

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

OCTOBER 14, 2016

**FRIDAY
1:30 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman – Absent
Sara L. Shullman

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Executive Director
Abigail Irizarry, COE Investigator I
Christie E. Kelley, Esq., COE General Counsel
Gina A. Levesque, COE Intake and Compliance Manager

ADMINISTRATIVE STAFF:

Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Chair Michael Kridel stated that several items may be taken out of order.

IV. APPROVAL OF MINUTES FROM SEPTEMBER 8, 2016

MOTION to approve the September 8, 2016, minutes. Motion by Clevis Headley, seconded by Michael Loffredo, and carried 4-0. Judy Pierman absent.

(CLERK'S NOTE: Item VI. was presented at this time.)

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VI.a. Request for Opinion (RQO) 16-020

VI.b. RQO 16-023

MOTION to approve the consent agenda. Motion by Sarah Shullman, seconded by Clevis Headley, and carried 4-0. Judy Pierman absent.

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. PROPOSED ADVISORY OPINIONS

VIII.a. RQO 16-021

Mark E. Bannon, COE Executive Director, explained that RQO 16-021 was not added to the consent agenda to allow discussion on the appearance of impropriety associated with the matter.

Commissioner Sarah Shullman noted that RQO 16-021 already contained a paragraph about the appearance of impropriety.

Christie Kelley, Esq., COE General Counsel, said that:

- A City of Delray Beach (Delray Beach) assistant attorney asked whether the West Atlantic Redevelopment Coalition (WARC) members were under the jurisdiction of the COE and the County's Code of Ethics.
 - The WARC was a nonprofit organization that advised the Delray Beach Community Redevelopment Agency and Delray Beach staff on redevelopment issues.
 - The WARC members hosted an annual gala to secure sponsorships from Delray Beach businesses.
 - One of Delray Beach's developers was a 2016 "Title Sponsor" of WARC's annual gala.

VIII.a. – CONTINUED

- The developer would be bringing a project before the WARC members and Delray Beach's Planning and Zoning Board (PZB).
- The WARC board members were not appointed by the Delray Beach Commission and did not fall under the jurisdiction of the COE and the County's Code of Ethics.
- One of the WARC members was on the Delray Beach PZB, which fell under the COE's jurisdiction.
 - As an official Delray Beach PZB member, the WARC member was prohibited from providing a special financial benefit to certain persons or entities, and she could not vote on an issue where those persons or entities would receive a special benefit.
 - The developer was not a WARC member and would not receive a special benefit if the WARC member voted on the developer's project.
 - Staff believed that no conflict of interest existed; however, an appearance of impropriety may exist because the WARC member served on the Delray Beach PZB.
- The advisory opinion letter stated that any official action taken by the WARC and the Delray Beach PZB member, including recommendations on the development project to the Delray Beach Commission, would violate the misuse of public office and employment section of the County's Code of Ethics if it was based on any unlawful quid pro quo or other benefit to the developer because of the developer's donation to the WARC.

Commissioner Shullman suggested changing the date of the advisory opinion letter because the COE meeting had been rescheduled.

MOTION to approve proposed advisory opinion letter RQO 16-021 as amended. Motion by Sara Shullman, seconded by Clevis Headley, and carried 4-0. Judy Pierman absent.

VIII. CONTINUED

VIII.b. Pages 9-12

IX. EXECUTIVE DIRECTOR COMMENTS

IX.a.

DISCUSSED: Hurricane Matthew.

Mr. Bannon said that he was grateful that everyone withstood Hurricane Matthew's potential damage.

IX.b.

DISCUSSED: Municipal Council Meetings.

Mr. Bannon said that the goal of attending at least one municipal council meeting for the 38 municipalities would be complete with the Town of Glen Ridge meeting.

IX.c.

DISCUSSED: Commendations.

Mr. Bannon thanked Gina Levesque, COE Intake and Compliance Manager, for working with the emergency response team at the County's Emergency Management Center. He also thanked Commissioner Shullman for her work with the State's emergency management team.

IX.d.

DISCUSSED: Volunteer Advocate Training.

Mr. Bannon said that volunteer advocate training was held on September 29, 2016, at the Vista Center. He said that the training was advertised but only one person attended. He added that staff could contact local attorneys to solicit new volunteers who could view the videotaped training session.

IX. – CONTINUED

IX.e.

DISCUSSED: COE Agreements.

Mr. Bannon said that the Delray Beach Housing Authority and the Delray Beach Community Redevelopment Agency renewed their agreements to be under the COE's jurisdiction for three additional years.

IX.f.

DISCUSSED: Office of Inspector General Lawsuit.

Mr. Bannon stated that he and Ms. Kelley attended oral agreements at the Fourth District Court of Appeals regarding the Office of Inspector General lawsuit.

IX.g.

DISCUSSED: Practical Guide for the Code of Ethics.

Mr. Bannon commented that the first draft of the Practical Guide for the Code of Ethics contained a few minor errors and that the guide would be published and distributed possibly within the next few weeks.

RECESS

At 1:42 p.m., the chair declared the meeting recessed for an executive session.

(CLERK'S NOTE: Item V. was presented at this time.)

V. EXECUTIVE SESSION

RECONVENE

At 2:48 p.m., the meeting reconvened, and at Chair Kridel's request for a roll call, Chair Kridel, Vice Chair Clevis Headley, and Commissioners Michael Loffredo and Sarah Shullman were present.

V. – CONTINUED

V.a. C16-009 – Not presented

V.b. C15-030

Vice Chair Headley read the following Public Report Finding Probable Cause and Final Order of Dismissal as discussed during the executive session:

Complainant, Mark E. Bannon, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on December 4, 2015, alleging that Respondent, Conor Devery, a City of Delray Beach employee, violated §2-443(d) of the Palm Beach County Code of Ethics by entering into contracts with the City through his outside business when his outside business did not meet any of the exceptions to the contractual relationships provision.

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On October 14, 2016, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the Affidavit, and the Report of Investigation from COE investigative staff and the Probable Cause Recommendation submitted by the COE Advocate. After an oral statement by the Advocate and the Respondent, the Commission determined that there are reasonably trustworthy facts and circumstances to find probable cause exists and that the Respondent may have violated §2-443(d) of the Palm Beach County Code of Ethics. The Commission determined that the violation was inadvertent, unintentional or insubstantial and issued a Letter of Instruction.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Conor Devery, is hereby **DISMISSED** and a Letter of Instruction is issued.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on October 14, 2016.

By: Michael S. Kridel, Chair

V.b. – CONTINUED

(CLERK'S NOTE: The clerk added the language as printed in the Public Report Finding Probable Cause and Final Order of Dismissal.)

Vice Chair Headley read the following Letter of Instruction as discussed during the executive session:

Mark E. Bannon, Executive Director of the Palm Beach County Commission on Ethics (COE) (Complainant) filed the above-captioned complaint against Corey Devery (Respondent), an employee of the City of Delray Beach (City), alleging a violation of the Palm Beach County Code of Ethics, specifically Article XIII, §2-443(d)(Contractual relationships). The complaint alleges, in part, that Respondent's outside business entered into contracts with his public employer, the City of Delray Beach.

Facts:

This matter came to the attention of COE staff via a letter from City Manager Donald Cooper stating that an audit revealed that Respondent was an employee of First Response Training, LLC, a vendor of the City. While the audit conducted by the City found information indicating Respondent is employed by First Response Training, LLC, the investigation by COE staff revealed that Respondent and his wife share a 100% ownership interest in the company.

The company's Articles of Incorporation list Respondent as the Registered Agent and a Managing Member for First Response Training, LLC. Respondent's wife is also listed as having an ownership interest in this company. No other officers were listed within the Articles of Incorporation documents. Respondent stated that he and his wife have a 100% ownership interest in First Response Training, LLC. During the investigation, Respondent stated that he was approached by training officials from the City's Fire Department who specifically requested services from his company. Respondent subsequently secured multiple contractual jobs with the City and was paid for those jobs. Invoices provided by the City show that First Response Training, LLC was a vendor of the City and received a total of \$2,245 in payments from the City over a three year period.

V.b. – CONTINUED

However, due to the statute of limitations, the COE only has jurisdiction over the contract between the City and First Response Training, LLC that occurred on February 7, 2014, where payment for services rendered totaled \$560.

Holding:

Respondent's outside business (First Response Training, LLC) was a vendor of the City. Under 2-443(d) of the Code, the February 7, 2014 contract between the City and First Response Training, LLC was prohibited. Furthermore, the evidence also showed that the contract did not meet any of the exceptions to the contractual relationships provision. The COE is mindful of the fact Respondent was approached by training officials from the City's Fire Department who specifically requested services from his company.

In light of the facts and circumstances known to the Commission on Ethics, the matter is disposed of by way of dismissal with this Letter of Instruction. The COE believes that the violation was unintentional, inadvertent or insubstantial and has determined that the public interest would not be served by proceeding further. However, Respondent is advised that the filing of Ethics Complaint C15-030, along with this Letter of Instruction, is to serve as notice that entering into a contract with his public employer is prohibited under the Code of Ethics, unless an exception applies. Respondent is therefore instructed to be more careful in the future to ensure that he follows the requirements of §2-443(d) to avoid any future enforcement action.

This Letter of Instruction is issued by the Palm Beach County Commission on Ethics in public session on October 14, 2016.

Palm Beach County Commission on Ethics,

By: Michael S. Kridel, Chair

(CLERK'S NOTE: The clerk added the language as printed in the Letter of Instruction.)

(CLERK'S NOTE: Item VIII.b. was presented at this time.)

VIII.b. RQO 16-024

Ms. Kelley said that:

- The City of Boca Raton (Boca Raton) recently received unsolicited offers to purchase land owned by Boca Raton.
- Boca Raton staff decided that all parties interested in purchasing the land could submit bids.
- Boca Raton's attorney believed that the cone of silence provision in the County's lobbyist registration ordinance only applied when the land sale involved a procurement or purchasing process and not when Boca Raton was selling the land.
- Staff believed that the cone of silence provision applied to both situations.
- The cone of silence's purpose was to ensure transparency throughout the competitive solicitation process and to prevent any improper influence of officials or other authorized employees.
- The County's lobbyist registration ordinance stated that the cone of silence provision prohibited any oral communication regarding a particular request for proposal, a request for qualification, and a bid. The prohibition also included any other competitive solicitation, which was not narrowly defined in the County's ordinance.
- Boca Raton requested that any parties interested in purchasing its land submit a best, last, and final written bid by October 21, 2016, between 4:30 p.m. and 5:00 p.m. Offers submitted after that date would not be considered.
- Boca Raton's approach was considered a competitive solicitation because it was a written bid with a deadline.
- Since Boca Raton was utilizing a competitive solicitation process, the cone of silence provision applied and would go into effect at the submission deadline.

VIII.b. – CONTINUED

Mr. Bannon said that:

- A contract still needed to be negotiated even when the cone of silence applied and a bidder's offer was accepted.
- Once a bid was awarded, negotiations between staff and the intended recipient of the bid were not within the cone of silence.
- Staff believed that the cone of silence should still apply to others involved in the bidding process because an agreement with the first bidder may not be reached, and Boca Raton staff may need to select another bidder.

Commissioner Shullman said that:

- The COE was required to follow the County's lobbyist registration ordinance and not the other ordinances from Miami-Dade and Broward counties, which were cited in the Boca Raton attorney's request for advisory opinion.
- She did not find any language in the County's ordinance limiting it to the procurement process.

Joni Hamilton, Boca Raton Senior Assistant Attorney, said that:

- Boca Raton's code of ordinances contained a provision for sale of real estate property stating that a competitive solicitation was considered a procurement process.
- The County established the cone of silence provision to prevent private entities and the government from having communications while engaging in sales.
- Broward and Palm Beach counties both referenced competitive solicitation in their ordinances, but Broward applied the term to the purchase of goods or services.

VIII.b. – CONTINUED

- The Palm Beach County's ordinance, Section 2-355(e), pertained to purchases, although the cone of silence did not apply to small purchases.

Chair Kridel stated that he had seen requests for proposals applied to the procurement process but not to real estate transactions. He added that most organizations' procurement process had language about "de minimis" exceptions or a "less than" threshold contained in their purchase provision.

Ms. Hamilton said that:

- The small purchase provision of the procurement process did not apply to Boca Raton.
- Boca Raton's ordinance contained a provision that listed the manner and method for selling municipal property.
- Boca Raton's request could be classified as the sale of real property pursuant to Boca Raton's ordinance, Chapter 13.
- The County should not enforce an ordinance provision that did not apply to Boca Raton.
- The County's lobbyist registration ordinance could be revised to state that the cone of silence also applied to the sale of real property.
- The Florida Legislature's intent for the cone of silence was to address procurement.

Ms. Shullman stated that it was not the COE's responsibility to determine the County's intent but to make a determination after reviewing RQO 16-024 and the County's Code of Ordinances.

MOTION to approve proposed advisory opinion letter RQO 16-024. Motion by Michael Loffredo, seconded by Sarah Shullman, and carried 4-0. Judy Pierman absent.

(CLERK'S NOTE: The numeric order of the agenda was restored.)

X. COMMISSION COMMENTS – None

XI. PUBLIC COMMENTS – None

XII. ADJOURNMENT

At 3:31 p.m., the chair declared the meeting adjourned.

APPROVED:



Chair/Vice Chair