

*Honesty - Integrity - Character*

# *Agenda*

May 4, 2023 – 1:30 p.m.  
Governmental Center,  
301 North Olive Avenue, 6<sup>th</sup> Floor  
Commissioners Chambers

**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**

Michael H. Kugler

Danielle A. Sherriff

Peter L. Cruise

Michael S. Kridel

Rodney G. Romano

**Executive Director**

Christie E. Kelley

**General Counsel**

Rhonda Giger

**Intake and Compliance Manager**

Gina A. Levesque

**Investigator**

Mark A. Higgs

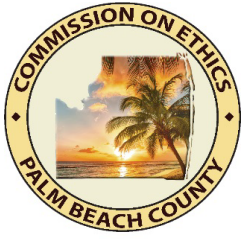
**Investigator**

Abigail Irizarry

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Introductory Remarks
- V. Processed Advisory Opinions (Consent Agenda)
  - a. RQO 23-010
  - b. RQO 23-011
- VI. Items Pulled from Consent Agenda
  - a.
- VII. Executive Director Comments
- VIII. Commission Comments
- IX. Public Comments
- X. Adjournment

If a person decides to appeal any decision made by this Commission with respect to any matter considered at this meeting or hearing, (s)he will need a record of the proceedings, and that, for such purpose, (s)he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.





# Palm Beach County Commission on Ethics

## Commissioners

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

## Executive Director

Christie E. Kelley

*Honesty - Integrity - Character*

April 28, 2023

Christen Ritchey, Board Member  
Boca Raton Planning and Zoning Board  
681 N.E. Lakeview Terrace  
Boca Raton, FL 33431

Re: RQO 23-010  
Possible Conflict of Interest

Dear Ms. Ritchey,

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 member of the Boca Raton Planning and Zoning Board (PZB), from voting on construction or site plan issues involving Paradise Bank, considering you are a customer of the bank?

### **BRIEF ANSWER:**

Based on the facts submitted, because Paradise Bank is not a customer or client of your outside business or employer, the Code does not prohibit you from voting on or participating in matters involving Paradise Bank as long as your vote or participation does not result in a special financial benefit for yourself or any other prohibited persons or entities.

### **FACTS:**

You are a member of the Boca Raton PZB. You are the co-owner of a law firm that is a customer of Paradise Bank. Your law firm maintains both its checking and IOTA (interest on trust accounts) accounts at Paradise Bank. You are also a personal customer of Paradise Bank. Outside of your relationship as a customer, you hold no interest in Paradise Bank. Paradise Bank is not a customer or client of you or your law firm.

Paradise Bank has purchased land in Boca Raton and has proposed construction of a new three-story building to serve as the physical location for both a bank storefront and its company headquarters. As a part of the construction approval process, Paradise Bank will appear before the PZB.

**ANSWER:**

The Palm Beach County Code of Ethics (Code) prohibits you from using your official position on the PZB to give a special financial benefit to specified persons and entities, including yourself, your outside business, and customers or clients of your outside business.<sup>1</sup> Additionally, you must abstain from voting on and participating in any matter that would give a special financial benefit to any of those same persons or entities.<sup>2</sup> Financial benefit, in the context of the Code, constitutes economic gain or loss.<sup>3</sup> A customer or client is defined as any person or entity to which your outside employer or business has supplied goods or services with a value over \$10,000 during the previous 24 months.<sup>4</sup> In this scenario, because you and your law firm are the customers of Paradise Bank, and not the other way around, the “customer or client” relationship is not applicable.

Based on the facts provided here, the PZB will be voting on whether to approve the construction project proposal presented by Paradise Bank. Although Paradise Bank may receive a financial benefit (gain or loss) depending on the outcome of the vote, there does not seem to be any nexus between the vote on the proposal and any economic gain or loss being received by you or your business, or by any other general customer of the bank. Therefore, considering that Paradise Bank, in the provided scenario, is not a customer or client of your outside business or employer, the Code does not prohibit you from voting on or participating in discussions on the bank’s construction proposal as long as your vote or participation does not result in a special financial benefit to any of the other prohibited persons or entities listed in Section 2-443(a).

Finally, while the Code does not restrict your participation and vote as long as the guidance in this opinion is followed, you must be mindful that as a public official, 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.<sup>5</sup> 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.<sup>6</sup>

**LEGAL BASIS:**

The legal basis for this opinion is found in Sec. 2-442 and Sec. 2-443 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).

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

<sup>2</sup> Sec. 2-443(c)

<sup>3</sup> Id.

<sup>4</sup> Sec. 2-442

<sup>5</sup> Sec. 2-444(e)

<sup>6</sup> Sec. 2-443(b)

**Sec. 2-443. Prohibited conduct.**

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, or attempt to do any of these things, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
  - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
  - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
  - (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;
  - (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner—"substantial" for these purposes shall mean at least ten thousand dollars(\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
  - (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 term "participate" as used in this section shall be defined as: "To take any action, or to

influence others to take any action, or to attempt to do any of these things, in order to affect the passage or defeat of the specific matter before the voting body in which the official is required to abstain from voting.” The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted but assumes they are true for purposes of this advisory opinion. 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.

