



Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

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Commissioners

Michael S. Kridel, Chair

Clevis Headley, Vice Chair

Bryan Kummerlen

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

December 14, 2017 – 1:30 p.m.

Governmental Center,

301 North Olive Avenue, 6th Floor

Commissioners Chambers

Meeting will begin at 1:30pm
Executive Session will begin at 1:40pm
Regular Agenda will resume at 2:15pm

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from November 2, 2017
- V. Executive Session: C17-040
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 17-023
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Proposed Advisory Opinions
 - a. RQO 17-025
- 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**

NOVEMBER 2, 2017

**THURSDAY
2:30 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Michael S. Kridel, Chair
Clevis Headley, Vice Chair - Absent
Bryan Kummerlen
Judy M. Pierman
Sarah 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 – None

IV. APPROVAL OF MINUTES FROM OCTOBER 12, 2017

Commissioner Bryan Kummerlen noted that the vote on page 6 should indicate Bryan Kummerlen and not Michael Kummerlen.

MOTION to approve the October 12, 2017 minutes as amended. Motion by Judy Pierman, seconded by Bryan Kummerlen, and carried 4-0. Clevis Headley absent.

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

V.a. RQO 17-022

VI. ITEMS PULLED FROM CONSENT AGENDA – None

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

VII. PROPOSED ADVISORY OPINIONS

VII.a. RQO 17-015

Commissioner Kummerlen commented that the language in RQO 17-015 better clarified some of the previous questions that were asked during the October 12, 2017 meeting.

PUBLIC COMMENTS: Darren Leiser and M.B. Hague.

Commissioner Shullman said that uncertainty existed on whether voting on the project gave a direct financial benefit or other special benefit to the Citizen Owners of Love Street Inc. or the Town of Jupiter Planning & Zoning Commissioners, Mary Beth Hague and Cheryl Schneider. She added that the opinion letter narrowly construed the specific set of facts contained in the letter.

MOTION to approve advisory opinion letter RQO 17-015. Motion by Bryan Kummerlen, seconded by Judy Pierman, and carried 4-0. Clevis Headley absent.

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

IX. EXECUTIVE DIRECTOR COMMENTS

IX.A.

DISCUSSED: Ethics Training, COE Fall Newsletter, Ethics Seminar, and Partnership with Public Ethics Academy for Florida Atlantic University.

Mark Bannon, COE Executive Director, said that:

- Staff continued live ethics trainings and was midpoint through the training of several municipalities.
- Christie Kelley, COE General Counsel, completed and uploaded the fall 2017 newsletter onto the Web site.
- He and Norm Ostrow, City of West Palm Beach Ethics Officer, conducted ethics training at an October 18, 2017 Palm Beach County League of Cities (League of Cities) meeting.
- He would be attending the 11th annual Ethics Seminar in the City of Boca Raton.
- On October 16, 2017, he met with Dr. Peter Cruz, executive director of the Public Ethics Academy for Florida Atlantic University, to discuss partnering with faculty members on improving the COE's Web site and PowerPoint skill sets.

X. COMMISSION COMMENTS – None

XI. PUBLIC COMMENTS

XI.A.

DISCUSSED: October 18, 2017 COE Ethics Training at the League of Cities.

Richard Radcliffe, Executive Director of the League of Cities, said that the 61 people who attended the October 18, 2017 League of Cities ethics training provided positive feedback.

RECESS

At 2:42 p.m., the chair declared the meeting recessed for an executive session.

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

VIII. EXECUTIVE SESSION

RECONVENE

At 4:12 p.m., the meeting reconvened, and at Chair Kridel's request for a roll call, Commissioners Bryan Kummerlen, and Sarah Shullman were present.

VIII.a. C17-018

Chair Kridel read the following Public Report 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 June 1, 2017, alleging that Respondent, Hal Valeche, a Palm Beach County commissioner, violated §2-444(a)(I) of the Palm Beach County Code of Ethics by knowingly accepting a gift from a person that he knew, or should have known, was a principal of a lobbyist who lobbied Palm Beach County.

