

*Honesty - Integrity - Character*

# *Agenda*

April 13, 2023 – 1:30 p.m.  
Governmental Center,  
301 North Olive Avenue, 6<sup>th</sup> Floor  
Commissioners Chambers

Meeting will begin at 1:30pm  
Executive Session will begin at 1:40pm  
Regular Agenda will resume immediately  
following Executive Session

**Palm Beach County**

**Commission on Ethics**

300 North Dixie Highway  
West Palm Beach, FL 33401  
561.355.1915  
FAX: 561.355.1904  
**Hotline: 877.766.5920**  
E-mail: [ethics@pbcgov.org](mailto:ethics@pbcgov.org)

**Commissioners**

Rodney G. Romano  
Michael H. Kugler  
Peter L. Cruise  
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

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Introductory Remarks
- V. Approval of Minutes from March 9, 2023
- VI. Executive Session Re: C23-005
- VII. Processed Advisory Opinions (Consent Agenda)
  - a. RQO 23-007
  - b. RQO 23-008
- VIII. Items Pulled from Consent Agenda
  - a.
- IX. Executive Director Comments
- X. Commission Comments
- XI. Public Comments
- XII. 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  
PALM BEACH COUNTY, FLORIDA**

**MARCH 9, 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

**COMMISSION ON ETHICS STAFF PRESENT:**

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

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

Danielle Freeman, Deputy Clerk

**I. CALL TO ORDER**

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

(CLERK'S NOTE: The roll call was conducted at this time.)

**III. ROLL CALL**

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

**Absent:** None

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

## **II. PLEDGE OF ALLEGIANCE**

Commissioner Sherriff led the Pledge of Allegiance.

Chair Romano shared his remarks on serving as chair. He also suggested that the commission consider nominating a member who had not been nominated before to give other members an opportunity to serve in the positions of chair and vice chair.

Commissioner Cruise inquired if Chair Romano's suggestion applied to nominating Vice Chair Kugler as Chair and Commissioner Sherriff as Vice Chair, and Chair Romano said that it did.

## **IV. NOMINATION AND ELECTION OF NEW CHAIRPERSON (to begin presiding over meeting immediately upon election)**

Chair Cruise nominated Vice Chair Kugler as Chair and Commissioner Sherriff as Vice Chair, and Commissioner Kridel seconded.

No other nominations were made, and the nomination passed unanimously.

## **V. NOMINATION AND ELECTION OF NEW VICE CHAIR**

(See earlier in minutes.)

## **VI. INTORDUCTORY REMARKS**

Vice Chair Sherriff expressed gratitude to the commission for her new role as vice chair and said she looked forward to serving with the commission.

Commissioner Cruise congratulated the chair and vice chair.

Chair Kugler thanked the commission for trusting him and Vice Chair Sherriff with their new roles.

## **VII. APPROVAL OF MINUTES FROM FEBRUARY 2, 2023**

**MOTION to approve the February 2, 2023, minutes. Motion by Commissioner Romano, seconded by Commissioner Kridel, and carried 5-0.**

## **VIII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)**

- a. RQO 23-001
- b. RQO 23-002
- c. RQO 23-003

d. RQO 23-004

e. RQO 23-005

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

#### **IX. ITEMS PULLED FROM CONSENT AGENDA**

No items were pulled from consent.

#### **XI. EXECUTIVE DIRECTOR COMMENTS**

1.

Ms. Kelley said the COE office continued to work with the Miami-Dade Commission on Ethics and Public Trust to enter in an agreement allowing the Miami-Dade Commission to conduct investigations into ethics complaints involving commissioners or staff of the COE. The intent of the agreement was to avoid any appearance of impropriety, prejudice, or bias. She added that she appreciated their joint endeavor regarding this.

2.

Ms. Kelley stated that staff had visited several municipal meetings since the last COE meeting, and they would be visiting Cloud Lakes municipal meeting that evening.

3.

Ms. Kelley said the COE had recently renewed the agreement with the Delray Beach Community Redevelopment Agency (CRA) that voluntarily placed the agency under the COE's jurisdiction. She noted that Ms. Giger had conducted a successful ethics training for them.

4.

Ms. Kelley provided a brief update on case C22-005 regarding Kenneth Payne, stating that a settlement agreement was reached resulting in the issuance of a letter of reprimand.

#### **XI. COMMISSION COMMENTS**

1.

Commissioner Romano congratulated Chair Kugler and Vice Chair Sherriff on their nominations, and he thanked staff for their hard work.

2.

Vice Chair Sherriff expressed gratitude to everyone.

3.

Commissioner Cruise asked Ms. Kelley how many CRA agreements the COE had, and Ms. Kelley said they had six in total.

4.

Chair Kugler said he looked forward to a great year as chair and said that he appreciated how well written and informative the processed advisory opinions were. He also stated he looked forward to working alongside Vice Chair Sherriff.

