



*Honesty - Integrity - Character*

**Palm Beach County**

**Commission on Ethics**

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**Commissioners**

Michael S. Kridel, Chair

Clevis Headley, Vice Chair

Michael F. Loffredo

Judy M. Pierman

Sarah L. Shullman

**Executive Director**

Mark E. Bannon

**Intake and Compliance Manager**

Gina A. Levesque

**General Counsel**

Christie E. Kelley

**Chief Investigator**

Anthony C. Bennett

**Investigator**

Abigail Irizarry

# *Agenda*

April 6, 2017 – 1:30 p.m.  
Governmental Center,  
301 North Olive Avenue, 6<sup>th</sup> Floor  
Commissioners Chambers

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Minutes
  - a. March 2, 2017 meeting
  - b. March 6, 2017 meeting
- V. Processed Advisory Opinions (Consent Agenda)
  - a. RQO 17-005
  - b. RQO 17-006
- 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.

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

**MARCH 2, 2017**

**THURSDAY  
9:10 A.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  
Sarah L. Shullman

**STAFF:**

Mark E. Bannon, Commission on Ethics (COE) Executive Director  
Anthony C. Bennett, COE Chief Investigator  
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 said that today's primary business involved the final hearing on C16-006.

**IV. MINUTES**

**IV.a. January 12, 2017 Meeting**

**MOTION to approve the January 12, 2017 minutes. Motion by Judy Pierman, seconded by Clevis Headley, and carried 5-0.**

**IV.b. February 2, 2017 Meeting**

**MOTION to approve the February 2, 2017 minutes. Motion by Clevis Headley, seconded by Michael Loffredo, and carried 5-0.**

**V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)**

**V.a. Request for Opinion (RQO) 17-002**

**MOTION to approve the consent agenda. Motion by Judy Pierman, seconded by Clevis Headley, and carried 5-0.**

**VI. ITEMS PULLED FROM CONSENT AGENDA – None**

**VII. EXECUTIVE DIRECTOR COMMENTS – None**

**VIII. COMMISSION COMMENTS – None**

**IX. PUBLIC COMMENTS – None**

**RECESS**

**At 9:12 a.m., the chair declared the meeting recessed.**

**RECONVENE**

**At 9:55 a.m., the meeting reconvened with Chair Kridel, Vice Chair Clevis Headley, and Commissioners Michael Loffredo, Judy Pierman, and Sarah Shullman present.**

**X. FINAL HEARING C16-006**

Chair Kridel stated that Commissioner Sarah Shullman would preside over the C16-006 final hearing.

## **X. – CONTINUED**

Patrick Quinlan, Commission on Ethics (COE) Volunteer Advocate, said that:

- Abigail Irizarry, COE Investigator, prepared a thumb drive containing the COE's list of numbered exhibits with hyperlinks to the specific exhibits.
- He and Jeloni Davis, counsel for Respondent Rowan Hughes, agreed to mark the thumb drive as Exhibit A.
- Specific hard-copy exhibits would be shown to witnesses and provided to the COE. Hard-copy exhibits would be included in the thumb drive except for the Office of Inspector General (OIG) report.
- He and Mr. Davis agreed that COE witness Daniel Bates, Environmental Resources Management (ERM) Deputy Director, could appear by telephone.

Commissioner Shullman stated that:

- The final hearing was being recorded by PBC TV Channel 20.
- Evidentiary standards for the public hearing would be based on criteria contained in Section 2-260.1 of the COE ordinance.
  - The public hearing shall not adhere to the technical rules of evidence and witnesses, and relevant evidence may be admitted.
  - Hearsay evidence could be admitted if used to supplement and explain other evidence or testimony but would not, in and of itself, be sufficient to support a finding.
  - Oral evidence taken under oath or affirmation would be administered by Gina Levesque, COE Intake and Compliance Manager.
  - Submission of affidavits from witnesses who may have been called to testify but did not appear would not be allowed.
  - Witness depositions were permitted.

## **X. – CONTINUED**

- Mr. Quinlan would make a brief presentation, followed by Mr. Davis or Mr. Hughes. Rebuttal would be allowed at the discretion of the presiding commissioner.
- Mr. Quinlan would present his case, including witnesses and documentary evidence.
- Mr. Davis could cross-examine witnesses upon completion of direct examination and would then present his case and any witnesses or documentary evidence.
- Mr. Quinlan could cross-examine Mr. Davis' witnesses upon completion of direct examination. Rebuttal would be allowed at the discretion of the presiding commissioner.
- Mr. Quinlan and Mr. Davis could impeach a witness regardless of who called the witness to testify.
- Mr. Quinlan and Mr. Davis could make a brief closing statement after submitting all evidence and witness testimony. Rebuttal would be allowed at the discretion of the presiding commissioner.
- Once all witnesses were heard and all evidence was submitted, the evidentiary standard would be addressed again.
- The COE would then engage in public discussion, evaluate the evidence, and determine whether a violation occurred.
- A finding would be determined at the end of public discussion.
  - If the COE found by clear and convincing evidence that a violation was committed, the COE would issue an order imposing the appropriate penalty based on competent, substantial evidence in the record.
  - The finding would also include a determination of whether the violation was intentional or unintentional.
  - A public report of the finding would be issued.

## X. – CONTINUED

- If the COE found that a violation occurred, the penalty would include a public reprimand, a fine of up to \$500 per violation, or both.
- If a violation was not supported by clear and convincing evidence, the case would be dismissed, and a public report of the findings would be issued based on competent, substantial evidence in the record.
- The COE would publish its public report at the end of the public hearing unless Mr. Quinlan and Mr. Davis submitted written proposed public reports.
- The proposed public reports should be submitted within 12 months of the June 28, 2016 filing of the complaint unless extended by the COE for good cause.

Mark Bannon, COE Executive Director, read the clear and convincing evidence standard:

In order to find that Respondent has committed a violation of the Palm Beach County Code of Ethics, the Commission must find by clear and convincing evidence, based on competent substantial evidence in the record, that a violation was committed by Respondent.