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 November 2, 2017, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the Report of Investigation, and the Probable Cause Recommendation submitted by the COE Advocate. After an oral statement by the Advocate, the Commission determined that the violation was unintentional, inadvertent, or insubstantial and issued a Letter of Instruction pursuant to Section 2-260.3 of the Commission on Ethics Ordinance.

(This space intentionally left blank.)

VIII. – CONTINUED

VIII.a. – CONTINUED

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Hal Valeche, 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 November 2, 2017.

By: Michael S. Kridel, Chair

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

VIII.b. C17-019

Chair Kridel read the following Public Report 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 June 1, 2017, alleging that Respondent, Rena Blades, a principal of lobbyists who lobbied Palm Beach County, violated §2-444(a)(2) of the Palm Beach County Code of Ethics by giving a gift with a value greater than \$100 in the aggregate for the calendar year to a person who she knew was an official of the county. Pursuant to §2-258(a)1 of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On November 2, 2017, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the Report of Investigation, and the Probable Cause Recommendation submitted by the COE Advocate. After an oral statement by the Advocate and the Respondent, the Commission determined that the violations were unintentional, inadvertent or insubstantial and issued a Letter of Instruction pursuant to Section 2-260.3 of the Commission on Ethics Ordinance.

VIII. – CONTINUED

VIII.b. – CONTINUED

Therefore it is:

ORDERED AND ADJUDGED that the complaints against Respondent, Rena Blades, 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 November 2, 2017.

Signed: Michael S. Kridel, Chair

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

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

VIII.d. C15-023

Chair Kridel read the following Public Report and Final Order of Dismissal as discussed during the executive session:

Complainant, Steven P. Cullen, former Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on October 2, 2015, alleging that Respondent, Orlando Serrano, a former City of Delray Beach employee, violated §2-443(b) and §2-443(d) of the Palm Beach County Code of Ethics by improperly using his official position as a city employee to corruptly secure a special benefit from himself and others and by entering into prohibited contracts with the City of Delray Beach through his outside business or employer.

(This space intentionally left blank.)

VIII. – CONTINUED

VIII.d. – CONTINUED

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 November 2, 2017, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the Report of Investigation, and the Probable Cause Recommendation submitted by the COE Advocate. After an oral statement by the Advocate [and Respondent], the Commission found that probable cause existed but dismissed the complaint because the public interest would not be served by proceeding further pursuant to Section 2-260.3 of the Commission on Ethics Ordinance.

Although probable cause exists, Respondent was arrested and charged with Grand Theft over \$20,000 and Organized Scheme to Defraud (\$20,000 or more) (criminal case number 2016CF001522CXXX) regarding the same allegations. Pursuant to a plea negotiation, Respondent plead and was adjudicated guilty of all charges. Respondent was sentenced to one year in jail and five years probation and ordered to pay restitution in the amount of \$133,444.57 to the City of Delray Beach and perform 100 hours of community service.

Due to the sanctions levied by a criminal court against Respondent regarding the same allegations, Respondent losing his employment with the City, being ordered to pay restitution to the City, and having conditions placed on him that exceed any penalty the COE could impose to ensure this action does not occur again, the COE has determined that the public interest would not be served by proceeding further.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Orlando Serrano, is hereby **DISMISSED**.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on November 2, 2017.

VIII. – CONTINUED

VIII.d. – CONTINUED

Signed: Michael S. Kridel, Chair

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

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

VIII.c. C17-028

Chair Kridel read the following Public Report 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 July 24, 2017, alleging that Respondent, Rena Blades, a principal of lobbyists who lobbied Palm Beach County, violated §2-444(a){2} of the Palm Beach County Code of Ethics by giving, directly or indirectly, a gift with a value greater than \$100 in the aggregate for the calendar year to a person who she knew was an employee of the county.

Pursuant to §2-258(a)1 of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On November 2, 2017, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the Report of Investigation, and the Probable Cause Recommendation submitted by the COE Advocate. After an oral statement by the Advocate and the Respondent, the Commission determined that the violations were unintentional, inadvertent or insubstantial and issued a Letter of Instruction pursuant to Section 2-260.3 of the Commission on Ethics Ordinance.

