



Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

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Commissioners

Peter L. Cruise

Carol E. A. DeGraffenreidt

Michael S. Kridel

Michael H. Kugler

Rodney G. Romano

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

August 6, 2020 – 1:30 p.m.

MEETING VIA WEBEX

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from July 9, 2020
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 20-007
 - b. RQO 20-008
 - c. RQO 20-009
- VI. Items Pulled from Consent Agenda
 - a.
- VII. Second review of proposed changes to Commission on Ethics Ordinance
- VIII. Second review of proposed changes to Code of Ethics Ordinance
- IX. Second review of proposed changes to Lobbyist Registration Ordinance
- X. Executive Director Comments
- XI. Commission Comments
- XII. Public Comments
- XIII. 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**

JULY 9, 2020

**THURSDAY
1:31 P.M.**

**WEBEX TELECONFERENCE
WEISMAN GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Peter L. Cruise, Chair
Michael S. Kridel, Vice Chair
Carol E.A. DeGraffenreidt – Absent
Michael H. Kugler
Rodney G. Romano

STAFF:

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

ADMINISTRATIVE STAFF:

Marisa Valentin, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS – None

IV. APPROVAL OF MINUTES FROM MAY 7, 2020

MOTION to approve the May 7, 2020 minutes. Motion by Rodney Romano, seconded by Michael Kugler, and carried 4-0. Carol DeGraffenreidt absent.

V. APPROVAL OF MINUTES FROM JUNE 4, 2020

MOTION to approve the June 4, 2020 minutes. Motion by Michael Kridel, seconded by Rodney Romano, and carried 4-0. Carol DeGraffenreidt absent.

VI. PUBLICATION OF ORDER RE: EXECUTIVE SESSION for C19-006

Vice Chair Kridel read the following Public Report Stipulating to Probable Cause:

Christie E. Kelley, General Counsel of the Palm Beach County Commissioner on Ethics, filed the above referenced complaint on September 23, 2019, alleging Respondent, David DeMarois, the former vice mayor of the town of Loxahatchee Groves, violated §2-443(b), *Corrupt misuse of official position*, by threatening and asserting pressure on a town employee in an attempt to have the employee hire Respondent's preferred applicant.

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics (COE) Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On July 9, 2020, Respondent stipulated to probable cause and requested to proceed to a final hearing.

Therefore it is:

ORDERED AND ADJUDGED that probable cause exists and the complaint against Respondent, David DeMarois, will be set for a final hearing within 120 days to be coordinated between the parties.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on July 9, 2020.

By: Peter L. Cruise, Chair

(CLERK'S NOTE: The clerk added the language as printed in the Public Report Stipulating to Probable Cause.)

VII. PROCESSED ADVISORY OPINIONS

VII.a. Request for Opinion (RQO) 20-004

VII.b. RQO 20-005

VII.c. RQO 20-006

MOTION to approve the advisory opinions. Motion by Michael Kridel, seconded by Rodney Romano, and carried 4-0. Carol DeGraffenreidt absent.

VIII. EXECUTIVE DIRECTOR COMMENTS

VIII.a

DISCUSSED: Congratulations.

COE Executive Director Mark Bannon congratulated staff for being able to perform all their job duties remotely during the COVID-19 pandemic.

IX. COMMISSION COMMENTS

IX.a

DISCUSSED: Congratulations.

Commissioner Romano congratulated his son, Zack, for scoring 151 on his Law School Admission Tests, and his daughter for being accepted into nursing school.

IX.b

DISCUSSED: Congratulations.

Chair Cruise congratulated COE General Counsel Christie Kelley, Mr. