



Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

300 North Dixie Highway
West Palm Beach, FL 33401

561.355.1915

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Commissioners

Sarah L. Shullman, Chair

Bryan Kummerlen, Vice Chair

Michael S. Kridel

Rodney G. Romano

Peter L. Cruise

Executive Director

Mark E. Bannon

Intake and Compliance Manager

Gina A. Levesque

General Counsel

Christie E. Kelley

Investigator

Abigail Irizarry

Investigator

Mark A. Higgs

Agenda

October 3, 2019 – 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 1:45pm
Regular Agenda will resume at 3:15pm

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from September 5, 2019
- V. Executive Sessions
 - a. C18-005
 - b. C18-006
 - c. C18-007
 - d. C18-008
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 19-017
- VII. Proposed Advisory Opinions
 - a. RQO 19-016
- VIII. Items Pulled from Consent Agenda
 - a.
- IX. Executive Director Comments
- X. Commission Comments
- XI. Public Comments
- XII. Adjournment

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

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

SEPTEMBER 5, 2019

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

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Sarah L. Shullman, Chair
Bryan Kummerlen, Vice Chair
Peter L. Cruise
Michael S. Kridel
Rodney G. Romano

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Executive Director
Anthony 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:

Domonique McKenzie, Minutes Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

DISCUSSED: Aftermath of Hurricane Dorian.

Chair Shullman said that she was glad everyone in attendance safely weathered Hurricane Dorian.

IV. APPROVAL OF MINUTES FROM AUGUST 1, 2019

MOTION to approve the August 1, 2019 minutes. Motion by Peter Cruise, seconded by Rodney Romano, and carried 5-0.

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

a. RQO 19-013

b. RQO 19-014

c. RQO 19-015

MOTION to approve the consent agenda. Motion by Rodney Romano, seconded by Peter Cruise, and carried 5-0.

VI. ITEMS PULLED FROM CONSENT AGENDA – None

VII. EXECUTIVE DIRECTOR COMMENTS

DISCUSSED: Hurricane Dorian Relief Efforts.

Mark Bannon, COE Executive Director, encouraged contributions to the relief efforts towards those directly impacted by Hurricane Dorian.

DISCUSSED: Expression of Gratitude.

Mark Bannon, COE Executive Director, applauded Anthony Bennett, COE Chief Investigator, for earning the position of Supervisor of Investigations with the Office of Inspector General (OIG).

VIII. COMMISSION COMMENTS

DISCUSSED: Expression of Gratitude.

Chair Shullman wished COE Chief Investigator Anthony Bennett well on his new endeavor with the OIG. She added that Mr. Bennett's investigative work was inspiring and his keen eye for detail would be missed by the COE.

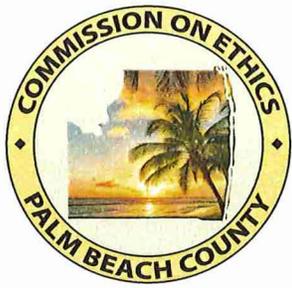
IX. PUBLIC COMMENTS - None

X. ADJOURNMENT

At 1:34 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

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October 3, 2019
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Commissioners
Sarah L. Shullman, Chair
Bryan Kummerlen, Vice Chair
Rodney G. Romano
Michael S. Kridel
Peter L. Cruise
Executive Director
Mark E. Bannon

September 16, 2019

Commissioner Christina Romelus
City of Boynton Beach
3301 Quantum Blvd, Suite 101
Boynton Beach, FL 33426

Re: RQO 19-017
Outside Employment

Dear Commissioner Romelus,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows:

QUESTION:

Does the Palm Beach County Code of Ethics (Code) prohibit you from accepting employment with Leadership Palm Beach County (LPBC), a non-profit organization, who is a vendor of the City of Boynton Beach (city), while you also serve as a commissioner for the city?

BRIEF ANSWER:

No, the Code does not prohibit you from accepting this employment because it meets the sole source exception. However, you must ensure the requirements of the Code as described below are followed.

FACTS:

You are an elected official with the City of Boynton Beach. You are applying for a position as the Executive Director of LPBC, a 501(c)(3) non-profit organization. The Executive Director of LPBC reports to the Chair of the Board of Governors and has overall strategic and operational responsibility for LPBC's staff, programs, and execution of its mission. The Executive Director would also oversee fundraising efforts and cultivate key relationships with alumni and the public to meet community partnership and sponsorship goals.

Pursuant to information provided on their website: LPBC brings together leaders from the public, private, and nonprofit sectors to build and steward a vibrant, interconnected community. LPBC offers up-and-coming and more-established leaders of Palm Beach County a unique opportunity to be part of a group that has come together to:

- Enhance their personal and professional leadership skills,
- Understand the complex issues facing Palm Beach County,
- Participate in civic work that aims to serve the greater good of the county, and
- Build relationships with other leaders who find solutions to the challenges facing our county.

No other programs in the county offer the same leadership development curriculum as LPBC.