The clear and convincing evidence standard is an “intermediate” standard of proof, and requires *“evidence indicating that the thing to be proved is highly probable or reasonably certain.”*

The Florida Supreme Court has held that clear and convincing evidence requires, *“that the evidence submitted must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations to be established.”*

## X. – CONTINUED

Commissioner Shullman stated that:

- The COE would determine two alleged violations of Section 2-443(a) and Section 2-443(b) of the Code of Ethics (Code).
- To find a violation of Section 2-443(a), the evidence must show that Mr. Hughes used his official position, or took some action, or influenced others to take an action to give a special financial benefit to himself or one of the persons or entities listed in Section 2-443(a).
- The Code defined a financial benefit as any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these or anything else of value.
- To find a violation of Section 2-443(b), the evidence must show that Mr. Hughes used his official position to corruptly secure a special privilege, benefit, or exemption for himself or for someone else.
- The Code defined “corruptly” as done with a wrongful intent and for the purpose of obtaining or receiving compensation for any benefit resulting from some act by the public employee, which was inconsistent with the proper performance of his public duties.

Mr. Quinlan stated the following during his opening statement:

- During the probable cause hearing, Mr. Hughes acknowledged that he used a County vehicle to drive to Ron Cheston Automotive (RCA).
  - Use of a County vehicle would be mentioned during the presentation of evidence regarding the allegation that Mr. Hughes improperly sought to reduce his auto repair cost by referring to his County position.
  - Mr. Davis indicated that the misuse of a County vehicle charge did not need to be proven.
- Evidence would establish that in discussing the auto repair and payment on June 22, 2017, Mr. Hughes referenced his County position with ERM and well field inspections, which could directly impact RCA.

## **X. – CONTINUED**

- Ron Cheston Sr. said that he felt threatened and intimidated by Mr. Hughes' reference to his ERM position and the suggestion that it would be in his best interest to reduce or discount the auto repair cost.
- Mr. Hughes paid the auto repair bill on June 22, 2017, but Mr. Cheston Sr. immediately called the County to complain about the manner in which Mr. Hughes referenced his ERM position and his implication that there could be negative consequences if the discount was not provided.
- On June 23, 2017, Mr. Cheston Sr. and Ron Cheston Jr. provided statements to the OIG.
- The Chestons, Mr. Bates, Robert Robbins, ERM Director, and Ms. Irizarry would be called to testify.
- After presentation of evidence, it would be clear and convincing that Mr. Hughes violated Sections 2-443(a) and 2-443(b).

Mr. Davis stated the following during his opening statement:

- Mr. Hughes would admit to violating Section 2-443(a) so proving misuse of a County vehicle was unnecessary.
- A different version of the facts would be presented regarding a violation of Section 2-443(b).
  - Mr. Hughes made arrangements with RCA to repair possible fuel issues on his truck.
  - RCA called Mr. Hughes around June 19, 2015, stating that the repairs were completed, and Mr. Hughes arrived at RCA on June 22, 2015.
  - Mr. Hughes briefly spoke to Mr. Cheston Sr., walked outside to speak to Mr. Cheston Jr., and inspected the truck before paying the repair bill.

## **X. – CONTINUED**

- Mr. Hughes mentioned to Mr. Cheston Jr. that he worked for ERM and with staff that handled oil fields and other environmental issues; however, Mr. Cheston Jr. may have misinterpreted the comment.
- Mr. Hughes went inside the RCA shop and questioned the fuel pump cost.
- Mr. Hughes eventually paid the bill, but at no time on June 22, 2015, did he mention a government discount or use his position to influence a discount.
- Mr. Hughes arranged to pick up his truck later and left in the County vehicle that he arrived in. At the end of the day, Mr. Hughes returned with his wife to pick up the truck.
- The truck stalled on the way home. Mr. Hughes called RCA, but it was closed.
- On June 23, 2015, Mr. Hughes arrived at RCA in a County vehicle and explained what happened to the truck.
- Mr. Cheston Sr. rudely responded. The evidence would show that Mr. Hughes did not mention a government discount or his ERM position to influence a discount.
- Mr. Cheston Sr. asked Mr. Hughes to return the truck. Mr. Hughes requested that the fuel pump be replaced.
- Mr. Cheston Sr. stated that the original fuel pump was considered used after installation. Mr. Hughes filed a credit card dispute stating that the services and goods were not provided.
- The evidence would show that a fuel pump was never installed in the truck and that on June 23, 2015, the Chestons initiated an OIG complaint.
- Clear and convincing evidence would not show that Mr. Hughes used his ERM position to influence any discount on his truck.

**X. – CONTINUED**

Mr. Quinlan clarified that Mr. Hughes' reference to his employment status to obtain a discount violated Sections 2-443(a) and 2-443(b). He added that Mr. Davis only conceded to the portion of Section 2-443(a) involving the misuse of a County vehicle.

(CLERK'S NOTE: Mr. Quinlan conducted direct examination of Mr. Cheston Sr.)

(CLERK'S NOTE: Mr. Davis conducted cross-examination of Mr. Cheston Sr.)

Mr. Quinlan stated that it was nearing the time when Mr. Bates would appear by telephone. He added that direct examination would take approximately three minutes and that there would be no exhibits.

Mr. Davis said that he would not object to Mr. Quinlan questioning Mr. Bates at this time.

Commissioner Shullman noted that Mr. Bates would appear by telephone due to a family medical emergency involving a minor.

Mr. Quinlan said that cross-examination could continue until Mr. Bates was available.

(CLERK'S NOTE: Mr. Davis continued cross-examination of Mr. Cheston Sr.)

Mr. Davis requested that Mr. Cheston Sr. remain until Mr. Bates testimony was concluded.

(CLERK'S NOTE: Mr. Quinlan conducted direct examination of Mr. Bates who appeared by telephone.)

(CLERK'S NOTE: Mr. Davis conducted cross-examination of Mr. Bates.)

(CLERK'S NOTE: Mr. Quinlan conducted redirect examination of Mr. Bates.)

(CLERK'S NOTE: Mr. Davis continued cross-examination of Mr. Cheston Sr.)

(CLERK'S NOTE: Mr. Quinlan conducted redirect examination of Mr. Cheston Sr.)

**X. – CONTINUED**

**RECESS**

**At 11:51 a.m., Commissioner Shullman declared the meeting recessed.)**

**RECONVENE**

**At 11:58 a.m., the meeting reconvened with Chair Kridel, Vice Chair Clevis Headley, and Commissioners Michael Loffredo, Judy Pierman, and Sarah Shullman present.**

(CLERK'S NOTE: Mr. Quinlan conducted direct examination of Mr. Robbins.)

(CLERK'S NOTE: Mr. Davis conducted cross-examination of Mr. Robbins.)

(CLERK'S NOTE: Mr. Quinlan conducted redirect examination of Mr. Robbins.)

**RECESS**

**At 12:27 p.m., Commissioner Shullman declared the meeting recessed.**

**RECONVENE**

**At 1:28 p.m., the meeting reconvened with Chair Kridel, Vice Chair Clevis Headley, and Commissioners Michael Loffredo, Judy Pierman, and Sarah Shullman present.**

Mr. Quinlan stated that:

- Ron Cheston Jr. was unable to appear and testify at this time.
- If the hearing resumed on March 3, 2017, at 8:30 a.m., he and Mr. Davis could conclude at 11:30 a.m.
- Mr. Davis did not want Mr. Hughes to testify until Mr. Cheston Jr.'s testimony was completed.

Commissioner Shullman stated that resuming the hearing on March 6, 2017, at 10:00 a.m. would work best for everyone.

**X. – CONTINUED**

Mr. Quinlan said that he had no objections to Ms. Irizarry testifying before adjournment.

(CLERK'S NOTE: Mr. Davis conducted direct examination of Ms. Irizarry.)

**XI. ADJOURNMENT**

**At 1:44 p.m., the chair declared the meeting adjourned.**

APPROVED:

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Chair/Vice Chair

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

**MARCH 6, 2017  
CONTINUATION OF THE MARCH 2, 2017 MEETING**

**MONDAY  
10:05 A.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  
Sarah L. Shullman

**STAFF:**

Mark E. Bannon, Commission on Ethics (COE) Executive Director  
Anthony C. Bennett, COE Chief Investigator  
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**

Commissioner Sarah Shullman requested that everyone turn off or silence their cell phones.

(CLERK'S NOTE: Continuation of item X. took place at this time.)

Patrick Quinlan, Commission on Ethics (COE) Volunteer Advocate, clarified that the thumb drive containing hard copies of COE exhibits was marked as Exhibit 31. The Office of Inspector General (OIG) report presented to the witnesses and the COE on March 2, 2017 was marked as Exhibit 32

(CLERK'S NOTE: Mr. Quinlan conducted direct examination of Ron Cheston Jr.)

(CLERK'S NOTE: Jeloni Davis, Counsel for Respondent Rowan Davis, conducted cross-examination of Mr. Cheston Jr.)

(CLERK'S NOTE: Mr. Quinlan conducted redirect examination of Mr. Cheston Jr.)

Mr. Quinlan said that he and Mr. Davis agreed that no additional evidence would be presented at this time but some may be offered during his cross-examination and rebuttal of Mr. Hughes and Abigail Irizarry, COE Investigator. He added that he had completed the presentation of his case.

(CLERK'S NOTE: Mr. Davis conducted direct examination of Mr. Hughes.)

(CLERK'S NOTE: Mr. Quinlan conducted cross-examination of Mr. Hughes.)

## **RECESS**

**At 12:27 p.m., Commissioner Shullman declared the meeting recessed.**

## **RECONVENE**

**At 12:41 p.m., the meeting reconvened with Chair Kridel, Vice Chair Clevis Headley, and Commissioners Michael Loffredo, Judy Pierman, and Sarah Shullman present.**

(CLERK'S NOTE: Mr. Quinlan continued cross-examination of Mr. Hughes.)

**X. – CONTINUED**

(CLERK'S NOTE: Mr. Davis conducted redirect examination of Mr. Hughes.)

**RECESS**

**At 12:45 p.m., Commissioner Shullman declared the meeting recessed.**

**RECONVENE**

**At 1:33 p.m., the meeting reconvened with Chair Kridel, Vice Chair Clevis Headley, and Commissioners Michael Loffredo, Judy Pierman, and Sarah Shullman present.**

(CLERK'S NOTE: Mr. Davis conducted direct examination of Keith Colombo (phonetic).)

Mr. Davis stated that he had completed the presentation of his case.

Mr. Quinlan stated the following during his closing argument:

- Before the work began, Mr. Cheston Sr. informed Mr. Hughes that there would be a \$175 diagnostic charge.
- Mr. Hughes was charged \$2,762 for the auto part, which was less than the \$2,909 list price indicated on Exhibit 33.
- Mr. Cheston Sr. testified that the total auto repair of \$3,622.01 was described to Mr. Hughes before the work was performed.
- When Mr. Hughes arrived on June 22, 2015, to pay for the auto repair, he referenced his County job and stated that it would be in Mr. Cheston Sr.'s best interest to give him a discount.
- Mr. Cheston Sr. obtained a receipt for the fuel pump that Mr. Hughes accused him of either not installing or installing a lower quality.
- Daniel Bates, Environmental Resources Management (ERM) Deputy Director, testified that Mr. Hughes told him that he had asked Mr. Cheston Sr. about a government discount for the auto repair.

## X. – CONTINUED

- Robert Robbins, ERM Director, testified that Mr. Bates told him about his conversation with Mr. Hughes and that he also had a similar conversation with Mr. Hughes.
- Mr. Cheston Jr. testified that Mr. Hughes referenced his employment status and that when he spoke to Mr. Cheston Sr., he realized that Mr. Hughes was using his employment status to leverage a reduction in the auto repair.
- Mr. Hughes testified that:
  - He acknowledged mentioning fuel stations and well field inspections but did not state that his job involved climate change matters.
  - The word, “discount” never came up when talking to the Chestons, despite testimony to the contrary.
  - He drove his Lexus to Ron Cheston Automotive (RCA) on June 25, 2015, but it was on June 23, 2015 that he drove the County vehicle.
  - He drove the County vehicle to RCA after attending a County meeting but later admitted to using the County vehicle entirely for personal use on June 22, 2015, and June 23, 2015.
- The case rested on Mr. Hughes’ credibility and the fact that he only told the truth to Mr. Bates, Mr. Robbins, and the OIG investigators when confronted with the evidence.
- Testimony proved that Mr. Cheston Sr.:
  - provided Mr. Hughes with a quote;
  - made the auto repair that he charged Mr. Hughes for; and
  - did not file a false complaint in response to the credit card dispute initiated by Mr. Hughes.

## X. – CONTINUED

- Considering the testimony of Mr. Hughes, the four witnesses, and 33 exhibits, Mr. Hughes should be found in violation of Section 2-443(a) for using a County vehicle for personal use, which he now admitted, and Section 2-443(b) for referencing his employment to obtain a financial benefit for himself.

Mr. Davis stated the following during his closing argument:

- Mr. Quinlan did not meet his burden of proof regarding Section 2-443(b).
- He conceded to a violation of Section 2-443(a) since Mr. Hughes admitted in a sworn statement to Ms. Irizarry that he drove a County vehicle to RCA.
- Registration and pictures of the truck were produced on March 2, 2017; however, Mr. Quinlan did not produce an Advance Auto Parts receipt until today.
  - It was disingenuous of Mr. Quinlan to equate that both scenarios regarding production of documents were handled in the same manner.
  - Mr. Hughes' defense was based on sending a subpoena duces tecum for production of documents to the Cheston's attorney, Allen Belluccio and to Napleton Dodge.
  - Mr. Belluccio and Napleton Dodge provided a written response to the subpoena duces tecum for production of documents.
  - The Advance Auto Parts receipt was not produced until rigorous cross-examination of Mr. Cheston Sr. on March 2, 2017.
- The case revolved around contradictions and a lack of communication between Mr. Hughes and Mr. Cheston Sr.
- Mr. Robbins and Mr. Bates testified that Mr. Hughes' work integrity was exemplary until he used the County vehicle for personal use.

## **X. – CONTINUED**

- Mr. Hughes would never use his position to gain a \$400 discount for what was essentially a hobby truck.
- Mr. Colombo testified about Mr. Hughes' work integrity.
- Using a County vehicle for personal use could be equated to jaywalking or speeding because everyone engaged in those types of actions at some point.
- Asking for a discount was not unethical, regardless of whether or not Mr. Hughes requested one.
- There was no clear and convincing evidence that Mr. Hughes used his position to gain a favor.
- There was no June 22, 2015 video surveillance from RCA because the only incident that occurred was Mr. Hughes paying for his auto repair.
- The June 23, 2015 video did not show Mr. Cheston Sr. screaming and walking out on Mr. Hughes because it was cut and pasted.
- He was confident that the COE would find that his client did not abuse his authority regarding Section 2-443(b).

Mr. Quinlan stated the following during his rebuttal:

- He was offended that the word "disingenuous" was used to personally describe him.
- When he received the Advance Auto Parts receipt on March 2, 2016, it was immediately provided to Mr. Davis.
- Minor discrepancies about the events were reasonable and to be expected given that the Chestons had testified multiple times.
- Testimony established that a June 22, 2017 video from RCA existed, but it was not produced during the investigation.

## X. – CONTINUED

- Mr. Cheston Sr. produced the Advance Auto Parts receipt.
- Mr. Hughes said under oath that the Chestons, Mr. Robbins, and Mr. Bates were lying.
- Mr. Robbins terminated Mr. Hughes when he concluded that he falsified logs to use County vehicles for personal use and violated the Palm Beach County Merit Rules 7.02.D.(21) and 7.02.D(32).
- He requested that the COE find Mr. Hughes in violation of Sections 2-443(a) and 2-443(b).

Mark Bannon, COE Executive Director, read the clear and convincing evidence standard:

In order to find that Respondent has committed a violation of the Palm Beach County Code of Ethics, the Commission must find by CLEAR AND CONVINCING EVIDENCE, based on competent substantial evidence in the record, that a violation was committed by Respondent.

The CLEAR AND CONVINCING EVIDENCE standard is an “intermediate” standard of proof, and requires *“evidence indicating that the thing to be proved is highly probable or reasonably certain.”* *Black’s Law Dictionary, 7<sup>th</sup> Edition.*

The Florida Supreme Court has held that CLEAR AND CONVINCING EVIDENCE requires, *“that the evidence submitted must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations to be established.”* *In Re: Davey, 645 So. 2d 398, 404 (Fla 1994), quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4<sup>th</sup> DCA 1983).*

(CLERK’S NOTE: The clerk added the language as printed in the Clear and Convincing Evidence Standard.)

## X. – CONTINUED

Commissioner Shullman said that:

- Various charges were discussed during the hearing.
- The COE would only focus on the alleged use of an official position to obtain a discount.
- Two sections of the Palm Beach County Code of Ethics (Code) were before the COE members, and a finding must be made on each charge individually.

- A violation of Section 2-443(a)(1) required that the COE:

find by clear and convincing evidence based on competent substantial evidence in the record, that Respondent used his official position or office to take some action, or influence others to take some action, in a manner which he knew or should have known with the exercise of reasonable care, would result in a special financial benefit, not shared with similarly situated members of the general public, for himself.

- A violation of Section 2-443(b) required that the COE:

find by clear and convincing evidence based on competent substantial evidence in the record, that Respondent used his official position or office, or any property or resource within his trust, to corruptly secure or attempt to secure, some special privilege, benefit, or exemption for himself. For this subsection, the term “corruptly” means done with wrongful intent and for the purpose of obtaining any benefit resulting from some act omission of the Respondent which is inconsistent with the proper performance of his public duties.

If the Commission finds that Respondent has violated either or both provisions of the Code of Ethics, they must also make a finding of whether any violation was intentional or unintentional.

## X. – CONTINUED

Chair Michael Kridel said that:

- The Advance Auto Parts receipt contained a June 16, 2015 “estimated time of arrival” date yet the document was not made available until this week.
- The receipt contained a fax date of March 2, 2017.
- The RCA estimate was problematic because the signature date was the same date that the vehicle was picked up.
- The vehicle’s description was problematic.
  - The vehicle appeared to be in reasonably good shape from the photographs.
  - He never heard clarification as to whether that was the way it looked now or the day that it was at the shop.
- Miscommunication contributed to issues between the parties.
- It was not illegal to request a discount; however, it should be evaluated by how and when it was asked.
- The fact that Mr. Hughes admitted to using a County vehicle for personal use to some extent spoke to his credibility.
- Part of Mr. Cheston Sr.’s testimony created more questions than answers.
- Mr. Hughes could have determined if a different fuel pump was installed by physically examining it.
- Late introduction of the Advance Auto Parts receipt did not discount that the work was timely performed.

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## **X. – CONTINUED**

Vice Chair Clevis Headley said that:

- The RCA estimate and Mr. Cheston Sr.'s testimony elicited some crucial facts, including:
  - Mr. Hughes said that he would consider the estimate, and he called back to approve the diagnostic test.
  - A diagnostic test was performed, a quote was provided, and Mr. Hughes called Mr. Cheston Sr. to proceed with the auto repair.
  - Estimates were almost always requested, and no auto mechanic would perform work without first receiving approval.
- The Chestons' testimony would be questionable without the Advance Auto Parts receipt.
- Something must have happened on June 22, 2015 that led Mr. Cheston Sr. to call the OIG and schedule an interview on June 23, 2015.
- Mr. Bates and Mr. Robbins testified that Mr. Hughes was a good employee and an excellent coworker and that he referenced his request for a government discount.
- It was not unethical to inquire about a discount, but discussing it raised some questions.
- It appeared that Mr. Hughes had difficulty being consistent and remembering specifics about the case.

Commissioner Michael Loffredo said that:

- Miscommunication was the significant issue involving the case.
- Perjury should be considered when witnesses testified that conversations never occurred when recorded sworn testimony proved otherwise.
- He did not believe that the Chestons defrauded Mr. Hughes.

## X. – CONTINUED

Commissioner Judy Pierman stated that:

- She agreed that a lack of communication existed between the Chestons and Mr. Hughes.
- Mr. Hughes surreptitiously used a County vehicle and was terminated.
- She was unsure whether Mr. Hughes' intent was to use his job for a financial gain.
- It was unclear whether Mr. Hughes asked the Chestons for a government discount.
  - It appeared that he asked his employer whether government discounts were permitted or whether it was ethical to ask for them.
  - Requesting a government discount was not unethical.

Commissioner Shullman said that:

- Mr. Hughes violated Sections 2-443(a) and 2-443(b) if he attempted or implied that he would use his County position to obtain a discount.
- The invoices from Napleton Dodge versus A-1 Cardone (phonetic) were side issues when applying the clear and convincing evidence standard.
- The Chestons provided continuous consistent statements to the OIG and the COE about what occurred the day of and the day after the incident.
- The prior written statements and current testimony of Mr. Robbins and Mr. Bates were consistent with one another and with Mr. Hughes that there were suggestions about a discount.
- Whether it was illegal or unethical to request a government discount was not the issue.
- Mr. Hughes testified that he never asked for a government discount, but his prior testimony indicated that he had.

## **X. – CONTINUED**

- It was difficult to find Mr. Hughes' testimony credible because it changed frequently.
- Something must have happened for the Chestons to call five times to reach the OIG and the COE to provide their statements.
- Mr. Hughes' previous written statement that the Chestons noticed his County shirt and inquired about his position could be plausible, but it contradicted his testimony today.
- The June 22, 2015 surveillance video that was unavailable may have shown that Mr. Hughes wore a County-logo shirt, but he never testified to that.
- The Advance Auto Parts receipt indicated that the fuel injector pump was installed and no other credible evidence was produced to indicate otherwise.
- Mr. Hughes admitted that he showed one of the Chestons his business card with the County logo and drove to RCA in a County vehicle.
- It was highly probable that Mr. Hughes used his position to obtain a discount, but she was uncertain whether it was done corruptly with wrongful intent.

Chair Kridel said that:

- The threshold of finding that a violation occurred under Section 2-443(a)(1) was met by the testimony.
- A higher threshold was required to prove that a violation occurred under Section 2-443(b).
- Mr. Hughes contested the credit card charge three weeks after the vehicle was picked up and three weeks after the Chestons filed the OIG complaint. The motivation for contesting the credit card charge was to not pay the bill.

## X. – CONTINUED

- The motivation for filing the OIG complaint was the Chestons' disappointment in their expectations of public servants.

Commissioner Headley said that the COE should consider whether Mr. Hughes notified Mr. Robbins and Mr. Bates of what took place after the incident or framed the incident to benefit himself.

Commissioner Loffredo reiterated his belief that Mr. Hughes perjured himself by testifying that certain statements were never made yet sworn statements from others proved otherwise.

Chair Kridel said that:

- There was a clear violation of Section 2-443(a)(1).
- He was not convinced that Mr. Hughes "corruptly" misused his official position under Section 2-443(b).
- He was uncertain whether a violation of Section 2-443(b) occurred because it was difficult to determine if Mr. Hughes' intentionally used his employment and his official position to obtain a financial benefit.

