

Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

300 North Dixie Highway, Ste 450

West Palm Beach, FL 33401

561.355.1915

Hotline: 877.766.5920

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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 & Compliance Manager

Gina A. Levesque

Education & Communications Manager

S. Lizabeth Martin

Investigator

Mark A. Higgs

Investigator

Abigail Irizarry

Agenda

December 14, 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 1:35pm
Regular Agenda will resume immediately
following Executive Session

- I. Call to Order
- II. Pledge of Allegiance
- III. Introductory Remarks
- IV. Roll Call
- V. Approval of Minutes
 - a. October 5, 2023
 - b. November 2, 2023
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 23-028
 - b. RQO 23-029
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Executive Session
 - a. C23-003
 - b. C23-010
 - c. C22-004
 - d. C23-006
- 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**

OCTOBER 5, 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
Christie E. Kelley, COE Director III
Gina A. Levesque, COE Intake and Compliance Manager
S. Lizabeth Martin, COE Communication and Education 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 Cruise led the Pledge of Allegiance.

III. Roll Call

All members were present.

IV. Introductory Remarks

There were no introductory remarks.

V. Approval of minutes from September 7, 2023

MOTION to approve the September 7, 2023, meeting minutes. Motion by Commissioner Romano, seconded by Commissioner Cruise, and carried 5-0.

VI. Processed Advisory Opinions (Consent Agenda)

- a. **RQO 23-023**
- b. **RQO 23-024**
- c. **RQO 23-026**
- d. **RQO 23-027**

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

VII. Items Pulled from Consent Agenda

No items were pulled from consent.

VIII. Executive Director Comments

Ms. Kelley provided the following updates:

1.

Ms. Kelley discussed the findings of a complaint against Commissioner Cruise regarding his attendance at local political event.

2.

Ms. Levesque had provided an overview presentation about the COE to the Leadership Class of Palm Beach County.

3.

Ms. Giger had conducted an in-person training at the Office of the Inspector General (OIG).

4.

In October, Ms. Kelley and Norman Ostrau, Ethics Officer for the City of West Palm Beach, would be presenting a training for the Palm Beach County League of Cities.

5.

Ms. Kelley stated that the OIG meeting would be held in November following the COE meeting.

IX. Commission Comments

1.

Commissioner Cruise thanked Ms. Levesque and Ms. Martin for their attendance at the Civics and Government Day event.

2.

Commissioner Cruise thanked Ms. Kelley and the COE staff for their professionalism and efforts when handling complaints regardless of the complainant's identity or who the allegations might be against.

3.

Chair Kugler thanked Vice Chair Vara-Garcia for conducting the COE meetings in his absence.

4.

Chair Kugler echoed the sentiments of Commissioner Cruise regarding the professionalism displayed in handling complaints.

XI. Public Comments

There were no public comments.

XI. Adjournment

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

APPROVED: _____

Chair/Vice Chair

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

NOVEMBER 2, 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
S. Lizabeth Martin, COE Communication and Education 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 1:31 p.m.

Chair Kugler stated that no votes would be taken and no executive session would be held due to lack of a quorum.

(CLERK'S NOTE: The clerk performed the roll call at this time.)

III. Roll Call

Present: Chair Michael H. Kugler and Vice Chair Kristen Vara-Garcia

Absent: Commissioner Peter L. Cruise, Commissioner Michael S. Kridel, and Commissioner Rodney G. Romano

II. Pledge of Allegiance

The Pledge of Allegiance was not performed.

IV. INTRODUCTORY REMARKS

No remarks were made.

V. APPROVAL OF MINUTES FROM OCTOBER 5, 2023

No votes were taken due to lack of a quorum.

VI. EXECUTIVE SESSION RE: C23-003

No executive session was held due to lack of a quorum.

VII. Executive Director Comments

1.

Ms. Kelley provided an update on the Edward Lynch case, and she thanked COE Advocate John Cleary for his efforts regarding the case.

