

Honesty - Integrity - Character

Agenda

September 7, 2023 – 1:30 p.m.
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Meeting will begin at 1:30pm
Executive Session will begin at 1:45pm
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

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 August 8, 2023
- VI. Executive Session Re: C23-025
- VII. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 23-018
 - b. RQO 23-019
 - c. RQO 23-020
 - d. RQO 23-021
 - e. RQO 23-022
- 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 (COE)
PALM BEACH COUNTY, FLORIDA**

AUGUST 3, 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
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:

Danielle Freeman, Deputy Clerk

I. Call to Order

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

II. Pledge of Allegiance

Commissioner Kridel led the Pledge of Allegiance.

III. Roll Call

Present: Vice Chair Kristen Vara-Garcia, Commissioner Michael S. Kridel,
and Commissioner Rodney G. Romano

Absent: Chair Michael H. Kugler and Commissioner Peter L. Cruise

IV. Introductory Remarks

There were no introductory remarks.

V. Approval of minutes from July 6, 2023

MOTION to approve the July 6, 2023, meeting minutes. Motion by Commissioner Romano, seconded by Commissioner Kridel, and carried 3-0.

VI. Processed Advisory Opinions (Consent Agenda)

a. **RQO 23-016**

b. **RQO 23-017**

MOTION to approve the consent agenda as published. Motion by Commissioner Romano, seconded by Commissioner Kridel, and carried 3-0.

VII. Items Pulled from Consent Agenda

No items were pulled from consent.

VIII. Executive Director Comments

Ms. Kelley stated that the COE was six months into the second year of the five-year strategic plan. She provided updates regarding the commission's progress toward achieving its objectives in the following areas: exceptional service delivery; implementation of a marketing plan; maintenance and motivation of a highly skilled and agile team; overhauling of the COE website; enhancement of the comprehensive education program; and the fostering of community partnerships.

Ms. Kelley also reported that staff had spoken at several municipalities since the last COE meeting and said that Ms. Giger was in the process of conducting ethics trainings for the Village of Tequesta.

IX. Commission Comments

No comments were made.

XI. Public Comments

There were no public comments.

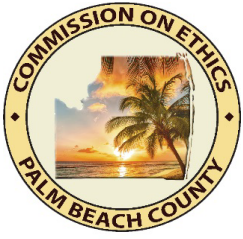
XI. Adjournment

MOTION to adjourn. Motion by Commissioner Romano, seconded by Commissioner Kridel, and carried 3-0.

At 1:37 p.m., the vice chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



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Palm Beach County Commission on Ethics

Commissioners
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Peter L. Cruise
Michael S. Kridel
Rodney G. Romano

Executive Director
Christie Kelley

August 11, 2023

Ms. Jamie Devereaux
Palm Beach County Animal Care and Control
7100 Belvedere Road
West Palm Beach, FL 33411

Re: RQO 23-018
Misuse of public office or employment

Dear Ms. Devereaux,

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

QUESTION:

Does the Palm Beach County Code of Ethics (Code) prohibit you, as an employee of Palm Beach County Animal Care and Control (ACC), from video recording your training sessions with animals housed at ACC's shelter while you are off duty and in your private capacity as a volunteer, when those recordings will be used by both your outside business and by ACC?

BRIEF ANSWER:

As long as the recordings are made while you are off duty, serving on a volunteer basis and are available for ACC's use, the Code does not prohibit this activity.

FACTS:

You are a part-time employee of ACC.¹ You have an outside consulting business that assists with animal behavioral issues. You are an Associate Certified Dog Behavior Consultant, a Certified Professional Dog Trainer, and a Fear Free Certified Trainer. You also attended University of the Pacific and obtained a certificate in Animal Shelter Behavior Management. You utilize all of these skills in both your private business and while you are on duty at ACC.

Outside of your assigned work hours and on a volunteer basis, you would like to spend time training the animals that are currently housed in the shelter in order to address any concerning behaviors, with the end goal of making them more adoptable and, thus, reducing shelter capacity. You would like to record these training sessions and use the recordings to promote your outside business. ACC would also use the recordings to profile the animal online and highlight the training it has received, thereby boosting its appeal as a desirable and adoptable pet.

