

*Honesty - Integrity - Character*

**Palm Beach County**

**Commission on Ethics**

300 North Dixie Highway, Ste 450

West Palm Beach, FL 33401

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**Commissioners**

Kristin A. Vara-Garcia

Michael S. Kridel

Peter L. Cruise

Michael H. Kugler

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*

May 2, 2024 – 1:30 p.m.

Governmental Center,  
301 North Olive Avenue, 6<sup>th</sup> Floor  
Commissioners Chambers

Meeting will begin at 1:30pm  
Executive Session will begin at 1:40pm  
Regular Agenda will resume immediately  
following Executive Session

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Introductory Remarks
- V. Approval of Minutes from April 4, 2024
- VI. Executive Session for C24-006
- VII. Processed Advisory Opinions (Consent Agenda)
  - a. RQO 24-005
- 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  
PALM BEACH COUNTY, FLORIDA**

**APRIL 4, 2024**

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

**COMMISSION CHAMBERS  
WEISMAN GOVERNMENTAL CENTER**

**MEMBERS:**

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

**COMMISSION ON ETHICS 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  
S. Lizabeth Martin, COE Communication and Education Manager

**CLERK OF THE CIRCUIT COURT & COMPTROLLER'S OFFICE STAFF PRESENT:**

Danielle Freeman, Deputy Clerk  
Chayanne Munet, Deputy Clerk

**I. CALL TO ORDER**

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

**II. PLEDGE OF ALLEGIANCE**

Judge Reid Scott performed the Pledge of Allegiance.

**III. SWEARING IN CEREMONY BY JUDGE REID SCOTT**

Judge Reid Scott performed the swearing-in for Commissioner Michael Kugler.

#### **IV. ROLL CALL**

All members were present.

#### **V. INTRODUCTORY REMARKS**

Commissioner Cruise welcomed Commissioner Kugler back to the Committee.

Commissioner Kugler congratulated Chair Vara-Garcia and Vice Chair Kridel on their new positions.

#### **VI. APPROVAL OF MINUTES FROM MARCH 7, 2024.**

**MOTION to approve the March 7, 2024, minutes. Motion by Commissioner Cruise, seconded by Commissioner Kugler, and carried 5-0.**

#### **VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)**

- a. RQO 24-003
- b. RQO 24-004

#### **VIII. ITEMS PULLED FROM CONSENT AGENDA**

No items were pulled from the consent agenda.

#### **IX. EXECUTIVE DIRECTOR COMMENTS**

1.

Ms. Kelley conferred with the Board about a draft letter of opposition that would be sent to Governor DeSantis concerning Senate Bill 7014.

2.

Ms. Kelley discussed the ethics training that staff had provided to the Delray Beach Community Redevelopment Agency, the new firefighters at Hyland Beach, and for the City of Boynton Beach.

3.

Ms. Kelley stated that staff had spoken at various municipalities.

**X. COMMISSION COMMENTS**

No comments were made.

**XI. PUBLIC COMMENTS**

No comments were made.

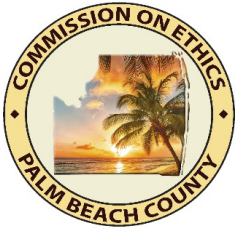
**XII. ADJOURNMENT**

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

APPROVED:

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Chair/Vice Chair



Honesty - Integrity - Character

# Palm Beach County Commission on Ethics

## Commissioners

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

## Executive Director

Christie Kelley

April 17, 2024

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

Re: RQO 24-005  
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 the Palm Beach County Code of Ethics (Code) prohibit the Village of Wellington (Village) from purchasing goods from the outside business of a Village council member?

### **BRIEF ANSWER:**

Generally, the Code restricts any actions that would result in a council member's outside business entering into a contract or transaction with the Village. Thus, unless one of the exceptions applies, the Code would prohibit a contractual relationship between the Village and the outside business.

### **FACTS:**

You are the Village Attorney. A recently elected councilmember, Maria Antuna, has a possible conflict in the contractual relationship context. Ms. Antuna's husband owns an auto parts business called County Auto Parts/Original Equipment (CAP). Ms. Antuna is not employed by the company and does not own any stock in the company. The Village does not have a contract with CAP but does purchase items from CAP on an as-needed basis. Your estimate is that the total goods purchased by the Village to date in this fiscal year is \$16,000. All government entities who purchase parts from the business receive a government discount and may receive a larger discount, depending on the size of their fleet. The Village does receive this deeper discount, but does not receive any greater discount than any other government entity with a similar fleet size would receive. No Council approval is required for these purchases since they fall below the threshold required for Council approval.

