

*Honesty - Integrity - Character*

# Agenda

August 3, 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  
Kristin A. Vara-Garcia  
Peter L. Cruise  
Michael S. Kridel  
Rodney G. Romano

### **Executive Director**

Christie 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 July 6, 2023
- VI. Processed Advisory Opinions (Consent Agenda)
  - a. RQO 23-016
  - b. RQO 23-017
- VII. Items Pulled from Consent Agenda
  - a.
- VIII. Executive Director Comments
- IX. Commission Comments
- X. Public Comments
- XI. Adjournment

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



**OFFICIAL MEETING MINUTES  
OF THE  
PALM BEACH COUNTY COMMISSION ON ETHICS (COE)  
PALM BEACH COUNTY, FLORIDA**

**JULY 6, 2023**

**THURSDAY  
1:30 P.M.**

**COMMISSION CHAMBERS  
WEISMAN GOVERNMENTAL CENTER**

**MEMBERS:**

Michael H. Kugler, Chair  
Kristin A. Vara-Garcia, Vice Chair  
Peter L. Cruise  
Michael S. Kridel  
Rodney G. Romano

**COUNTY 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 & COMPTROLLER'S OFFICE STAFF PRESENT:**

Jillian Zalewska, Deputy Clerk

**I. Call to Order**

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

(CLERK'S NOTE: Item IV was taken up at this time.)

**IV. Swearing-in ceremony for Kristin A. Vara-Garcia, appointed by the Palm Beach County Association of Chiefs of Police. Swearing-in by Judge Sherri Collins, 15<sup>th</sup> Judicial Circuit of Florida**

(CLERK'S NOTE: The order of the agenda was restored at this time.)

**II. Pledge of Allegiance**

Commissioner Romano led the Pledge of Allegiance.

### **III. Introductory Remarks**

No remarks were taken up at this time.

### **V. Roll Call**

All members were present.

### **VI. Introductory Remarks**

The members welcomed Commissioner Kristin Vara-Garcia.

Commissioner Vara-Garcia said she was excited to join the commission and she thanked Commissioner Romano for his mentorship.

### **VII. Nomination and Election of new Vice Chairperson**

Chair Kugler opened the floor to nominations for vice chair. Commissioner Romano recommended continuing the tradition of allowing new members to gain leadership experience by serving as chair or vice chair.

Commissioner Cruise nominated Kristin Vara-Garcia as vice chair subject to her acceptance of the position.

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

### **VIII. Approval of minutes from June 8, 2023**

**MOTION to approve the June 8, 2023, meeting minutes. Motion by Commissioner Cruise, seconded by Commissioner Romano, and carried 5-0.**

### **IX. Executive Session Re: C23-009**

#### **RECESS**

**At 1:36 p.m., the chair declared the meeting recessed for an executive session.**

#### **RECONVENE**

**At 2:17 p.m., the meeting reconvened with all members present.**

Vice Chair Vara-Garcia read the following Public Report and Final Order:

*In Re: Fedrick Foster*

Complainant Christie Kelley, Executive Director, Palm Beach County Commission on Ethics, filed the above referenced complaint on May 10, 2023, alleging Respondent, Fedrick Foster, an employee of Palm Beach County, violated Section 2-444(e), *Gift law*, of the Palm Beach County Code of Ethics, by accepting a cash tip after performing a specific service contemplated by his employment duties.

Pursuant to §2-258(a)<sup>1</sup> of the Palm Beach County Commission on Ethics Ordinance, the Palm Beach County Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. Respondent stipulated to Probable Cause, and Respondent and Advocate submitted a Negotiated Settlement including a Letter of Reprimand to the COE for approval. Respondent stipulated to the facts and circumstances as contained in the Letter of Reprimand. According to the Negotiated Settlement and based on the facts as set forth in the Letter of Reprimand, Respondent admitted to violating Section 2-444(e) of the Palm Beach County Code of Ethics and agreed to accept a Letter of Reprimand. After listening to the statements by Advocate and the Respondent, the Commission accepted the conditions of the negotiated settlement.

Pursuant to Commission on Ethics Ordinance §2-260.1, *Public hearing procedures*, the Commission found that there was clear and convincing evidence contained within the record to support a finding that the violation was intentional, and that Respondent has acknowledged that his actions violated the Palm Beach County Code of Ethics.