¹ In the past you were employed full time with ACC as the Lead Behavior Coordinator.

According to the Director of ACC, when other non-employee trainers volunteer their time at the animal shelter and interact with the shelter animals, they are permitted to record their training sessions for private use with the understanding that the recordings may also be used by ACC.

ANSWER:

Section 2-443(a), *Misuse of public office or employment*, prohibits public employees from using their official position to give a special financial benefit to specified persons and entities, including to themselves or their outside business. Therefore, as a county employee, you are prohibited from using your official position with ACC 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 you or your outside business.

The question here is whether recording and using training sessions made while volunteering at ACC gives a special financial benefit to you or your outside business. Based on the facts provided, making and using such recordings while volunteering at ACC would not result in a special financial benefit to you or your outside business because other volunteer animal trainers are permitted the same opportunity to make these training videos. Further, the COE understands that while you or your outside business may benefit from these recordings, it appears that ACC will also receive an equal value from the content of the recordings. The ongoing relationships ACC maintains with volunteer animal trainers appears to be entirely symbiotic.

Although no per se conflict of interest exists, to avoid any appearance of impropriety, you must be extremely careful to avoid any actions that may be construed as using your official position with ACC to give yourself or your outside business a special financial benefit. Further, while this type of volunteer work is allowed under the Code, you are reminded that Section 2-443(d), *Contractual relationships*, prohibits you or your outside business from entering into any contract or other transaction for goods or services with the county, either directly or indirectly. Additionally, you are also reminded that the Code prohibits you from using your position with ACC to corruptly secure a special benefit, financial or otherwise, for yourself or your outside business.

LEGAL BASIS:

The legal basis for this opinion is 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;
 - (4) An outside employer or business of his or hers.
- (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



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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 Kelley

August 8, 2023

Jonathan Brown, Director
Palm Beach County
Department of Housing & Economic Development
100 Australian Avenue, 5th Floor
West Palm Beach, FL 33406

Re: RQO 23-019
Nepotism

Dear Mr. Brown,

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 your spouse from being hired by Palm Beach County's Department of Housing & Economic Development when you are the director of that department?

BRIEF ANSWER:

Your spouse may not accept a position within a department where you are the director.

FACTS:

You are a Palm Beach County employee, serving as the Director of the Department of Housing and Economic Development (HED). HED consists of seven separate divisions; one of which is Mortgage and Housing Investments.¹ According to the organizational flow chart, within this department, the director is the highest authority and is thus ultimately responsible for filling vacancies, appointing, supervising, and promoting personnel. Your position is also specifically responsible for exercising primary operational and administrative control over all divisions of HED.² Additionally, your position handles employee complaints and grievances and recommends the hiring, termination, and promotion of staff.³

Your spouse has applied for the position of Planner 1 in the Mortgage and Housing Investments (MHI) division. MHI is supervised by a Division Director, a Principal Planner, and a Senior Planner. MHI's supervisors report both to you and a Deputy Director.

¹ The seven divisions are Capital Improvements, Real Estate and Inspection Services; Mortgage and Housing Investments; Strategic Planning; Contract Development and Quality Control; Business and Economic Development; Financial Administration and Loan Servicing; and, Business Compliance and Services.

² Palm Beach County Position Description for Director of HUD

³ Palm Beach County job description for an employee at the Director II position – applicable to Mr. Brown.

ANSWER:

The anti-nepotism provision of the Code prohibits an official from appointing, employing, promoting, or advancing a relative, or advocating for any of those actions on behalf of a relative.⁴ A spouse is considered a relative.⁵ Under Section 2-445, *Anti-nepotism law*, an official means any "employee in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in the county..."⁶ Based on the facts provided, the anti-nepotism section would apply to this situation because, as the Director of HED, you have the ultimate authority to appoint, employ, promote, or advance individuals within the division where your spouse would be working. Because of this authority, the Code prohibits your spouse from accepting any position within your department.

The COE is mindful that your spouse is qualified for the position to which she has applied. However, the anti-nepotism policy is grounded in the understanding that an individual should not be in a position where there is the possibility that he or she would influence the hiring, promotion, or discipline of a close relative. The COE also understands that although there would be levels of management between you and your spouse, you would still be the final authority over not only your spouse but also over the employees who would be her direct supervisors. Ultimately, the fact that you would not directly supervise your spouse does not overcome the anti-nepotism prohibition.