There are other similar businesses in the Village, thus there are other options for the Village when the purchase of similar goods is necessary.

You want to know if the Code would be violated if the Village continues to patronize CAP on an as-needed basis.

**ANSWER:**

Section 2-443(d) of the Code prohibits public officials or 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.<sup>1</sup> 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 five percent 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, CAP qualifies as Ms. Antuna outside business. Therefore, CAP is prohibited from entering into any contract or other transaction with the Village, directly or indirectly, unless an exception applies.

The Code provides for a variety of exceptions to the above prohibition. However, based on the facts provided, none of these exceptions appear to apply.<sup>2</sup> Because CAP currently provides goods to the Village on an as-needed basis without a contract, the "sealed-bid, low-bid" exception is not applicable.<sup>3</sup> Because there are other similar auto parts businesses in the Village, the sole source exception is inapplicable.<sup>4</sup> Further, based on the current value of goods the Village has already purchased from CAP for the current fiscal year, the exception for transactions under \$500 in the aggregate per calendar year is similarly inapplicable in this situation.<sup>5</sup> However, it should be noted that transactions between the Village and CAP are still permitted under the Code as long as the total amount in the aggregate does not exceed the above defined \$500 maximum per calendar year.

Although there is not currently an exception available to CAP, the COE is mindful that in an emergency situation, a purchase or transaction that may otherwise violate the Code, would be permissible as long as it is made to protect the health, safety, or welfare of the citizens of the Village.<sup>6</sup>

Additionally, as a member of the Village Council, the Code prohibits Ms. Antuna from using her 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 her spouse and their outside business.<sup>7</sup> Financial benefit, in the context of the Code, constitutes economic gain or loss.<sup>8</sup> Similarly, the Code also prohibits the use of an official position to corruptly secure a special benefit of any kind for anyone, including Ms. Antuna, her spouse, or their outside business. Corruptly is defined as an act that is done with a wrongful intent and that is inconsistent with the proper performance of public duties.<sup>9</sup> Finally, as an elected official, Ms. Antuna must remember that no quid pro quo or any other

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<sup>1</sup> Sec. 2-443(d), *Contractual relationships*

<sup>2</sup> Sec. 2-443(e), *Exceptions and waiver*

<sup>3</sup> Sec. 2-443(e)(1)

<sup>4</sup> Sec. 2-443(e)(3)

<sup>5</sup> Sec. 2-443(e)(4)

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

<sup>7</sup> Sec. 2-443(a), *Misuse of public office or employment*

<sup>8</sup> Sec. 2-442, *Definitions*

<sup>9</sup> Sec. 2-443(b), *Corrupt misuse of official position*

benefit may ever be given for an official act or the past, present, or future performance of a public duty.<sup>10</sup>

### **LEGAL BASIS:**

The legal basis for this opinion is found in Sec. 2-442, Sec. 2-443(a), Sec. 2-443(d), and Sec. 2-443(e) 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.

#### **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;

(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.

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<sup>10</sup> Sec. 2-444(e), *Gift law*

(e) Exceptions and waiver.

In addition, no official or employee shall be held in violation of subsection (d) if:

- (1) The business is awarded under a system of sealed, competitive bidding to the lowest bidder and:
  - a. The official or employee, or his or her relative or household member, has in no way participated in the determination of the bid specifications or the determination of the lowest bidder;
  - b. The official or employee, or his or her relative or household member, has in no way used or attempted to use the official or employee's influence to persuade the agency, governmental entity or any personnel thereof to enter such a contract other than by the mere submission of the bid; and
  - c. The official or employee, prior to or at the time of the submission of the bid, has filed a statement with the supervisor of elections and the commission on ethics, disclosing the nature of the interest in the outside employer or business submitting the bid.
- (2) An emergency purchase or contract, which would otherwise violate a provision of subsection (d), must be made in order to protect the health, safety, or welfare of the citizens of the county or municipality as applicable.
- (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.
- (4) The total amount of the contracts or transactions in the aggregate between the outside employer or business and the county or municipality as applicable does not exceed five hundred dollars (\$500) per calendar year.

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