LPBC is currently a vendor of the city because you and the city manager were accepted into a yearlong LPBC program. The city paid for the LPBC program fees. For future applicants, any commissioner or mayor wanting to participate would need approval of the city commission. LPBC is not currently registered as a lobbyist or principal or employer of a lobbyist who lobbies the city.

RATIONALE:

In general, the Code prohibits your outside employer from having any contracts or transactions to provide goods or services to the municipality you serve.¹ Based on the facts provided, you would be prohibited from employment with LPBC as long as LPBC is a vendor of the City of Boynton Beach, unless an exception applies. The Code provides a sole source exception where the outside employer is the sole source of the supply within the county.² Since LPBC is a program unique to Palm Beach County as a whole, and a similar program is not offered within the county, the sole source exception applies. In order to avoid violating the Code, if you become the Executive Director of LPBC, you must fully disclose your interest in LPBC to the city and the Commission on Ethics prior to any future contract or transaction between LPBC and the city.

Further, as an elected official, you are prohibited from using your official position as a city commissioner to give a special financial benefit, not shared with similarly situated entities in the community, to your outside employer.³ If you accept the position with LPBC, you would oversee fundraising and sponsorship efforts. Lending your name and official title as a city commissioner to any fundraising or sponsorship efforts on behalf of LPBC would per se constitute using your elected office to give LPBC a special financial benefit.⁴ This applies to you, as well as anyone indirectly soliciting on your behalf. Therefore, your participation in any fundraising for LPBC would need to be in your personal name without title or connection to your official position as a city commissioner.

In addition, you would be prohibited from participating in or voting on any matter that would result in a special financial benefit being given to LPBC. This includes a prohibition on participating in or voting on whether to approve funding to send any city official or employee to a LPBC program.

Insofar as the gift law is concerned, you are not prohibited from soliciting donations in your non-official capacity. Generally, you, or any other person or entity on your behalf, are prohibited from knowingly soliciting or accepting, directly or indirectly, any gift with a value greater than \$100 in the aggregate for the calendar year from any person or entity that you know, or should know with the exercise of reasonable care, is a vendor, lobbyist or principal or employer of a lobbyist who lobbies, sells or leases to the municipality you serve.⁵

However, §2-444(h) of the Code creates an exception to this prohibition for charitable donations solicited on behalf of a 501(c)(3) non-profit organization, recognized as such under the IRS regulations. Due to your position as Executive Director of this organization were you to be selected, which has as part of its duties the responsibility for overseeing fundraising for the organization, any solicitations for funds by your LPBC staff or anyone else if done under your direction would be considered to be an indirect solicitation on your behalf. Therefore, since LPBC is a 501(c)(3) organization, should you, your staff at LPBC, or anyone else acting under your direction solicit or accept a donation in excess of \$100 from a vendor, lobbyist, or principal or employer of a lobbyist of the City of Boynton Beach, you must maintain a record of the solicitation and submit the record to the COE within 30 days of the event, or if no event, within 30 days of the solicitation.⁶ Additionally, you, your staff, or anyone acting on your behalf, are prohibited from soliciting any person or entity with a pending application before the city.

Finally, you are reminded that gifts may not be solicited or accepted because of the past, present, or future performance of a legal duty or official action.⁷ You must take great care that solicitations accepted on behalf of LPBC do not result in a quid pro quo for your "official action" as a city commissioner.

LEGAL BASIS:

The legal basis for this opinion is found, in relevant part, in §2-443(a), §2-443(d), §2-443(e)(3), §2-444(c), §2-444(a), §2-444(e), and §2-444(h) of the Code:

¹ §2-443(d)

² §2-443(e)(3)

³ §2-443(a)

⁴ RQO 12-081

⁵ §2-444(a)(1)

⁶ §2-444(h)

⁷ §2-444(e)

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;
- (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).
- (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. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable.
- (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.

Sec. 2-444. Gift law.

- (a) (1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.
- (e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:
- (1) An official public action taken or to be taken, or which could be taken;
- (2) A legal duty performed or to be performed or which could be performed; or
- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.
- (h) **Solicitation of contributions on behalf of a non-profit charitable organization.**
- (1) Notwithstanding the prohibition on gifts as outlined in subsections (a) and (b), the solicitation of funds by a county or municipal official or employee for a non-profit charitable organization, as defined under the Internal Revenue Code, is permissible so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited. The solicitation by an official or employee as contemplated herein, is expressly prohibited

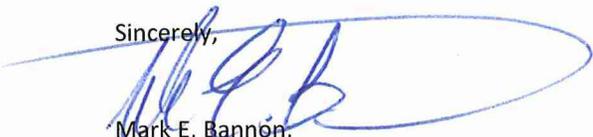
if made to any person or entity with a pending application for approval or award of any nature before the county or municipality as applicable.

- (2) To promote the full and complete transparency of any such solicitation, officials and employees shall disclose, on a form provided by the commission on ethics, the name of the charitable organization, the event for which the funds were solicited, the name of any person or entity that was contacted regarding a solicitation or pledge by the official or employee, and the amount of the funds solicited or pledged if known. The form shall be completed legibly and shall be filed with the commission on ethics. The form shall be filed within thirty (30) days from the occurrence of the event for which the solicitation was made, or if no event, within thirty (30) days from the occurrence of the solicitation.
- (3) Officials and employees may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions described in this subsection.

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

October 4, 2019

Mr. Arnold Sevell
Sevell Realty Partners, Inc.
2295 Corporate Blvd., N.W., Suite 131
Boca Raton, FL 33431-7328

Re: RQO 19-016
Voting Conflicts

Dear Mr. Sevell,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion was rendered at a public meeting held on October 3, 2019 as follows:

QUESTION:

Would it violate the Palm Beach County Code of Ethics (Code) if you, as a member of the City of Boca Raton Planning and Zoning Board (PZB), were to vote on a future building project submitted by Crocker Partners, LLC (Crocker) when it comes before the PZB for approval, where your outside realty business manages the common areas of a separate office park where Crocker owns a building through a subsidiary, and where Crocker pays an amount equal to \$4,492.40 per year toward the annual fee your realty company receives for managing this complex?

ANSWER:

No, you would not be prohibited from voting on this matter as a PZB member under the facts submitted.

Under the Palm Beach County Code of Ethics, you are considered an official as a member of PZB.¹ The Code prohibits officials and employees from using their official position in any way to give a special financial benefit, not shared with similarly situated members of the general public, to specified persons or entities, including their outside business.² Customer or client is defined within the code as being any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).³

Based on the facts as submitted, it would not violate the Code for you to vote on this project as a PZB board member where the annual amount paid indirectly by Crocker to your outside realty business amounts to \$8,984.40 in a 24 month period, and does not reach the \$10,000 within 24 months threshold found in the code's definition of "customer or client." Thus, under these circumstances, Crocker would not be considered a customer or client of your outside business.

However, if for any reason the \$10,000 payment threshold is reached during the 24 months prior to the matter coming before your board, it would violate the code for you to vote as a PZB member as you would then be giving a prohibited special financial benefit to Crocker, who would at that time be considered a customer or client of your outside business.⁴ In such an instance, you must publicly disclose the nature of this conflict at the PZB meeting where this matter is before the board, file the required state disclosure form (8B), and refrain from voting on and participating in the matter in any way to influence the outcome of the decision by PZB.⁵

¹ §2-442

² §2-443(a)(5)

³ §2-442

⁴ §2-442, §2-443(a), §2-443(c)

⁵ §2-443(c)

FACTS:

You are Chairman of the City of Boca Raton Planning and Zoning Board (PZB). You have an outside business, which is wholly owned by you and your wife, Sevell Realty Partners, Inc. (Realty Partners). Realty Partners is paid an annual fee to manage the common areas of a business park where your business is located, Glades Corporate Center. While the common area land is technically owned by the City of Boca Raton, the businesses located within Glades Corporate Center pay a fee for the management and general upkeep of the common areas of this business park through an association formed by the businesses located there, Glades Corporate Property Owners Association (association). Each business pays a portion of this fee based on the property size and percentage of ownership within the park. Crocker Partners, LLC, (Crocker) through a subsidiary, owns a building within Glades Corporate Center, and is thus charged a fee annually for the upkeep and management of this park.

According to the 2019 Glades Corporate Budget Analysis provided by you, Crocker has a 15.14% ownership share in Glades Corporate Center, and is charged an annual fee of \$4,492.40 by the association for the management services provided by Realty Partners. Based on this information, Crocker pays indirectly through the association an amount of \$8,984.40 during a 24-month period to Realty Partners for managing the complex. While you do serve on the board of directors of the association with Crocker's property manager, each of the five people on this board have an equal vote regardless of the percentage of ownership share. Other than association board meetings, which are held two or three times per year, and the occasional question about park business, you have no regular contact with or any other business dealings with Crocker.

Crocker is planning to build a project known as "Restaurant Row," which will be located approximately one mile from Glades Corporate Center. This project will come before PZB for approval.

RATIONALE:

The Palm Beach County Code of Ethics (Code) prohibits officials from using their official position to give a special financial benefit to specified persons and entities, including themselves, their outside businesses, and customers or clients of their outside businesses.⁶ You and your wife own 100% of Realty Partners, thus it is considered to be your outside business under the code.⁷ Customer or client is defined within the code as being any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).⁸ Here, while Crocker does indirectly pay Realty Partners through the association for managing Glades Corporate Park, the amount paid by Crocker for this service is \$8,984.40 over a 24-month period, less than the \$10,000 within 24 months threshold necessary to make Crocker a customer or client of Realty Partners under the Code. They are therefore not considered to be a customer or client of your outside business under the code at this time.

LEGAL BASIS:

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

Sec. 2-442. Definitions.

Customer or client means any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four {24} months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).

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,

⁶ §2-443(a), §2-443(c)

⁷ §2-442

⁸ §2-442

step-child, brother, sister, parent or step-parent, or a person claimed as a dependent on the official or employee's latest individual federal tax return.

Sec. 2-443. Prohibited conduct.

(a) Misuse of public office or employment. An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, 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:

(5) A customer or client of the official or employee's outside employer or business;

(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 assumes 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

MEB/gal