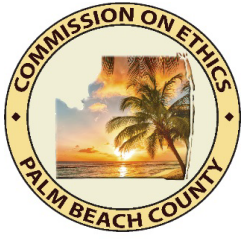
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

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

*Honesty - Integrity - Character*

April 28, 2023

Maria Sachs, County Commissioner  
Palm Beach County Board of County Commissioners  
301 North Olive Ave. Suite 1201  
West Palm Beach, FL

Re: RQO 23-011  
Possible Conflict of Interest

Dear Commissioner Sachs,

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 member of the Palm Beach County Board of County Commissioners (BCC), from voting on a comprehensive plan amendment involving GL Homes of Florida (GLH)?

### **BRIEF ANSWER:**

Based on the facts submitted, the Code does not prohibit you from participating in discussions or voting this matter involving GLH as long as your vote or participation does not result in a special financial benefit for yourself or any other prohibited persons or entities.

### **FACTS:**

You are a Commissioner and the current Vice Mayor of the BCC. GLH has a proposal before the BCC involving a request to revise the comprehensive plan. This revision, if granted, will allow GLH to move forward on a major residential housing project. As a part of their public relations campaign within the community, GLH has indicated its intent to donate land to a non-profit organization with the ultimate goal of developing a facility for seniors and the developmentally disabled. This land donation is being offered by GLH outside of the formal proposal in front of the BCC and is not a part of the development proposed within the comprehensive plan revision.

You have heard through informal channels that the beneficiary of the land donation may be the Jewish Association for Residential Care (JARC), one of the programs run by the Jewish Federation of Palm Beach County. Your husband was one of 21 other members who sit on JARC's board, but he recently resigned his position. His position on JARC's board was an advisory one, and he did not receive compensation for his service. For quite some time, your adult step-daughter has

been a resident of one of the care facilities operated by JARC. Your step-daughter's housing situation will not be impacted if GLH ultimately donates the land to JARC.

**ANSWER:**

As an elected official, the Code prohibits you from using your official position on the BCC to give a special financial benefit to specified persons and entities.<sup>1</sup> Among those specified persons or entities are yourself, your spouse, stepchildren, and any organization of which your spouse is an officer or director. Additionally, you must abstain from voting on and participating in any matter that would give a special financial benefit to any of those same persons or entities.<sup>2</sup>

Financial benefit, in the context of the Code, constitutes economic gain or loss.<sup>3</sup> In determining whether an action would result in a special financial benefit being given to a person or entity, the COE has held that any such financial benefit must be direct and immediate, rather than remote and speculative.<sup>4</sup> Similarly, the Florida Commission on Ethics has also determined that where there is uncertainty at the time of a vote as to whether a measure directly affects a person or entity, any private gain or loss based on the vote is remote and speculative, and thus the official is not be precluded from casting such vote.<sup>5</sup>

Under this scenario, because your spouse no longer serves as an officer or director of JARC, Section 2-443(a)(7) of the Code does not apply to this situation. Therefore, the issue here is whether you or your stepdaughter will receive a special financial benefit from your vote on this matter. Based on the facts provided here, the BCC will be voting on whether to approve the comprehensive plan variance proposed by GLH. If the variance is approved, GLH may then, as a gesture of goodwill to the community, donate land to a non-profit organization, potentially JARC. GLH has not guaranteed this donation by way of contract or other binding promise, and you learned only through second-hand information that JARC may be the recipient.

Considering this, it is remote and speculative, at best, that your vote on this matter will result in any special financial benefit being given to a prohibited person or entity. There does not seem to be any direct nexus between your vote on the proposed variance and any potential economic gain or loss being received by you or your step-daughter. Therefore, considering the facts as provided, the Code does not prohibit you from voting on or participating in discussions involving GLH's request to revise the comprehensive plan as long as your vote or participation does not result in a special financial benefit to any of the other prohibited persons or entities listed in Section 2-443(a).

Finally, while the Code does not restrict your participation and vote as long as the guidance in this opinion is followed, you must be mindful that as a public official, no quid pro quo or other benefit may be given for an official act or the past, present, or future performance of a public

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

<sup>2</sup> Sec. 2-443(c)

<sup>3</sup> Id.

<sup>4</sup> RQO 12-063

<sup>5</sup> CEO 85-77CEO 05-15; CEO 91-61; CEO 12-19



duty.<sup>6</sup> 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.<sup>7</sup>

**LEGAL BASIS:**

The legal basis for this opinion is found in Sec. 2-443 and Sec. 2-444 of the Code:

**Sec. 2-443. Prohibited conduct.**

- (a) ***Misuse of public office or employment.*** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, or attempt to do any of these things, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
  - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
  - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
  - (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;
  - (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner—"substantial" for these purposes shall mean at least ten thousand dollars(\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
  - (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

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<sup>6</sup> Sec. 2-444(e)

<sup>7</sup> Sec. 2-443(b)

receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

- (c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The term “participate” as used in this section shall be defined as: “To take any action, or to influence others to take any action, or to attempt to do any of these things, in order to affect the passage or defeat of the specific matter before the voting body in which the official is required to abstain from voting.” The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

**Sec. 2-444 Gift law.**

- (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