2.

Ms. Kelley and Norman Ostrau, Ethics Officer for the City of West Palm Beach, had provided a joint training for the Palm Beach County League of Cities. She expressed gratitude to Richard Radcliffe for his efforts.

3.

Ms. Kelly stated that COE Communication and Education Manager S. Lizbeth Martin had spoken at several events.

4.

Ms. Kelley stated that the COE had prepared a public service announcement that would air in December, and she added that the December COE meeting would be held on the second Thursday of the month.

VIII. Commission Comments

Chair Kugler and Vice Chair Vara-Garcia wished everyone a happy Thanksgiving.

IX. Public Comments

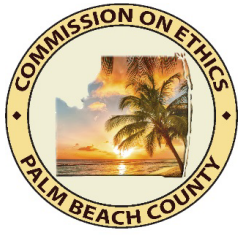
Richard Radcliffe expressed gratitude to the staff for their efforts regarding the Commission on Ethics trainings that had been conducted with the League of Cities.

X. Adjournment

At 1:36 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



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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

November 15, 2023

Isaac Kovner, Principal Engineer
City of Delray Beach
434 S. Swinton Avenue
Delray Beach, FL 33444

Re: RQO 23-028
Conflict of Interest

Dear Mr. Kovner:

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 involvement in various City processes that will ultimately benefit your son's outside employer?

BRIEF ANSWER:

Based on the facts submitted, a prohibited conflict of interest would arise where your participation results in your son's employer receiving a special financial benefit.

FACTS:

You are employed by the city of Delray Beach (City) as a principal engineer. Your son is employed by WGI. WGI is a professional services firm that operates nationwide, including several offices in Florida. Your son works for their Tampa office.¹

WGI performs work for the City in a variety of areas; however, this work involves their local office, and not the office where your son is employed. You are a Project Manager for the City and routinely collaborate with consultants and contractors to engineer and construct City capital improvement projects. You also frequently request service authorizations. A service authorization is used to directly hire engineering consultants on smaller projects. Additionally, you participate in certain City processes by assessing and ranking project applicants. This ranking process ultimately dictates which organization will move forward to contract negotiations with the City.

You have specifically asked the following three questions:

- 1) Under the Code, are you allowed to request a service authorization for WGI to perform professional services for the City?
- 2) Under the Code, are you allowed to be on a "Voting Committee" whereby you would rank applicants (the number one ranking enters into contract negotiations with the City) for engineering or professional services contracts?²

¹ Your son has no ownership interest in WGI.

² For purposes of this opinion, the COE assumes this applies only to situations where WGI is an applicant.

- 3) Under the Code, are you allowed to be on a “Technical Advisor Committee” if your participation is limited to answering technical engineering questions that pertain to the design of the specific engineering project?³

ANSWER:

Section 2-443(a) of the Code prohibits employees from using their official position in any way, including influencing others to take some action, to give a special financial benefit to specified persons and entities. Among those prohibited persons or entities are your son and his outside employer, WGI.⁴ Financial benefit, in the context of the Code, constitutes economic gain or loss.⁵

With respect to question one, based on the facts as provided, you would be exercising your sole discretion to choose a firm as an engineering consultant for the City under a “service authorization.” Were you to choose WGI as a consultant, you would be using your position with the City to give a special financial benefit to WGI. This would result in a prohibited entity (WGI) receiving a special financial benefit and would violate Section 2-443(a) of the Code.

With respect to question two, based on the facts provided, the Code also prohibits you from serving on the “Voting Committee” for projects where WGI is an applicant. For a special financial benefit to exist, the possibility of a financial gain must be direct or immediate, rather than remote or speculative. The facts submitted here support a determination that, where WGI is a listed applicant, if you were to rank WGI higher than other applicants and WGI was selected to move forward in the process, you would be using your position with the City to give, or to influence others to give, a special financial benefit to WGI. The COE therefore concludes that your participation in any such assessment process would violate Section 2-443(a) of the Code.