Commissioner Headley said that he was hesitant to state that Mr. Hughes "corruptly" misused his official position because Mr. Colombo, Mr. Robbins, and Mr. Bates testified to Mr. Hughes' good character.

Commissioner Loffredo stated that it would be difficult to determine wrongful intent.

Commissioner Pierman said that she was also concerned about making a finding of "corrupt" misuse of official position.

Commissioner Shullman said that:

- Wrongful intent would probably apply if Mr. Hughes suggested that there would be some kind of well field inspection that could negatively impact RCA.

## **X. – CONTINUED**

- Misuse of public office was applicable based on clear and convincing evidence and the credible and consistent testimony of the witnesses.
- Subsections 2-443(a) and 2-443(b) would be voted on separately.
- If a violation was found, it must include whether it was intentional or unintentional.
- If a violation was found, the penalty could include a public reprimand, a fine of up to \$500 per violation, or both.

**UPON CALL FOR A VOTE, the motion finding that the respondent violated Section 2-443(a)(1) of the Palm Beach County Code of Ethics carried 5-0.**

**UPON CALL FOR A VOTE, the motion finding that the violation of Section 2-443(a)(1) was intentional carried 3-2. Michael Kridel and Judy Pierman opposed.**

**UPON CALL FOR A VOTE, the motion finding that the violation of Section 2-443(a)(1) was unintentional FAILED 2-3. Clevis Headley, Michael Loffredo, and Sarah Shullman opposed.**

**UPON CALL FOR A VOTE, the motion finding that the respondent violated Section 2-443(b) of the Palm Beach County Code of Ethics FAILED 1-5. Michael Kridel, Michael Loffredo, Judy Pierman, and Sarah Shullman opposed.**

Commissioner Shullman stated that given the vote, it was unnecessary to find that a violation of Section 2-443(b) was intentional or unintentional.

Commissioners Kridel and Headley stated that Mr. Hughes already lost his employment with the County, and a Letter of Reprimand was the most equitable approach.

Commissioner Loffredo stated that a monetary fine and a Letter of Reprimand should be made.

Commissioner Pierman recommended no monetary fine and a Letter of Reprimand.

## **X. – CONTINUED**

Commissioner Shullman stated that a monetary fine and a public reprimand was necessary to deter future potential transgressions by public employees. She added that despite the findings, she believed that Mr. Hughes was not a bad person.

**UPON CALL FOR A VOTE, the motion finding that the respondent should receive a public reprimand carried 5-0.**

**UPON CALL FOR A VOTE, the motion finding that the respondent should receive a public fine of up to \$500 FAILED 2-3. Michael Kridel, Clevis Headley, and Judy Pierman opposed.**

Commissioner Shullman announced that the penalty would be a public reprimand.

Gina Levesque, COE Intake and Compliance Manager, stated that draft copies of the Public Report and Final Order and a Letter of Reprimand would be distributed to the COE members.

Mr. Bannon clarified that the COE could accept the draft copies or allow Mr. Quinlan and Mr. Davis to submit their written proposals.

Commissioner Kridel said that one of the “intentional/unintentional” variables should be removed from the Public Report and Final Order.

Mr. Bannon said that the dollar fine would be removed from the second page.

Commissioner Pierman said that she was uncertain whether the statement, “Mr. Hughes said he was the head of the Palm Beach County Inspectors,” in the Letter of Reprimand was accurately proven.

Commissioner Kridel said that he agreed with Commissioner Pierman and added that:

- He did not recall that use of the word “threatened” during the hearing was as clear and ominous as it was in the Letter of Reprimand.
- He believed that use of the word “threatened” was insinuated or intimated.

## **X. – CONTINUED**

Mr. Quinlan and Mr. Davis said that they agreed to changing the intentional/unintentional variable and removing the dollar fine in the Public Report and Final Order.

### **UPON CALL FOR A VOTE, the motion to approve the Public Report and Final Order as amended carried 5-0.**

Commissioner Shullman stated that Commissioner Pierman expressed concern about the Letter of Reprimand sentence that began, “When the business owner refused to provide a discount...”

Mr. Davis suggested eliminating the sentence.

Mr. Quinlan suggested rewording the sentence to state that Mr. Hughes undertook action that was perceived or suggested as a threat rather than deleting the entire sentence.

Commissioner Kridel said that the paragraph should refer to Mr. Hughes’ “allusion of representation” as well as the consequences for failure to get a discount.

Commissioner Shullman suggested incorporating language from the Code:

When the business owner refused to provide a discount, Mr. Hughes used his official position in a manner which he knew or should have known would result in a special financial benefit.

Mr. Quinlan suggested the language, “Referred to his official position.”

Mr. Kridel and Mr. Davis said that they agreed with the revisions.

Commissioner Shullman read the revised language as follows:

...referred to his official position in a manner in which he knew or should have known would result in a special financial benefit for himself.

### **UPON CALL FOR A VOTE, the motion to approve the Letter of Reprimand as amended was carried 5-0.**

## X. – CONTINUED

Mr. Bannon stated that the Public Report and Final Order and the Letter of Reprimand could be published once they were printed, and he thanked everyone who participated in the public hearing.

Commissioner Shullman read the following Public Report and Final Order:

Complainant, Mark E. Bannon, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on July 1, 2016, alleging possible ethics violations involving Respondent, Rowan Hughes, a former Palm Beach County employee.

The complaint alleges two Palm Beach County Code of Ethics violations involving misuse of official position and corrupt misuse of office.

County 1 alleges that on or about June 22, 2015, Respondent attempted to use his official position to receive a discount for the repair of his personal vehicle, in violation of Article XIII, Section 2-443(a), *Misuse of public office or employment*, of the Palm Beach County Code of Ethics. County 2 alleges that on or about June 22, 2015, Respondent attempted to corruptly secure a special privilege, privilege, benefit, or exemption for himself with wrongful intent, in a manner inconsistent with a proper performance of his public duties, in violation of Article XIII, Section 2-443(b), *Corrupt misuse of official position*, of the Palm Beach County Code of Ethics.