Therefore it is:

**ORDERED AND ADJUDGED** that the matter is concluded upon the issuance of a LETTER OF REPRIMAND.

**DONE AND ORDERED** by the Palm Beach County Commission on Ethics in executive session on this 6<sup>th</sup> day of July, 2023.

## **X. Executive Director Comments**

1.

Ms. Kelley reported that staff had delivered presentations at several municipality meetings since the last meeting of the COE. She also stated that Ms. Giger had conducted a successful in-person ethics training for the Delray Beach Housing Authority.

2.

Ms. Kelley welcomed Vice Chair Vara-Garcia and thanked the Palm Beach County Chiefs of Police for their efforts in filling the vacant commission seat.

## **XI. Commission Comments**

No comments were made.

## **XI. Public Comments**

**PUBLIC COMMENT:** Lia Escobar

Chair Kugler and Ms. Kelley responded to questions posed by Ms. Escobar regarding the commission's role in ongoing investigations.

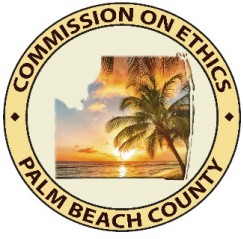
## **XII. Adjournment**

**At 2:24 p.m., the chair declared the meeting adjourned.**

APPROVED:

---

Chair/Vice Chair



Honesty - Integrity - Character

# Palm Beach County Commission on Ethics

## Commissioners

Michael H. Kugler, Chair  
Kristin A. Vara-Garcia, Vice Chair  
Peter L. Cruise  
Michael S. Kridel  
Rodney G. Romano

## Executive Director

Christie E. Kelley

July 21, 2023

Laurie Cohen, Village Attorney  
Village of Wellington  
12300 Forest Hill Blvd.  
Wellington, FL 33414

Re: RQO 23-016  
Contractual Relationships

Dear Ms. Cohen,

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

### **QUESTION:**

Does a conflict of interest arise if an employee of the Village of Wellington (Village), acting on behalf of a non-profit organization, enters into a contract with the Village wherein the non-profit organization will pay associated fees and the Village will provide a venue and designated services during a co-sponsored fundraising event?

### **BRIEF ANSWER:**

The Code of Ethics does not prohibit the execution of this contract on behalf of the non-profit organization as long as the guidance in this advisory opinion is carefully followed.

### **FACTS:**

You are the Village Attorney for the Village of Wellington and are requesting this advisory opinion on behalf of Michael Sands, who is a Village employee. Mr. Sands is also the president of the Tropical Orchid Society, Inc. (TOS), a not-for-profit corporation. TOS would like to enter into an agreement with the Village to co-sponsor the Wellington Orchid Society Festival. The three-day event will take place in the gymnasium at the Village Park. The anticipated contract between the Village and TOS includes comparable terms and costs found in previous contracts for past events held on Village property by other organizations.

The Village based its desire to co-sponsor this event on the favorable exposure to the community and the economic benefit to the businesses located within the Village. Pursuant to the proposed contract, TOS will pay costs and fees at the same rate the Village charges other organizations hosting events on Village property. TOS will also feature the Village as a co-sponsor on all promotional material for the event. The Village, consistent with prior similar contracts, has agreed to provide signage for each day of the event. Part of the negotiations for the instant contract included the use of rooms adjacent to the gymnasium without additional charge.<sup>1</sup>

---

<sup>1</sup> According to the facts provided, these rooms are typically rented individually, when the gymnasium is not in use. While it is possible that a separate organization may rent the rooms while the gymnasium has been contracted by another party, the Village considers this to be unlikely and believes the rooms would remain unused during the event proposed by TOS.

**ANSWER:**

Section 2-443(a), *Misuse of public office or employment*, prohibits Mr. Sands, as a Village employee, from using his official position to give a special financial benefit to specified persons and entities. Among those specified persons and entities is an organization of which he serves as an officer or director. Therefore, because he is the president of the TOS, he is prohibited from using his official position as a Village employee to take or fail to take any action, or influencing others to take some action, or attempting to do any of these things, to give a special financial benefit to TOS.

The salient question here is whether the co-sponsorship agreement would give a special financial benefit to TOS. Based on the facts provided, especially considering the terms of the proposed contract between the Village and TOS closely mirror previous contracts between the Village and other non-profit organizations, the co-sponsorship agreements would not result in a special financial benefit to TOS. The COE recognizes that the Village is allowing TOS to use the adjacent rooms without charge; however, because this is a benefit that would be available to other similarly situated non-profit organizations hosting an event in the gymnasium, it is not a *special* financial benefit. Additionally, this component of the contract is simply a piece of the entire negotiation where fair and adequate consideration will be paid by TOS to the Village.

In addition, Section 2-443(d), *Contractual relationships*, prohibits Mr. Sands or his outside business or employer from entering into any contract or other transaction for goods or services with the Village. Here, although Mr. Sands is the president of TOS, because he serves as a volunteer and receives no compensation, TOS does not qualify as his outside employer or business. Therefore, the contractual relationship prohibition found in Section 2-443(d) does not prohibit TOS from entering into a co-sponsorship agreement with the Village.

Although no per se conflict of interest would be involved here, to avoid any appearance of impropriety, Mr. Sands must be extremely careful to take no actions that can be construed as a use of his official position to give himself or TOS a special financial benefit. As such, the COE recommends he refrain from being one of the representatives involved in the execution of the agreement between the Village and TOS. In addition, Mr. Sands may wish to remain completely removed from any further discussions regarding the agreement. Further, Mr. Sands is reminded that the Code also prohibits him from using his position to corruptly secure a special benefit, financial or otherwise, for himself or others. Therefore, he must refrain from using his position with the Village to corruptly secure any special benefit for the TOS.

**LEGAL BASIS:**

The legal basis for this opinion can be found in following relevant sections of the Code:

**Sec. 2-443. Definitions**

***Outside employer or business*** includes:

- (1) Any entity, other than the county, the state, or any other federal, regional, local, or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced. For purposes of this definition, "compensation" does not include reimbursement for necessary expenses, including travel expenses; or
- (2) Any entity located in the county or which does business with or is regulated by the county or municipality as applicable, in which the official or employee has an ownership interest. For purposes of this definition, an "ownership interest" shall mean at least five (5) percent of the total assets or common stock owned by the official or employee or any combination of the official or employee's household members, spouse, child, step-child, brother, sister, parent or step-parent, or a person claimed as a dependent on the official or employee's latest individual federal tax return.



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

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, or attempt to do any of these things, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
  - (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.
- (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.

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.

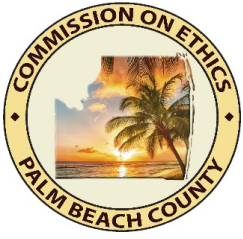
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Christie E. Kelley,  
Executive Director

RG/gal



Honesty - Integrity - Character

# Palm Beach County Commission on Ethics

**Commissioners**  
Michael H. Kugler, Chair  
Kristin A. Vara-Garcia, Vice Chair  
Peter L. Cruise  
Michael S. Kridel  
Rodney G. Romano

**Executive Director**  
Christie E. Kelley

July 25, 2023

Laurie Cohen, Village Attorney  
Village of Wellington  
12300 Forest Hill Blvd.  
Wellington, FL 33414

Re: RQO 23-017  
Possible Voting Conflict

Dear Ms. Cohen,

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

**QUESTION:**

Does a voting conflict arise if Anne Gerwig, the mayor of the Village of Wellington, participates in discussions and votes on the approval of land use applications where a customer or client of her outside business participated in a preliminary component of the project?

**BRIEF ANSWER:**

Mayor Gerwig is not prohibited from participating in discussions or voting on these matters because the possibility of a prohibited entity receiving a special financial gain is remote and speculative.

**FACTS:**

You are the Village Attorney for the Village of Wellington and are requesting this advisory opinion on behalf of Mayor Gerwig, who is an elected official. Mayor Gerwig and her spouse have complete ownership interest in a business, Alan Gerwig & Associates (AGA). AGA is routinely hired as a sub-contractor by Simmons & White, Inc. (SWI). AGA has supplied goods or services to SWI in the last 24 months in an amount exceeding \$10,000.

Two property owners have submitted land use applications for two separate but related projects that the Village Council is scheduled to consider. Each are applications for the development of private property. The applicants are requesting comprehensive plan amendments, master plan amendments, and rezoning to allow for the proposed development. SWI was the traffic engineer for both projects. The traffic engineering work for both projects was completed prior to the submission of the land use applications; consequently, neither applicant will require further services from SWI, unless a modification becomes necessary after project approval.

**ANSWER:**

The Code prohibits Mayor Gerwig from using her official position in any way when she knows or should know with the exercise of reasonable care that it would give a special financial benefit to one of the prohibited persons or entities listed in Section 2-443(a), which includes a client or customer of her outside business.<sup>1</sup>

---

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

Similarly, Mayor Gerwig is also prohibited from participating in or voting on a matter that will give in a special financial benefit to a client or customer of her outside business.<sup>2</sup> The Code defines an outside business as any entity in which the official has an ownership interest, thus AGA is considered Mayor Gerwig's outside business because she and her spouse share a 100 percent ownership interest in the business.<sup>3</sup> Additionally, a customer or client is an entity where the official's outside business has supplied goods or services in excess of \$10,000 in the past 24 months.<sup>4</sup> Accordingly, based on the information provided, SWI is a customer or client of AGA.

The issue here is whether SWI will receive a special financial benefit from Mayor Gerwig's vote. Financial benefit, in the context of the Code, constitutes economic gain or loss.<sup>5</sup> Under state statute, in evaluating a potential conflict of interest, the degree to which there is uncertainty at the time of the vote as to whether there would be any economic gain or loss to the prohibited person or entity must be considered.<sup>6</sup> To constitute a prohibited voting conflict, the possibility of an economic gain or loss must be direct and immediate, rather than remote and speculative.<sup>7</sup> Where the economic gain or loss would require many steps or be subject to contingencies, any gain or loss is remote and speculative.<sup>8</sup> Where any gain or loss is remote and speculative, a special financial benefit does not exist.<sup>9</sup>

Based on the facts presented, there is uncertainty as to whether there would be any economic gain or loss to SWI from the vote on the land use applications; thus, any financial benefit is remote and speculative. Whether there is any future financial benefit to SWI (beyond the work they have already completed) is entirely dependent upon the necessity for changes or modifications to the approved plans. Therefore, based on the facts presented here, any special financial benefit to SWI is neither direct nor immediate. Because the vote on the land use applications has no direct and immediate financial benefit to SWI, Mayor Gerwig is not prohibited from participating in and voting on these applications when they come before the Village Council.

However, Mayor Gerwig should be aware that even though there may be no per se prohibited conflict of interest under these facts, there may exist an "appearance of impropriety," even where any benefit to SWI is remote and speculative at best. Additionally, while the Code does not restrict Mayor Gerwig's participation and vote as long as the guidance in this opinion is followed, 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>10</sup> Mayor Gerwig is reminded that the Code prohibits her from using her official position to corruptly secure a special benefit of any kind for anyone, including herself.<sup>11</sup>

Mayor Gerwig is also reminded that whether a conflict of interest exists depends on the facts and circumstances of each situation. Because Mayor Gerwig has an ongoing relationship with SWI, best practices dictate that she carefully reviews any matter appearing before the Village Council to ensure that none of her actions as the mayor give a special financial benefit to SWI. If there is ever any doubt about her vote on a particular matter, we recommend she seek an additional advisory opinion.

---

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

<sup>3</sup> Sec. 2-442. Definitions. Ownership interest "shall mean at least five (5) percent of the total assets or common stock owned by the official or employee or any combination of the official or employee's household members, spouse..."

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

<sup>5</sup> RQO 10-013

<sup>6</sup> 112.3143(1)(d), Florida Statutes

<sup>7</sup> CEO 85-77 (school board member was not prohibited from voting on matters relating to the use of school district property where he owned a clothing store near the site of the proposed school complex because it would be purely a matter of speculation and conjecture on our part to conclude that the member's business would derive any special gain)

<sup>8</sup> RQO 12-063

<sup>9</sup> CEO 14-3

<sup>10</sup> Sec. 2-444(e)

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

**LEGAL BASIS:**

The legal basis for this opinion is found in following relevant sections 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).

**Outside employer or business** includes:

- (2) Any entity located in the county or which does business with or is regulated by the county or municipality as applicable, in which the official or employee has an ownership interest. For purposes of this definition, an "ownership interest" shall mean at least five (5) percent of the total assets or common stock owned by the official or employee or any combination of the official or employee's household members, spouse, child, step-child, brother, sister, parent or step-parent, or a person claimed as a dependent on the official or employee's latest individual federal tax return.

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

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, or attempt to do any of these things, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
- (5) A customer or client of the official or employee's outside employer or business.
- (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."

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