## **XII. PUBLIC COMMENT**

No public comments were made.

## **XIII. ADJOURNMENT**

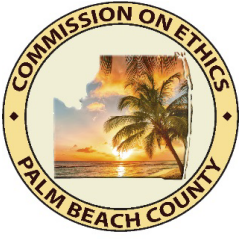
**MOTION to adjourn. Motion by Commissioner Romano, seconded by Vice Chair Sherriff and Commissioner Cruise, and carried 5-0.**

**At 1:40 p.m., the chair declared the meeting adjourned.**

APPROVED:

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Chair/Vice Chair



# Palm Beach County Commission on Ethics

**Commissioners**

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

**Executive Director**

Christie E. Kelley

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March 29, 2023

Nicole Barrett, Producer/Director  
PBC TV 20  
Palm Beach County Public Affairs Department  
301 N. Olive Avenue, Suite 100  
West Palm Beach, FL 33401

Re: RQO 23-007  
Gift Law

Dear Ms. Barrett,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows:

**QUESTION:**

Does the Palm Beach County Code of Ethics (Code) prohibit you, as a Palm Beach County (County) employee, from accepting tickets to "Evening on Antique Row" (EAR), when the tickets are being provided by the Historical Society of Palm Beach County (HSPBC)?

**BRIEF ANSWER:**

The Code does not preclude you from accepting tickets from HSPBC as long as you follow the guidance in this opinion including determining the adjusted value of the tickets, and returning any value in excess of \$100 to HSPBC.<sup>1</sup>

**FACTS:**

You are an employee of the County. In your role as a producer/director with PBC TV 20, you work closely with the HSPBC. As an expression of appreciation for the work done by PBC TV 20 throughout the year, the HSPBC would like to give you and your colleagues two tickets each to EAR.

EAR is an annual fundraising event hosted by HSPBC. HSPBC is a nonprofit organization and is also an active vendor of the County. Ticket prices for the event vary depending upon a variety of criteria, however the price for an advance purchase general admission ticket is \$75.

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<sup>1</sup> This guidance assumes you have not accepted any other gifts from HSPBC in the calendar year. If you have, the analysis will change as no more than \$100 in the aggregate per calendar year may be accepted from a County vendor such as HSPBC.

**ANSWER:**

Whether you may accept a gift is based on who is providing the gift and the value of the gift. The Code defines a gift as the transfer of anything of economic value without adequate and lawful consideration.<sup>2</sup> 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 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.<sup>3</sup> Here, because HSPBC is a vendor of the County, the Code prohibits you from accepting any gifts with an aggregate value that exceeds \$100 for the calendar year from HSPBC.

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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

After researching prices available to the general public, it appears the lowest cost for two tickets to attend EAR is \$150. In determining the actual value of a gift, the Code defers to Florida code and statutes.<sup>7</sup> Section 112.3148(7), Florida Statutes, and Section 34-13.500, Florida Administrative Code, both state that if the gift is provided by the charitable organization benefiting from the contribution, the value of admission to a charitable event is the value expressed on the face of the event ticket minus the portion of the cost which represents a charitable contribution.

Here, because HSPBC is providing the gift, the value of the tickets do not include the portion of the cost which represents a charitable contribution to HSPBC.<sup>8</sup> Therefore, because HSPBC is a County vendor, as long as the value of the tickets after subtracting the portion of the cost that represents a charitable contribution to HSPBC is \$100 or less for both tickets, and you have not accepted any other gifts from HSPBC during the calendar year, you may accept the tickets without further action. However, if the adjusted value of the two tickets exceeds \$100, you may still accept the tickets as long as you return any value in excess of \$100 to HSPBC within 90 days of the event.<sup>9</sup> The burden falls to the public employee to show with clear and convincing evidence the adjusted value of the accepted gift.<sup>10</sup> It should also be noted that a final option is simply to decline the tickets.

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<sup>2</sup> Sec. 2-442 Definitions

<sup>3</sup> Sec. 2-444(a)(1)

<sup>4</sup> Sec. 2-444(e)

<sup>5</sup> RQO 10-031; RQO 11-008;

<sup>6</sup> RQO 11-102

<sup>7</sup> 112.3148(7)(a), Florida Statutes

<sup>8</sup> 112.3148(7)(k), Florida Statutes

<sup>9</sup> RQO 10-005, 112.312(12)(a), Florida Statutes.

<sup>10</sup> RQO 10-030

Lastly, 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 in any way to give yourself a special financial benefit, not shared with similarly situated members of the general public.<sup>11</sup> You are also reminded that the Code prohibits you from using your official position to corruptly secure a special benefit of any kind for anyone, including yourself.<sup>12</sup>

As a generally rule, the guidance in this opinion will also apply to any of your colleagues who are also County employees.

### **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

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<sup>11</sup> Sec. 2-443(a)(1)

<sup>12</sup> Sec. 2-443(b)




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.