On July 1, 2016, the complaint was determined by staff to be LEGALLY SUFFICIENT. On November 3, 2016, in executive session, the COE found PROBABLE CAUSE to believe a violation may have occurred and set the matter for final hearing as to the following alleged violations.

(This space intentionally left blank.)

## X. – CONTINUED

On March 2, 2017, the Commission began the final hearing in public session and concluded the proceeding on March 6, 2017. The Commission heard oral arguments from the Advocate and the Respondent's attorney, listened to and reviewed witness testimony, and reviewed documentary evidence. The Commission concluded that there is clear and convincing evidence to conclude that Respondent violated County 1: §2-443(a), *Misuse of public office or employment*, Pursuant to Commission on Ethics Ordinance §2-260.1, *Public hearing procedures*, the Commission finds that the violation in Count 1 was intentional. The Commission further determined that there is not clear and convincing evidence to conclude that Respondent violated County 2: §2-443(b), *Corrupt misuse of official position*, and it was dismissed.

Therefore, it is:

ORDERED AND ADJUDGED THAT this matter is concluded upon the issuance of a letter of reprimand for County 1: §2-443(a), *Misuse of public office or employment*.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on this 6<sup>th</sup> day of March, 2017.

By: Sarah L. Shullman, Presiding Commissioner

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

Mr. Bannon stated that the Letter of Reprimand would be published later on the COE's Web site.

Mr. Quinlan stated that he had no objections.

Commissioner Shullman said that she would turn her position over to Chair Kridel.

**XI. ADJOURNMENT**

**At 3:40 p.m., the chair declared the meeting adjourned.**

APPROVED:

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Chair/Vice Chair



# Palm Beach County Commission on Ethics

*Honesty - Integrity - Character*

## **Commissioners**

Michael S. Kridel, *Chair*  
Clevis Headley, *Vice Chair*  
Michael F. Loffredo  
Judy M. Pierman  
Sarah L. Shullman

## **Executive Director**

Mark E. Bannon

March 31, 2017

Mr. William P. Doney, Esq., Town Attorney  
Town of Cloud Lake  
1555 Palm Beach Lake Blvd., Suite 1200  
West Palm Beach, FL 33401

Re: RQO 17-005  
Contractual Relationship Prohibition

Dear Mr. Doney,

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 prohibited contractual relationship exist for Mayor W. Patrick Slatery if his son's business, Clean Slate Property Maintenance, LLC, enters into a contract with the Town of Cloud Lake to provide pump maintenance services to the town?

### **ANSWER:**

Based on the facts submitted, the outside business of the Mayor's son may not enter into a contract for services with the Town of Cloud Lake unless one of the five exceptions to the contractual relationship prohibition applies.

The Palm Beach County Code of Ethics (the Code) prohibits Mayor Slatery from using his official position to gain a special financial benefit for his son, his daughter-in-law, or the mayor's outside business.<sup>1</sup> Additionally, Section 2-443(d) prohibits the mayor from entering into any contract or other transaction to provide goods or services to the public entity he serves, including any contract or transaction between the town and his outside employer or business. An outside business is defined as any entity doing business with, or being regulated by, their government employer in which the official has an ownership interest.<sup>2</sup> Under the Code, an ownership interest means that at least five percent of the total assets are owned by the official or any combination of the official's household members, spouse, or children.<sup>3</sup> Based on the facts provided, the Mayor's son and daughter-in-law share a 100 percent ownership interest in their business, Clean Slate Property Maintenance. Thus, under the Code, Clean Slate Maintenance is considered the outside business of the Mayor because the ownership interest of Mayor's son meets the required threshold. Accordingly, the Code prohibits Clean Slate Property Maintenance from entering into any contract or other transaction to provide goods or services to the Town of Cloud Lake. However, the Code has five exceptions to the contractual relations prohibition, one of which may apply to this situation.

The Code provides a sole source exception where the outside business is the only source of the product or the services within the Town of Cloud Lake.<sup>4</sup> If Clean Slate Property Maintenance is the only business located within the

<sup>1</sup> §2-443(a)

<sup>2</sup> §2-442

<sup>3</sup> *Id.*

<sup>4</sup> §2-443(e)(3)

Town of Cloud Lake that provides these pump maintenance services, that business would meet the sole source exception and a prohibited conflict of interest would not exist.<sup>5</sup> If another business within the Town of Cloud Lake also provides the pump maintenance services, then the sole source exception would not apply here. However, if Clean Slate Property Maintenance meets the sole source exception, prior to the transaction or contract being approved, the Mayor must fully disclose his interest in the business to the Town of Cloud Lake and to the COE.<sup>6</sup>

**FACTS:**

You are the Town Attorney for the Town of Cloud Lake. You are requesting an advisory opinion on behalf of Mayor W. Patrick Slatery.

The Town requires maintenance work for the pump utilized by the town to regulate water levels in Cloud Lake. Generally, the pump is activated only in the event of significant rain events. The Town of Cloud Lake sought proposals to have the work performed. The only proposal submission received by the Town was submitted by Clean Slate Property Maintenance, LLC. The Mayor's son is listed on Florida's Division of Corporations (Sunbiz) records as the member of the Clean Slate Property Maintenance with the right to manage and control the company. The Mayor's daughter-in-law is also a member of the LLC. Further, Sunbiz listed Clean Slate Property Maintenance, LLC as having an address located within the Town of Cloud Lake. However, there was insufficient information provided to know if the "sole source" exception applies in this case and if any other business within the Town provides these pump maintenance services. The total cost of the work is \$860. Pursuant to the Town's procurement policy, purchases under \$1000 require only one quote.