LEGAL BASIS:

The legal basis for this opinion is found in following relevant section of the Code:

Sec. 2-445. Anti-nepotism law.

An official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement in or to a position in the county or municipality as applicable in which the official is serving or over which the official exercises jurisdiction or control, any individual who is a relative or domestic partner of the official. An individual may not be appointed, employed, promoted, or advanced in or to a position in the county or a municipality if such appointment, employment, promotion, or advancement has been advocated by an official, serving in or exercising jurisdiction or control over the county or municipality as appropriate, who is a relative or domestic partner of the individual or if such appointment, employment, promotion, or advancement is made by a collegial body of which a relative or domestic partner of the individual is a member. However, this section shall not apply to appointments to boards other than those with land-planning or zoning responsibilities in those municipalities with less than thirty-five thousand (35,000) population. This section does not apply to persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services. Such persons may receive, without losing their volunteer status, reimbursements for the costs of any training they get relating to the provision of volunteer emergency medical, firefighting, or police services and payment for any incidental expenses relating to those services that they provide. Mere approval of budgets shall not be sufficient to constitute "jurisdiction or control" for the purposes of this section.

- (1) For the purposes of this section, "official" means any official or employee in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated to appoint, employ, promote, or advance individuals or to recommend individuals for appointment,

⁴ Sec. 2-445

⁵ Sec. 2-445(2)

⁶ Sec. 2-445(1)

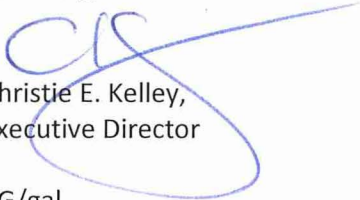
employment, promotion, or advancement in connection with employment in the county or municipality as applicable.

- (2) For the purposes of this section, "relative" means spouse, parent, child, sibling, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

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.

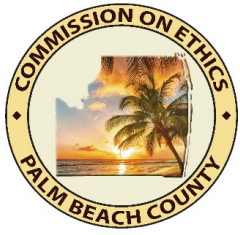
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Christie E. Kelley,
Executive Director

RG/gal



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Palm Beach County Commission on Ethics

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Peter L. Cruise
Michael S. Kridel
Rodney G. Romano

Executive Director
Christie Kelley

August 11, 2023

Mr. Marc Wigder, Councilmember
City of Boca Raton
201 Palmetto Park Road
Boca Raton, FL 33432

Re: RQO 23-020
Possible Conflict of Interest

Dear Mr. Wigder,

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 councilmember for the City of Boca Raton (City), from discussing issues related to Gumbo Limbo Coastal Stewards, Inc. (GLCS)¹, considering they are a customer of your outside business?

BRIEF ANSWER:

Based on the facts submitted, the Code does not prohibit you from discussing general matters that include GLCS as long as your participation does not result in a special financial benefit for your outside business or any other prohibited entities.

FACTS:

You are a councilmember for the City. Your outside business, Royale Courtyard Properties, Inc., (RCPI) owns a commercial building that leases space to many different entities. One of your tenants is GLCS. GLCS is a 501(c)(3) nonprofit conservation organization that supports and funds the activities of sea turtle rescue, rehabilitation, research, and release activities at the Gumbo Limbo Nature Center (Nature Center), including the operation of a gift store. The Nature Center is a cooperative environmental complex within Red Reef Park. The City owns, manages, and operates Red Reef Park and the Nature Center.

The space RCPI rents to GLCS is primarily devoted to the administrative portion of GLCS' nonprofit mission and consists mainly of commercial office space. GLCS entered into the lease in June of 2020, and it does not terminate until June of 2026.² You took office on March 31, 2023.

¹ Gumbo Limbo Coastal Stewards, Inc. was formerly known as Friends of Gumbo Limbo.

² According to the facts provided, the cost of GLCS's lease exceeds \$10,000 within the past 24 months.