Therefore it is:

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

VIII. – CONTINUED

VIII.c. – CONTINUED

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on November 2, 2017.

By: Michael S. Kridel, Chair

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

VIII.d. See earlier in the minutes.

IX. See earlier in the minutes.

X. See earlier in the minutes.

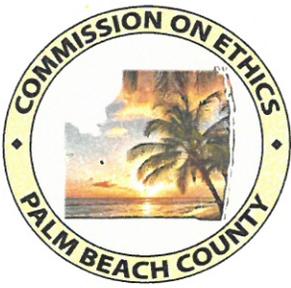
XI. See earlier in the minutes.

XII. ADJOURNMENT

At 4:23 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

Honesty - Integrity - Character

Commissioners

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

Executive Director

Mark E. Bannon

November 16, 2017

Mr. Duane D'Andrea,
Human Resources Assistant Director
City of Delray Beach
100 NW 1st Ave.
Delray Beach, FL 33444

Re: RQO 17-023
Conflict of Interest

Dear Mr. D'Andrea,

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 City of Delray Beach (City) employee have a prohibited conflict of interest if he works part-time, while off-duty, for a company that operates in the area he oversees as a City code enforcement officer?

ANSWER:

The Palm Beach County Code of Ethics (Code) prohibits a public employee from using his official position, or taking or failing to take any action, or influencing others to take or fail to any action, in a manner which he knows would give a special financial benefit to specified persons or entities.¹ An outside employer is among those specified persons or entities. Thus, the City code enforcement officer is prohibited from using his official position, or taking or failing to take any action, or influencing others to take or fail to any action, in any manner to give a special financial benefit to his outside employer, the Downtowner. A financial benefit is anything of value. The Code also prohibits a public employee from using his official position to corruptly secure any special exemption or benefit for any person or entity.² The Code defines corruptly as acting with a wrongful intent that is inconsistent with the proper performance of the employee's official duties.

Based on the facts submitted, under the Palm Beach County Code of Ethics, the code enforcement officer is not prohibited from working part-time for the Downtowner as long as he does not use his official position as a City code enforcement officer in any way to give the Downtowner a special financial benefit or to corruptly secure a special benefit for the Downtowner. Thus, the City code enforcement officer, while on duty, must treat the Downtowner in the same manner as he would treat any other company within the Clean & Safe District. For example, he cannot ignore any City ordinance or code violations by the Downtowner while on duty, and he cannot ask another City employee to ignore any violations by the company.

However, although the local Code of Ethics does not prohibit this outside employment as long as there is no misuse of his official position as discussed, and the COE does not typically opine on state law, we believe the

¹ §2-443(a)1-7

² §2-443(b)

employee should be aware that it may be a violation of state law. Section 112.313(7)(a), *Florida Statutes*, precludes a public official or employee from having any employment or contractual relationship with any business entity which is subject to the regulation of the agency of which he or she is an officer or employee. He should therefore seek clarification from the City Attorney on this issue before accepting this outside employment.

FACTS:

You are the Assistant Director of Human Resources for the City of Delray Beach. A City employee, Thomas Story, who works as a code enforcement officer recently submitted a request for outside employment. His outside employment would be with the Downtowner, a company that provides transportation services similar to a taxi driver or an Uber driver. The transportation services are free; it is believed that their source of revenue is marketing, as the golf carts are wrapped with advertisements from local businesses.

Mr. Story is assigned to the Clean & Safe Division. As a City code enforcement officer, Mr. Story ensures compliance with the City's ordinances and codes with the Clean & Safe District. Code enforcement officers assigned to the Clean & Safe Division encourage voluntary compliance with City ordinances and codes through the use of community-oriented, problem-solving techniques. The first technique for problem-solving is one-on-one conversations with the property owner to explain the issues and allow them to come into compliance on their own. If this is not effective, the property owner will be served with legal documentation, such as warnings, issuance of violation notices, civil citations and as a last resort, notices to appear. Code enforcement officers do not cite for violations during their off-duty time. As a driver for the Downtowner, Mr. Story would be operating the vehicle, while off-duty, within the Clean & Safe District, his City-assigned area of code enforcement.

