

Honesty - Integrity - Character

Agenda

February 1, 2024 – 1:30 p.m.
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

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

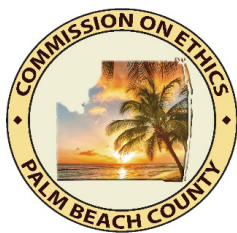
Mark A. Higgs

Investigator

Abigail Irizarry

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Introductory Remarks
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 24-002
- VI. Items Pulled from Consent Agenda
 - a.
- VII. Executive Director Comments
- VIII. Commission Comments
- IX. Public Comments
- X. Adjournment

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



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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

January 19, 2024

Jie "Jane" House, P.E., LEED AP
Director of Engineering
Palm Beach County Water Utilities Department
P.O. Box 24740
West Palm Beach, FL 33416

Re: RQO 24-002
Conflict of Interest/Contractual Relationships

Dear Ms. House:

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's outside employer from contracting with the County to provide engineering services?

BRIEF ANSWER:

The Code restricts any actions that would result in your spouse or 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 the Director of Engineering for Palm Beach County Water Utilities Department. Your spouse works for Parsons Corporation (PC), a company that intends to bid on projects with the County. Both you and your spouse also own common stocks in PC; however, you jointly own less than .01% of the company.

As a standard component of your employment duties, you would generally be in charge of the bidding process and selection of contracts issued by your division. You have stated it would be your intention to remove yourself from any decision-making process regarding bid proposals and selections involving PC. You have also noted that you would ensure that you have no influence on bid awards, contract awards, or decisions that have an affiliated cost. Your supervisor has agreed to assume your duties regarding bid proposals and selection if PC elects to submit a bid.

You want to be sure that the Code is not violated if PC pursues and is awarded projects for the County.

ANSWER:

Section 2-443(d) of the Code prohibits public employees, their outside business, or their outside employer from entering into a contract or other transaction for goods or services, directly or indirectly, with their

public employer, unless an exception applies.¹ The Code defines an "outside business" as any entity located in the County, or which does business with or is regulated by the County or a municipality as applicable, in which the official or employee has an ownership interest. "Ownership interest" means at least 5% of the total assets or common stock is 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. Under this definition, PC **does not** qualify as your outside business since you and your spouse own less than 5% of the combined total assets or common stock. As such, the Code does not prohibit PC from entering into contracts or other transactions with the County.

Additionally, 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 or your spouse's employer.² Financial benefit, in the context of the Code, constitutes economic gain or loss.³ 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.⁴

Based on the facts provided, as long you adhere to your listed intentions, follow the guidance in this opinion, and do not use your official position with the County in any way to give a special financial benefit to your spouse or PC or to corruptly secure a special benefit of any kind for your spouse or PC, you will not violate the Code.

Although you have acknowledged an understanding of the Code's prohibitions surrounding your involvement in discussions or decisions where your spouse's employer is a named party, 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 PC. This prohibition not only precludes you from participating in the selection process for any contract or transaction where PC is listed as a vendor but also from participating in any decision-making responsibility on PC projects that involve a special financial benefit for PC. You are also prohibited from influencing others to take or fail to take some action that would give PC a special financial benefit. As such, you are prohibited from ignoring any contractual violations, or from asking or influencing another County employee to ignore any violations, if it would result in a special financial benefit to PC. However, as long as you do not improperly use your official position to give PC or your spouse a special financial benefit, a conflict of interest would not arise for you.

Furthermore, the COE understands that you may find yourself in a situation that involves PC but would not result in a special financial benefit to PC 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 PC, especially if your acts are discretionary in nature. For example, if you are overseeing a project being completed by PC, since you have the ability to make a determination as to whether PC is in violation of its responsibilities or duties under the contract, any decision you make involving PC, even where there is no identified special financial

¹ Sec. 2-443(d), Contractual relationships.

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

³ Sec. 2-442, Definitions.

⁴ Sec. 2-443(b), Corrupt misuse of official position.

benefit to them, 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 PC 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 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 PC may provide services for the County on an ongoing basis, 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 person or entity. If there is ever any doubt about whether some action would give a special financial benefit to your spouse or to PC, 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) and (d) of the Code:

Sec. 2-442. Definitions.

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.

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;
 - (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 Sec. 2-444(e), Gift law.

- (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 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