The City has a long and collaborative history with GLCS. The responsibilities of both the City and GLCS, including anything related to monetary rights or financial responsibilities were part of a new agreement that was finalized in April of 2023.³

As far as income related to the Nature Center, GLCS may solicit donations in the gift store and rehabilitation areas and hold fundraising events. The City, meanwhile, is responsible for maintenance of the Nature Center and seawater pumps and retains all donations collected at the door to use for capital and maintenance projects at the Nature Center.

By way of history, you previously requested an opinion from the COE on a related, but more specific issue. However, prior to the COE issuing the opinion, the City formalized the agreement with GLCS by way of resolution.⁴ In an abundance of caution, you did not participate in discussions about those terms, or vote on the resolution. However, now that the financial component of the agreement is formalized, there are situations where you would like to participate in discussions regarding other issues that involve the day-to-day operations of GLCS; thus you are again seeking clarification from the COE as to whether the Code prohibits your involvement on matters relating to GLCS.

ANSWER:

The Palm Beach County Code of Ethics (Code) prohibits officials from using their official position to give a special financial benefit to specified persons and entities, including to themselves, their outside businesses, and customers or clients of their outside businesses.⁵ Additionally, officials must abstain from voting on and cannot participate in any matter that would give a special financial benefit to any of those same persons or entities.⁶ Financial benefit, in the context of the Code, constitutes economic gain or loss.⁷ A customer or client is any entity to which an official or their outside employer or business has supplied services in excess of \$10,000 during the previous 24 months.⁸ In this situation, because RCPI has provided goods or services to GLCS in excess of \$10,000 in the previous 24 months, GLCS is considered a customer or client of RCPI. Therefore, you are prohibited from voting on or participating in any matter that would give a special financial benefit to GLCS.

However, as long as the topics of discussion surrounding your participation or vote do not implicate any special financial benefit to GLCS, the Code does not require you to limit your involvement. Considering that the resolution between the City and GLCS has been finalized, there are many situations where a special financial benefit would not be implicated. Thus, as an elected official, you simply must be certain that you do not use your official position in a manner that will result in a special financial benefit for GLCS.

Additionally, while there may be no per se prohibited conflict of interest under these facts, it should be noted that there may exist an “appearance of impropriety” even where there is no identified special financial benefit to GLCS. Further, while the Code does not restrict your participation and vote as long as

³ GLCS responsibilities include - management and operational responsibility of the sea turtle program and related activities (including all related expenses); all costs and expenses related to the operation and management of the sea turtle rehabilitation area and gift store; maintenance of all regulatory permits required for the operation of sea turtle rescue, rehabilitation, research, and release; and, to annually pay a portion of the sea-water pump maintenance.

⁴ Resolution No. 42-2023 passed on April 25, 2023. You did not participate in the vote and filed a form 8B with the COE.

⁵ Sec. 2-443(a)

⁶ Sec. 2-443(c)

⁷ Id.

⁸ Sec. 2-442

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.⁹ 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, your outside business, or GLCS.¹⁰

You are also reminded that whether a conflict of interest exists depends on the facts and circumstances of each situation. Because you have an ongoing relationship with GLCS, best practices dictate that you carefully review any matter appearing before the City Council to ensure that none of your actions as a councilmember give a special financial benefit to GLCS. If there is ever any doubt about your vote or participation on a particular matter, we recommend you seek an additional advisory opinion.

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).

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 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

⁹ Sec. 2-444(e)

¹⁰ Sec. 2-443(b)

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.

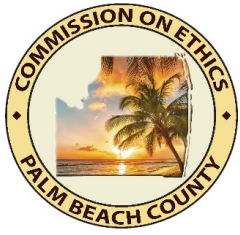
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Christie E. Kelley,
Executive Director

RG/gal



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 Kelley

September 1, 2023

Mr. David N. Tolces, Esquire
Weiss Serota Helfman Cole + Bierman, P.L.
2255 Glades Road
Boca Raton, FL 33430

Re: RQO 23-021
Outside employment/Contractual Relationships

Dear Mr. Tolces,

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:

Would a conflict of interest exist if an employee for the city of Boynton Beach (City) accepts secondary employment with NAFECO, when the outside employment will result in the employee providing services to the City?

BRIEF ANSWER:

Based on the facts submitted, the employee's proposed outside employment with NAFECO does not create a conflict because it meets the sole source exception. However, the requirements of the Code as described below must be followed.