Addressing your third question, while there may be no per se prohibited conflict of interest if you serve on the technical advisor committee, any input from you where WGI is involved, even if limited to answering questions, may create an appearance of impropriety.⁶ If you are concerned about this appearance of impropriety while participating on a technical advisor committee, you should consider not participating on the committee when WGI is involved.

Finally, while the Code does not restrict your participation where no special financial benefit is implicated, you must be mindful that as a public employee, no quid pro quo or other benefit may be given for an official act or for the past, present, or future performance of a public duty.⁷ 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 son, or WGI.⁸

LEGAL BASIS:

The legal basis for this opinion is found in Sec. 2-442 and Sec. 2-443(a) of the Code:

Sec. 2-442. Definitions.

Financial benefit includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value.

³ For purposes of this opinion, the COE assumes this applies only to situations where WGI is an applicant.

⁴ Sec. 2-443(a), Misuse of public office or employment.

⁵ Sec. 2-442, Definitions.

⁶ RQO 11-037

⁷ Sec. 2-444(e), Gift law.

⁸ Sec. 2-443(b), Corrupt misuse of official position.

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:
- (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;

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted but assume they are true for purposes of this advisory opinion. This opinion is not applicable to any conflict under state law, or with any relevant provision within the rules of The Florida Bar. Inquiries regarding possible conflicts under state law or bar rules should be directed to the State of Florida Commission on Ethics or The Florida Bar.

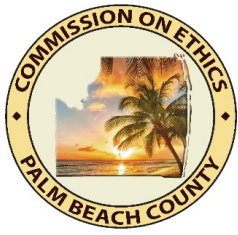
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Christie 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

November 27, 2023

Doug McGlynn, Deputy Chief
Palm Beach County Fire Rescue
405 Pike Road
West Palm Beach, FL 33411

Re: RQO 23-029
Conflict of Interest

Dear Deputy Chief McGlynn:

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 involvement in various capital projects for the County if your spouse's future employer is a current County vendor who has already been awarded these projects?

BRIEF ANSWER:

Generally, the Code restricts any actions that would result in your spouse's employer receiving a special financial benefit. However, if you carefully follow the guidance in this opinion and abstain from participating in certain aspects of relevant projects, then your actions will not violate the Code.

FACTS:

You are a Deputy Chief with Palm Beach County Fire Rescue (PBCFR). Part of your assigned duties are to oversee Support Services, which includes Capital Projects. That role consists of oversight and management of PBCFR capital projects; including the oversight of projects that are going out for RFP, bid selection, capital funding, and planning functions. CORE Construction (CORE) has already been awarded the construction contract for a number of PBCFR stations. Additionally, CORE was awarded a five-year contract for several maintenance and improvement projects.

Your spouse is being recruited by CORE to provide her expertise in customer service, social networking, and marketing. CORE will likely be opening an office in West Palm Beach, and it is imminent that your spouse will receive an employment offer from CORE. As of now, she has not received a formal offer of employment; however, you wish to address the issue proactively and avoid any potential conflict of interest. If your spouse accepts employment with CORE, she will have some oversight responsibilities of all public safety projects in this region of the state. It is very likely that her oversight will extend to the capital projects CORE is already working on for PBCFR.

If your spouse accepts employment with CORE, you intend to:

- Recuse/remove yourself from any decision making regarding bid proposals. This means you will not be involved in any aspect of current and future RFP's that involve CORE.

- Ensure that you do not influence how any bid is awarded for PBCFR projects that CORE is involved or affiliated with.
- Refrain from signing any paperwork such as “Pay Apps” or Change Orders that have a cost affiliated with it for CORE. If those would normally come to you, you will defer those tasks to your direct supervisor, thereby eliminating any perception of conflict or favoritism toward CORE.

