arise, despite your outside business relationship with the person or entity, the Code would not preclude your participation in or vote on the matter before the PBZC. Although there would be no per se conflict of interest, an appearance of impropriety may exist if you were to participate in discussions or vote on matters involving these persons or entities who utilize your travel agency services, even though they did not meet the \$10,000 threshold of the Code. If you are concerned about the appearance of impropriety, you may choose to abstain from voting on or participating in the matter or to at least disclose your business relationship prior to any vote or participation.

Further, the COE feels it is important to stress that any official action taken by you as a member of the PBZC will violate the Code if it is based on any unlawful quid pro quo to your outside business. You must also keep in mind that Sec. 2-443(b), *Corrupt misuse of official position*, prohibits you from using your official position to corruptly secure or attempt to secure a special privilege, benefit, or exemption for yourself 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, such as voting, which is inconsistent with the proper performance of his or her public duties.

LEGAL BASIS:

The legal basis for this opinion is found in §2-442, §2-443(a), §2-443(b), and §2-443(c) 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).

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;
- (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 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 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 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.

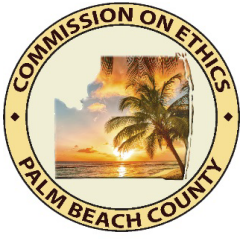
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Christie E. Kelley,
Executive Director

RG/gal



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Commissioners

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Executive Director

Christie E. Kelley

February 17, 2023

Mr. Charnel Geffrard
Building Maintenance Worker
City of Delray Beach Public Works Department
Delray Beach, FL 33483

Re: RQO 23-004
Outside Employment Conflict

Dear Mr. Geffrard,

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:

As an employee of the Public Works Department in the city of Delray Beach (City), would a prohibited conflict arise under the Palm Beach County Code of Ethics (Code) if you were also employed on a part-time basis with Lanier Parking, who has a current contract managed by the City's Public Works Department?

BRIEF ANSWER:

Yes, this would create a prohibited conflict under the Code because you would be unable to comply with all of the requirements of the waiver and exceptions provision as set forth in Section 2-443(e)(5).

FACTS:

You are a full-time employee for the city of Delray Beach Public Works Department. Your current job with the City is as a building maintenance worker and is overseen by the Building Maintenance Division. The Building Maintenance Division is component of the Public Works Department. Your current job duties are general maintenance of City facilities. You are not involved with any parking or parking enforcement projects as a part of your job requirements with the City.

The City contracts with Lanier Parking to oversee parking management within the City. This includes servicing parking meters, parking enforcement, maintaining the City parking garages, and responding to citizen complaints or questions pertaining to parking tickets or other parking issues. The contract with Lanier Parking is managed by the City's Public Works Department. You are totally uninvolved with any component of the contract

between Lanier Parking and the City. However, were you to continue your employment with Lanier Parking, part of your work duties would take place within the City.

ANSWER:

The Code generally prohibits public employees from accepting employment, directly or indirectly, with any "outside employer or business" that is a vendor of their public employer.¹ However, there are exceptions and a process by which this prohibition can be waived for employees.²

Here, because Lanier Parking is a vendor of the City, the Code prohibits you from accepting this part-time outside employment unless the prohibition can be waived. One of the requirements of the waiver and exceptions provision is that the employee may not work in the department which will oversee, administer, or enforce the contract between his or her public employer and the outside employer.³

Based on the facts submitted, the Code would prohibit you from obtaining part-time employment with Lanier Parking because it is a vendor of your public employer **and** the subject contract is overseen by the specific department in which you work. Because the Public Works Department oversees the contract with Lanier Parking, you would not be able to comply with all of the requirements of the exceptions and waiver provision. Therefore, you will need to decline this offer for part-time outside employment.

LEGAL BASIS:

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

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 his or her 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.

¹ Sec. 2-443(d)

² Sec. 2-443(e)

³ Sec. 2-443(e)(5)(a)

Sec. 2-443(e)(5)(a)

- (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 his or her spouse, domestic partner, household member, or relative does not work in the county or municipal department as applicable which will enforce, oversee or administer the subject contract;

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.

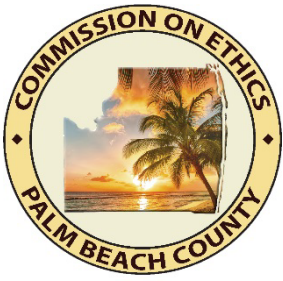
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Christie E. Kelley,
Executive Director

RG/gal



Palm Beach County Commission on Ethics

Commissioners

Rodney G. Romano, Chair
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Peter L. Cruise
Michael S. Kridel
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March 3, 2023

Carol Roberts
3620 Gardens Parkway - 601B
Palm Beach Gardens, FL 33410

Re: RQO 23-005

Dear Ms. Roberts,

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 conflict of interest arise for you as a member of the Palm Beach County Citizens Committee on Airport Noise (CCAN) if you were also to become a board member of Aeroauto LLC?