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.

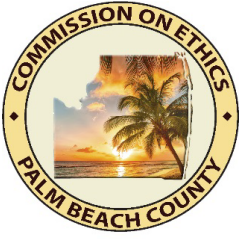
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Christie E. Kelley,  
Executive Director

RG/gal



# Palm Beach County Commission on Ethics

**Commissioners**

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

**Executive Director**

Christie E. Kelley

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April 6, 2023

Sean Pittman, Esq.  
Pittman Law Group, P.L.  
1028 East Park Avenue  
Tallahassee, FL 32301

Re: RQO 23-008  
Possible Conflict of Interest

Dear Mr. Pittman,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows:

**QUESTION:**

Does the Palm Beach County Code of Ethics (Code) prohibit you, as a Palm Beach County (County) vendor, who lobbies on behalf of the County at the state level, from also providing lobbying services to potential County vendors, when you will be lobbying the County on behalf of those vendors?

**BRIEF ANSWER:**

The Code does not preclude you from providing lobbying services to vendors of the County even if those services result in you appearing before the County.

**FACTS:**

You are an attorney who is also a vendor contracted by the County to lobby on behalf of the County at the state level. You have asked if the Code precludes you from serving as a lobbyist at the local level and representing entities, who would like to become vendors of the County, considering this representation would require you to appear before the County on behalf of those entities.

Your current role as a lobbyist for the County involves issues surrounding marginalized populations and communities and your lobbying efforts in this capacity occur in Tallahassee, Florida. While you are an active vendor of the County, you are not currently required to register as a lobbyist with the County.<sup>1</sup>

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<sup>1</sup> Sec. 2-442. Definitions. Lobbyist shall not include any contract employee or independent contractor of a governmental agency lobbying on behalf of that agency.

**ANSWER:**

The legal basis for this opinion rests in the jurisdiction conveyed to the COE through the Palm Beach County Commission on Ethics and Code of Ethics ordinances. The Code applies to all persons and/or entities within the jurisdiction of said ordinance.<sup>2</sup> However, the misuse of public office or employment, corrupt misuse of office, disclosure of voting conflicts, and contractual relationships sections all apply solely to public officials and employees.<sup>3</sup> Because lobbyists and vendors do not meet the Code's definition of "employees" or "officials," they are not subject to these prohibited conduct portions of the Code. While there are sections of the Code that expand the COE jurisdiction to vendors and lobbyists (gift law, noninterference, contingency fees, honesty in applications, etc.), none of those sections include prohibited conduct involving potential conflicts of interest.<sup>4</sup> Thus, considering that, in your role as a County vendor or a potential lobbyist of the County, you are not bound by the Code's prohibited conduct mandates involving conflicts of interest, the Code does not prohibit you from representing other County vendors as an attorney or lobbyist.

Although the Code does not prohibit this type of representation, you are reminded that Section 2-443(g), Contingent fee prohibition, generally prohibits any person from, in whole or in part, offering, giving, or accepting a contingency fee to another person. The Code defines a "contingency fee" as "a fee, bonus, commission, or nonmonetary benefit as compensation, which is dependent on or in any way contingent on the passage, defeat, or modification of: an ordinance, resolution, action or decision" of the Palm Beach County Board of County Commissioners (BCC), any employee authorized to act on behalf of the BCC, or the County Administrator.<sup>5</sup> You are also reminded that the gift law prohibitions in Section 2-444 apply to you both as a County vendor and as a lobbyist who lobbies the County. Finally, you are reminded that Section 2-353 of the Palm Beach County Lobbyist Registration Ordinance requires all lobbyists to register as a lobbyist with the County prior to any lobbying, unless an exception applies.

**LEGAL BASIS:**

The legal basis for this opinion is found in Sec. 2-256 and Sec. 2-442 of the Code:

**Sec. 2-256 – Applicability of code of ethics ordinance.**

The countywide code of ethics ordinance shall be applicable to all persons and/or entities within the jurisdiction of said ordinance and shall apply to the members of the commission on ethics.

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

**Lobbyist** shall mean any person who is employed and receives payment, or who contracts for economic consideration, or who registers in the county's central lobbyist registration database or with any municipality, for the purpose of lobbying on behalf of a principal, and shall include an employee whose principal responsibility to the employer is overseeing the

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<sup>2</sup> Sec. 2-256

<sup>3</sup> RQO 11-043

<sup>4</sup> Id.

<sup>5</sup> Sec. 2-443(g)

employer's various relationships with government or representing the employer in its contacts with government.

**"Lobbyist"** shall not include:

- (1) Any employee, contract employee, or independent contractor of a governmental agency or entity lobbying on behalf of that agency or entity, any elected local official when the official is lobbying on behalf of the governmental agency or entity which the official serves, or any member of the official's staff when such staff member is lobbying on an occasional basis on behalf of the governmental agency or entity by which the staff member is employed.

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