Recently, the City has had some dialogue centered around off-premise marketing with carts operating in the downtown. Currently, the City's sign ordinance, LDR 4.6.7, prohibits both off-premise advertisement signs and advertisement signs on parked vehicles. The ordinance has not been amended to include or exempt advertising on moving vehicles as this has become a more recent development.

LEGAL BASIS:

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

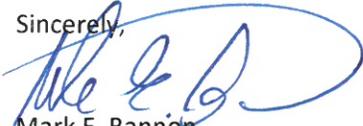
Sec. 2-443. Prohibited conduct.

- (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;
 - (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;
- (b) ***Corrupt misuse of official position.*** An official or employee shall not use his or her official position or office, or any property or resource, which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

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. 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, appearing to read "Mark E. Bannon", is written over a blue oval scribble.

Mark E. Bannon,
Executive Director

CEK/gal

December 8, 2017

Mr. Bruce Tumin, Chair
Construction Board of Adjustment & Appeals
Village of Wellington
12300 Forest Hill Blvd.
Wellington, FL 33414

Re: RQO 17-025
Conflict of Interest

Dear Mr. Tumin,

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 your outside employment as a forensic engineer at an engineering consulting firm create a conflict with your service on the Village of Wellington Construction Board of Adjustments & Appeals (CBAA)?

ANSWER:

The Palm Beach County Code of Ethics (Code) prohibits an official from using his official position or office, or taking or failing to take any action, or influencing others to take or fail to any action, in a manner which he knows would give a special financial benefit to specified persons or entities.¹ The official is also prohibited from participating in or voting on a matter which your give a special financial benefit to any of the specified persons or entities.² Among those specified persons or entities are an outside employer and customers or clients of your outside employer.³ Thus, you are prohibited from using your official position in any manner, including participating in or voting on a matter, to give a special financial benefit to your outside employer or to any customer or client of your outside employer. In addition, the Code prohibits a public employee from using his official position to corruptly secure any special exemption or benefit for any person or entity.⁴ The Code defines corruptly as acting with a wrongful intent that is inconsistent with the proper performance of the employee's official duties.

Based on the facts submitted, under the Code, your employment with the engineering consulting firm would not create a conflict as long as you do not use your position as a member of the CBAA in any way to give a special financial benefit to your outside employer or any customer or client of your outside employer. You are also prohibited from using your position on the CBAA to corruptly secure a special benefit for anyone. Although

¹ §2-443(a)1-7

² §2-443(c)

³ §2-443(a)1-7

⁴ §2-443(b)

it is unlikely that your outside employer would ever appear before the CBAA, there is a possibility that a customer or client of your outside employer may. If your outside employer or a customer or client of your outside employer were to appear before the CBAA on a matter, you would be prohibited from participating in or voting on that matter. In such an instance, the Code requires you to publicly disclose the nature of the conflict, abstain from participating in or voting on the matter, and file a state voting conflict form (Form 8B).

FACTS:

You are the Chair of the CBAA for the Village of Wellington. According to the Village of Wellington website (www.wellingtonfl.gov), the CBAA hears all appeals concerning interpretations and decisions of the building official and consider variances of the administrative, building, electrical, gas, mechanical, or plumbing codes adopted by the village. The board members are comprised of individuals with knowledge and experience in these technical codes.

You recently accepted employment with an engineering consulting firm. With your previous employment, you were able to limit your work to areas outside of the Village of Wellington. Your new employer provides forensic engineering to the property insurance industry throughout the county and world. Therefore, there is a possibility that you will be assigned to assess a structure in the Village of Wellington. Forensic engineering may include investigating construction deficiencies or defects and other sources of claims and litigation, preparing engineering reports, testifying at hearings and trials in administrative or judicial proceedings, and preparing advisory opinions to assist the resolution of disputes.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-443(a), §2-443(b), 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:
- (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) A customer or client of the official or employee's outside employer or business;
- (b) ***Corrupt misuse of official position.*** An official or employee shall not use his or her official position or office, or any property or resource, which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.
- (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. This opinion 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