BRIEF ANSWER:

The Palm Beach County Code of Ethics does not prohibit you from being a member of Aeroauto LLC's board simultaneous with your membership on the CCAN as long as you meet certain requirements. Were Aeroauto LLC to come before the CCAN, you may be required to abstain from participating in discussions or voting on the matter.

FACTS:

You are a member of the Palm Beach County CCAN. Aeroauto recently approached you about joining their board. The position on Aeroauto LLC's board is unpaid. Aeroauto is not a county vendor and has not previously appeared before CCAN. Moreover, you do not anticipate any future contact or interaction between Aeroauto LLC and CCAN.

However, it should be noted that Aeroauto Flight Academy, LLC, a related entity, is an active/registered vendor of the county. Aeroauto LLC and Aeroauto Flight Academy, LLC share an address and at least one person represents both companies, but their listed officers are not the same for both companies. Thus, it appears that Aeroauto Flight Academy, LLC is a separate entity from Aeroauto LLC. You will not be serving on the board of Aeroauto Flight Academy, LLC.

The CCAN's function is to consider potential noise mitigation methods and to suggest relevant programs and concepts to the Department of Airports and the Palm Beach County Board of County Commissioners. The CCAN also attempts to resolve complaints that come before it with an emphasis on obtaining public input to assist in the formulation of its recommendations for noise mitigation action.

ANSWER:

As a member of the CCAN, you are considered an official under the Code.¹ As an official, the Code prohibits you from using your official position as a member of CCAN in any way, including voting on or participating in discussions on a matter, to give a special financial benefit to any of the persons or entities listed in Section 2 443(a)(1-7), which includes yourself and any other organization of which you are an officer or director.²

Based on the facts presented, because you will serve as a board member of Aeroauto LLC, the Code prohibits you from using your position as a CCAN member to give a special financial benefit to Aeroauto LLC. In other words, your membership on Aeroauto LLC's board would not present a conflict under the Code as long as you do not use your position on CCAN in any way, including voting on or participating in any matter, to give a special financial benefit to Aeroauto LLC. Further, while Aeroauto LLC itself is not a vendor of the county, it appears that a related entity, Aeroauto Flight Academy, LLC, is an active/registered county vendor. However, because you will not be serving on the board of Aeroauto Flight Academy, LLC and Aeroauto Flight Academy, LLC is a separate entity from Aeroauto LLC, if Aeroauto Flight Academy, LLC were to appear before CCAN, you would not be prohibited by the Code from participating in discussions or voting on a matter that would give a special financial benefit to Aeroauto Flight Academy, LLC. Although a per se conflict would not exist for you, you are cautioned that an appearance of impropriety may exist because the two entities are so closely related. If you are concerned about this appearance of impropriety, you may wish to disclose your membership on Aeroauto LLC's board prior to any discussion or vote.

Further, the COE feels it is important to stress that any official action taken by you as a member of CCAN will violate the Code if it is based on any unlawful quid pro quo to Aeroauto LLC or any of its related businesses. You must also keep in mind that the Code prohibits you from using your official position as a member of CCAN to corruptly secure or attempt to secure a special privilege, benefit, or exemption for yourself or anyone else, including Aeroauto LLC or any of its related businesses.³ 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, such as voting, which is inconsistent with the proper performance of his or her public duties.⁴

LEGAL BASIS:

The legal basis for this opinion can be found in §2-442, §2-443(a)(7), §2-443(b), and §2-443(c) of the Code:

Sec. 2-442. Definitions.

Advisory board shall mean any advisory or quasi-judicial board created by the board of county commissioners, by the local municipal governing bodies, or by the mayors who serve as chief executive officers or by mayors who are not members of local municipal governing bodies.

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

¹ Sec. 2-442, Definitions

² Sec. 2-443(a)(1-7), Misuse of public office or employment; Sec. 2-443(c), Disclosure of voting conflicts

³ Sec. 2-443(b), Corrupt misuse of official position

⁴ Id.

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:

- (7) A civic group, union, social, charitable, or religious organization, or other organization of which he or she (or his or her spouse or domestic partner) is an officer or director. However, this sub-section shall not apply to any official or employee who is required to serve on the board of directors of any organization solely based on his or her official position (ex-officio), regardless of whether he or she has voting rights on the board, and who receives no financial compensation for such service on the board of directors, and otherwise has no personal ownership interest in the organization.
- (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 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 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.

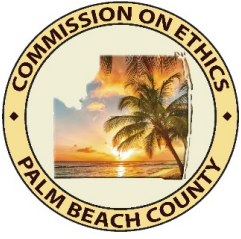
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Christie E. Kelley,
Executive Director

RG/gal



Palm Beach County Commission on Ethics

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Executive Director

Christie E. Kelley

Honesty - Integrity - Character

March 3, 2023

Captain Jim Matthews
Jupiter Inlet Colony Police Department
50 Colony Road
Jupiter Inlet Colony, FL 33469

Re: RQO 23-006

Dear Captain Matthews,

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 the Jupiter Inlet Colony Police Department, from purchasing an item of personal property from a local citizen when the item has not been publically advertised for sale?