ANSWER:

As a County employee, the Code prohibits you from using your official position to give a special financial benefit, not shared with similarly situated members of the general public, to specified persons or entities. Among those prohibited persons or entities are your spouse and her outside employer (for purposes of this opinion, the COE assumes that CORE will be your spouse’s outside employer).¹ Financial benefit, in the context of the Code, constitutes economic gain or loss.² Similarly, the Code also prohibits you from using your official position to corruptly secure a special benefit of any kind for anyone, including your spouse or your spouse’s employer. Corruptly is defined as an act that is done with a wrongful intent and that is inconsistent with the proper performance of your public duties.³

Based on the facts provided, as long you adhere to the listed intentions, and you do not use your official position with PBCFR in any way to give a special financial benefit to your spouse or CORE or to corruptly secure a special benefit of any kind for your spouse or CORE, you will not violate the Code.⁴ You have acknowledged an understanding of the Code’s prohibitions surrounding your involvement in discussions or decisions where your spouse’s employer, CORE, is a named party.

Additionally, you are reminded that the Code prohibits you from taking or failing to take an action which would result in a special financial benefit for your spouse or CORE. This prohibition not only precludes you from participating in the selection process for any contract or transaction where CORE is listed as a vendor but also from participating in any decision-making responsibility on CORE projects that involve a special financial benefit for CORE. You are also prohibited from influencing others to take or fail to take some action that would give CORE a special financial benefit. As such, you are prohibited from ignoring any contractual violations, or from asking or influencing another PBCFR employee to ignore any violations, if it would result in a special financial benefit to CORE. However, as long as you do not improperly use your official position to give CORE a special financial benefit, a conflict of interest would not arise for you, your spouse would not be prohibited from employment with CORE, and CORE would not be prohibited from continuing to operate as a certified-County vendor, including work for PBCFR.

Furthermore, the COE understands that you may find yourself in a situation that involves CORE but would not result in a special financial benefit to CORE or your spouse, in which case there would not be a per se prohibited conflict of interest. Although there may be no per se prohibited conflict of interest, you should be mindful that your involvement may give rise to an “appearance of impropriety” even where there is no identified special financial benefit to either your spouse or to CORE, especially if your acts are discretionary in nature. For example, if you are overseeing a project being completed by CORE, since you have the ability to make a determination as to whether CORE is in violation of its responsibilities or duties under the contract, any decision you make involving CORE, even where there is no identified special financial benefit to CORE, may have an appearance of impropriety. Although matters of internal policy and procedure are not normally subject to COE jurisdiction, if you are concerned about this appearance of impropriety, the COE recommends you recuse yourself from any involvement in CORE projects and have your direct supervisor oversee them. In addition, while the Code does not restrict your actions as long as the guidance in this opinion is followed, you must

¹ Sec. 2-443(a), Misuse of public office or employment.

² Sec. 2-442, Definitions.

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

⁴ Sec. 2-442, Definitions.

remember that as a public employee, no quid pro quo or any other benefit may ever be given for an official act or the past, present, or future performance of a public duty.⁵

Finally, you must be mindful that whether a conflict of interest exists depends on the facts and circumstances of each situation. Because CORE appears to have an ongoing relationship with PBCFR, best practices dictate that you carefully review any action that you take as a public employee to ensure a special financial benefit is not being given to a prohibited entity. If there is ever any doubt about whether some action would give a special financial benefit to your spouse or CORE, 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(a) of the Code:

Sec. 2-442. Definitions.

Financial benefit includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value.

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:

(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;

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted but assume they are true for purposes of this advisory opinion. This opinion is not applicable to any conflict under state law, or with any relevant provision within the rules of The Florida Bar. Inquiries regarding possible conflicts under state law or bar rules should be directed to the State of Florida Commission on Ethics or The Florida Bar.

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

Sincerely,

Christie Kelley
Executive Director

RG/gal

⁵ Sec. 2-444(e), Gift law.