**LEGAL BASIS:**

The legal basis for this opinion is found in the §2-442, §2-443(d), and §2-443(e)(3) of the Code:

**Sec. 2-443. 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.**

- (d) **Contractual relationships.** No official or employee shall enter into any contract or other transaction for goods or services with their 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.

- (e) **Exceptions and waiver.**

In addition, no official or employee shall 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 as applicable 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

<sup>5</sup> RQO 15-021

<sup>6</sup> Id.

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,



Mark E. Bannon  
Executive Director

CEK/gal



# Palm Beach County Commission on Ethics

*Honesty - Integrity - Character*

## **Commissioners**

Michael S. Kridel, *Chair*  
Clevis Headley, *Vice Chair*  
Michael F. Loffredo  
Judy M. Pierman  
Sarah L. Shullman

## **Executive Director**

Mark E. Bannon

March 31, 2017

Mr. Leonard Rubin, Esq.  
701 Northpoint Parkway, Suite 209  
West Palm Beach, FL 33407

Re: RQO 17-006  
Voting Conflict

Dear Mr. Rubin:

Your request for an expedited advisory opinion pursuant to Commission on Ethics rule of procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

### **QUESTION:**

Does the Palm Beach County Code of Ethics (Code) prohibit two members of the Town of Juno Beach Town Council from participating in discussions and voting on ordinances amending the land use classification and zoning designation of a vacant parcel of real property owned by the town when one of the council members owns a unit in the condominium complex which is located across the street from the vacant property and the other council member resides in a single-family residence directly northwest of the vacant property?

### **ANSWER:**

The Code prohibits public employees and officials from using their official positions to give themselves a special financial benefit not shared with similarly situated members of the general public.<sup>1</sup> Additionally, officials must abstain from voting and not participate in any matter which would result in a special financial benefit to themselves.<sup>2</sup> Financial benefit, in the context of the Code, constitutes economic gain or loss.<sup>3</sup> For a financial benefit to be “special”, the benefit must inure uniquely to the official, rather than affecting everyone in the surrounding area in the same way.<sup>4</sup>

In evaluating a potential conflict of interest under the Code, the degree to which there is uncertainty at the time of the vote as to whether there would be any economic gain or loss to the prohibited person or entity must be considered.<sup>5</sup> To constitute a prohibited voting conflict, the possibility of a financial gain must be direct and immediate, rather than remote and speculative.<sup>6</sup> As the COE has previously opined, where an official’s gain or loss would require many steps and be subject to many contingencies, any gain or loss is remote and speculative and cannot be said to inure to one’s special financial benefit.<sup>7</sup> In addition, the Florida Commission on Ethics has previously held that if a gain or loss to an official resulting from a particular measure is too remote and speculative, it does not constitute a special financial benefit.<sup>8</sup>

<sup>1</sup> §2-443(a)

<sup>2</sup> §2-443(c)

<sup>3</sup> RQO 10-013

<sup>4</sup> RQO 12-063

<sup>5</sup> 112.3143(1)(d), Florida Statutes

<sup>6</sup> *George v. City of Cocoa, Florida*, 78 F.3d 494 (1996).

<sup>7</sup> RQO 12-063, CEO 05-15, CEO 91-61, CEO 12-19

<sup>8</sup> CEO 85-77 (school board member who owned business near the site of a proposed school district building was not prohibited from voting on the matter); CEO 85-87 (city council member was not prohibited from voting on a site plan for a shopping center which was to be located adjacent to the florist store which he owned)

Based on the facts provided, similar to RQO 17-003, there is uncertainty as to whether there would be any economic gain or loss to the value of either Councilmember Fahy's property or to Councilmember Wheeler's property from this vote, and, thus, any financial benefit that Councilmember Fahy or Councilmember Wheeler may receive is remote and speculative. Here, the Town Council will be voting on ordinances to amend the land use classification and zoning designation of the Town's vacant property. Neither of these changes would have any immediate impact on the value of this vacant property or the surrounding properties.

Therefore, although both Councilmember Fahy and Councilmember Wheeler live near the vacant property, whether amending the land use classification and the zoning designation of the Town's would result in a special financial benefit to either council member is remote and speculative. Because the vote has no direct and immediate financial benefit to Councilmember Fahy or Councilmember Wheeler, they are not prohibited from participating in and voting on the amending of the land use classification and the zoning designation of the vacant property under the circumstances listed.

**FACTS:**

You are the Town of Juno Beach Town Attorney. You are requesting an advisory opinion on behalf of Councilmember Frank Fahy and Councilmember Peggy Wheeler. Councilmember Wheeler assumed office on March 29, 2017.

The Town of Juno Beach owns a .32-acre parcel of vacant property located at 841 Venus Drive. The Town Council has directed town staff to take all steps necessary to designate the vacant property as a park. The vacant property is within the town's Residential, Transient, and Multiple-Family Moderate Density (RMT) Zoning District. The Town's Comprehensive Development Plan currently assigns the vacant property a future use classification of Moderate Density Residential. Town staff is preparing the necessary ordinance to amend the future land use classification of the vacant property to Recreation/Open Space and the zoning designation to Public Recreation.

Councilmember Fahy owns a residential unit within the Tower Condominium, which is located across the street from the vacant property. Councilmember Wheeler resides within a single-family residence located northwest of the vacant property. The southeast corner of Councilmember Wheeler's property touches the northwest corner of the vacant property at a single point.

On January 25, 2017, the COE issued an advisory opinion for Councilmember Fahy involving similar facts. In the opinion, the COE opined that Councilmember Fahy was not prohibited from participating in discussions or voting on the future use of vacant property owned by the town because any financial benefit that he would receive from the vote was remote and speculative.

**LEGAL BASIS:**

The legal basis for this opinion is found in the §2-443(a) and §2-443(c) 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, 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;
  - (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;
- (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 official shall publicly disclose 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 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,

A handwritten signature in blue ink that reads "Mark E. Bannon". The signature is written in a cursive style with a large, sweeping loop at the end.

Mark E. Bannon  
Executive Director

CEK/gal