BRIEF ANSWER:

The Code does not preclude you from purchasing the item as long as the guidance in this opinion is followed, including determining the actual fair market value of the item being purchased, and, if necessary, completing and filing the appropriate gift form with the COE.

FACTS:

You are a captain with the Jupiter Inlet Colony (Town) Police Department. Several years ago, a citizen asked you for your opinion on the type of electric bicycle to purchase. Based on his needs, and your knowledge of the product, you suggested a particular brand. The resident ultimately purchased the suggested bicycle for approximately \$7,500 and used it until it no longer fit his needs. After this, the bicycle sat unused and unmaintained and ultimately no longer functioned. At some point, the bicycle was repaired and returned to a working condition, but in the meantime, the company has gone out of business.¹

Recently, the citizen approached you to see if you were interested in purchasing the bicycle. The citizen said that he intended to attempt to sell the bicycle on-line with a starting price of \$2,000, but that he would ultimately accept \$1000. After this discussion, the resident asked if you would be interested in buying the bicycle for \$1,000. Based on your research, you believe that the fair market value (FMV) of the bicycle is \$1,000.

ANSWER:

The Code defines a gift as the transfer of anything of economic value without adequate and lawful consideration. The Code prohibits public employees from soliciting or accepting any gifts with a value of greater than \$100, in the aggregate for the calendar year, from a person or entity that the

¹ The company is Hanebrink Bikes and was based in California. The owner, Dan Hanebrink died in 2018. Shortly thereafter, the company stopped providing replacement parts for the bicycles it had sold.

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 their public employer.² In addition, Section 2-444(c) prohibits the solicitation of any gift from a vendor, lobbyist, principal or employer of a lobbyist if the gift is for the personal benefit of the employee, fellow employees, or the employee's relatives or household members. Further, a gift of any value may not be accepted as a quid pro quo for any official action, duty performed, or duty violated.³ Additionally, a gift may not be accepted as a thank you gift or otherwise in appreciation for the performance of a specific official act by a public employee.⁴ However, where a gift is general in nature and not directed at specific acts of individual employees, depending upon the facts and circumstances, acceptance of such a gift may not be prohibited.⁵

According to the facts provided, you believe that \$1,000 is a fair price for the bicycle. In determining the value of a gift, the Code defers to Florida code and statutes.⁶ If the recognized FMV of the bicycle is greater than the price you ultimately pay, that excess amount would be considered a gift, thus will be subject to the gift law prohibitions and requirements of the Code. The burden falls to the public employee to show with clear and convincing evidence the FMV of the item when determining the amount, if any, that remains as a gift.⁷

If the seller of the bicycle **is** a vendor, lobbyist, or principal or employer of lobbyists of the town, then seller is considered a prohibited source, and any gifts with a value exceeding \$100 in the aggregate per calendar year is prohibited by the Code. If the FMV is greater than the sales price, that excess monetary amount would be considered the gift. As such, if the FMV exceeds \$100 over the sales price, then the purchase would be prohibited.

If the seller **is not** a vendor, lobbyist or principal or employer of lobbyists of the town, as long as there is no "quid pro quo" or special treatment or privileges given to the seller in exchange for the purchase of the bicycle, the transaction would not be prohibited. However, the differential between the purchase price and the FMV may be reportable as a gift. If the FMV exceeds the purchase price by over \$100, the excess monetary amount must be disclosed in an annual gift report to be filed with the COE if you are a local reporting individual; if you are a state reporting individual, then the gift may need to be disclosed on a quarterly gift report filed with the State of Florida with a copy filed with the COE.⁸ Thus, you must pay close attention to the differential between the FMV and the sales price of the bicycle, as a gift form will be required if the difference exceeds \$100.⁹

Finally, while the Code does not prohibit this transaction as long as the guidance in this opinion is followed, you must be mindful that as a public employee, you are prohibited from using your official position to give yourself a special financial benefit, not shared with similarly situated members of the general public.¹⁰ Additionally, 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.¹¹

² Sec. 2-444(a)(1)

³ Sec. 2-444(e)

⁴ RQO 10-031; RQO 11-008;

⁵ RQO 11-102

⁶ 112.3148(7)(a), Florida Statutes

⁷ RQO 10-030

⁸ Sec. 2-444(f)(1)

⁹ Sec. 2-444(f)(2)(b)

¹⁰ Sec. 2-443(a)(1)

¹¹ Sec. 2-443(b)

LEGAL BASIS:

The legal basis for this opinion is found in §2-442, §2-443(a)(1), §2-443(b), and §2-444 of the Code:

Sec. 2-442. Definitions.

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...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.

(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.
 - 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 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