FACTS:

You are the interim City Attorney. You are asking whether Joe Nardi, a City employee, may accept outside employment with NAFECO when that outside employment will result in an indirect contract between the employee and the City. NAFECO is the only factory-authorized dealer for sales and services of Holmatro products within the State of Florida. The City owns and uses Holmatro extraction equipment for special operations. The equipment is various hydraulic tools used to extricate victims from automobiles, aircraft, or other dangerous situations.

Not only is NAFECO the only provider of services for Holmatro product, Mr. Nardi is the only NAFECO-certified service technician in South Florida.¹ While NAFECO is willing to send a technician from outside the state, the additional costs for this would be borne by the City. Additionally, NAFECO has indicated that if authorized and certified service technicians are not used for maintenance and repair, the lifetime warranty of the equipment will be voided. Thus, in order to avoid additional costs for maintenance and service, as well as to ensure the validity of the lifetime warranty, the most expeditious way for this to occur is for Mr. Nardi to perform the work required by the City.

¹ The only other NAFECO-certified service technician in the area works out of Alabama and the Florida panhandle.

ANSWER:

In general, the Palm Beach County Code of Ethics (Code) prohibits public employees or their outside employer from having any contracts or transactions to provide goods or services with their employee.² However, the Code has several exceptions to the contractual relationship prohibition. Based on the facts provided, Mr. Nardi's employment with NAFECO would be prohibited while NAFECO is a vendor of the City, unless an exception applies. One such exception that would apply here is the sole source exception. The Code provides for a sole source exception where the outside employer is the sole source of the product or service within the municipality.³ Based on the facts provided, because Mr. Nardi is the only qualified and certified service provider in South Florida, the sole source exception applies. In order to avoid violating the Code and for transparency purposes, once Mr. Nardi accepts a position with NAFECO, he must fully disclose his interest in NAFECO to the City and the COE prior to any further contracts or transactions between NAFECO and the City.

As a reminder, the Code also prohibits Mr. Nardi from using or attempting to use his official position with the City in any way to give a special financial benefit to specified persons and entities, including to himself or NAFECO (his outside employer).⁴ Additionally, the Code prohibits Mr. Nardi from using his official position to corruptly secure a special benefit of any kind for anyone, including himself or NAFECO.⁵ Further, while the Code does not restrict the outside employment contemplated here, Mr. Nardi must be mindful that as a public employee, 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.⁶

LEGAL BASIS:

The legal basis for this opinion is found in Sec. 2-443 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;
 - (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.

² Sec. 2-443(d)

³ Sec. 2-443(e)(3)

⁴ Sec. 2-443(a)

⁵ Sec. 2-443(b)

⁶ Sec. 2-444(e)

- (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.
- (e) **Exceptions and waiver.** ...In addition, no official or employee may be held in violation of subsection (d) if:
- (3) The outside employer or business involved is the only source of supply within the county or municipality under applicable law or county or municipal policy, and there is full disclosure by the official or employee of his or her interest in the outside employer or business to the county or municipality as applicable and the ethics commission prior to the purchase, rental, sale, leasing, or other business being transacted.

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.

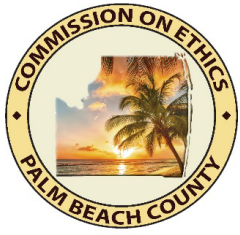
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

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 Kelley

September 1, 2023

Ms. Danna Ackerman-White
301 N. Olive Ave.
West Palm Beach, FL 33401

Re: RQO 23-022
Post-Employment Ordinance

Dear Ms. Ackerman-White,

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:

What restrictions will the Palm Beach County Post-Employment Ordinance (Post-Employment Ordinance) place on you once you retire from your employment position with Palm Beach County (County)?

BRIEF ANSWER:

Based on the facts submitted, the Post-Employment Ordinance will not place any restrictions on you after you separate from your employment with the County.

FACTS:

You are currently a County employee. Your current position is as a Senior Commission Aide to County Commissioner Michael Barnett. You intend to retire from County employment in October of 2023.

As a County employee, you have not been a department head, an assistant department head, a division head, or in any management-level position. Your position with the County also does not meet the definition of a Level 1 or Level 2 employee under the Post-Employment Ordinance.

ANSWER:

The Post-Employment Ordinance prohibits individuals who work in County administration and in management-level positions, specifically County commissioners, Level 1 employees, and Level 2 employees, from representing anyone other than the county or another public entity for certain time periods.¹ The Post-Employment Ordinance defines Level 1 employees as those employed as the County Administrator, the County Attorney, the Internal Auditor, the Fire Rescue Administrator, the County Engineer, the Deputy County Administrator, the Chief Deputy County Attorney, the Deputy County Engineer, and the Director of Planning, Zoning, and Development. Level 2 employees are assistant county administrators, assistant county attorneys, department heads, assistant department heads, division heads, auditors within the Internal Audit department, and deputy fire chiefs. Representation means appearing on behalf of an individual or entity, for compensation, before the Palm Beach County Board of

¹ Sec. 2-143

County Commissioners (BCC) in any of their official capacities or before an advisory body of the BCC or personal communications made with any officials, employees, or advisory board members of the County in their official capacity, on behalf of an individual or entity.

Under the Post-Employment Ordinance, former County commissioners are prohibited from representing anyone besides the County or another public entity for two years after the end of their term of office with the County. Former Level 1 employees are prohibited from representing anyone besides the County or another public entity for six months after leaving County employment; however, an additional 18-month restriction applies for issues where the County is a party. Former Level 2 employees are prohibited from representing anyone besides the County or another public entity for six months after leaving County employment; however an additional six-month restriction applies for issues where the County is a party.

Based on the facts submitted, the Post-Employment Ordinance would not apply to you once you retire from your position with the County because you are not a County commissioner, a Level 1 employee, or a Level 2 employee. As such, the Post Employment Ordinance would not place any restrictions on you when seeking employment or contracting with another entity after leaving County employment.

LEGAL BASIS:

The legal basis for this opinion is found in Sec. 2-142 and Sec. 2-143 of the Post-Employment Ordinance:

Sec. 2-142. Definitions.

- (1) County commissioner means any county commissioner of Palm Beach County.
- (2) Level 1 employee means all individuals employed by the board of county commissioners in the position of:
 - a. County administrator;
 - b. County attorney;
 - c. Internal auditor;
 - d. Fire rescue administrator;
 - e. County engineer;
 - f. Deputy county administrator;
 - g. Chief deputy county attorney;
 - h. Deputy county engineer; and
 - i. Director of planning, building and zoning.
- (3) Level 2 employee means:
 - a. Assistant county administrators;
 - b. Assistant county attorneys;
 - c. Department heads;
 - d. Assistant department heads;
 - e. Division heads;
 - f. Auditors (within internal audit department;); and
 - g. Deputy fire chiefs.
- (4) Represent or representation means actual physical attendance on behalf of an individual or entity, for compensation, at a proceeding before the board of county commissioners in any of their official capacities or before an advisory body of the board of county commissioners or personal communications made with any officials, employees, or advisory board members of the county in

their official capacity, on behalf of an individual or entity, including the filing of documents or the writing of letters on behalf of said individual or entity.

Sec. 2-143. Prohibited conduct after termination of employment or office with the county.

- (a) No former county commissioner shall knowingly represent anyone other than the county or another public entity in connection with any matter for a period of two (2) years after the cessation of his or her term of office with the county.
- (b) No former level 1 employee shall knowingly represent anyone other than the county or another public entity in connection with any matter for a period of six (6) months after the cessation of his or her employment with the county; additionally no level 1 employee shall knowingly represent anyone other than the county or another public entity in connection with any particular matter involving common issues of law and fact in which the county is a party or has an interest and in which the former employee participated personally, substantially and directly for the county for an additional period of eighteen (18) months (for a total of two (2) years) after the cessation of his or her employment with the county.
- (c) No former level 2 employee shall knowingly represent anyone other than the county or another public entity in connection with any matter for a period of six (6) months after the cessation of his or her employment with the county; additionally no former level 2 employee shall knowingly represent anyone other than the county or another public entity in connection with any particular matter involving common issues of laws and fact in which the county is a party or has an interest and in which the employee participated personally, substantially and directly for the county for an additional period of six (6) months (for a total of one (1) year) after the cessation of his or her employment with the county.

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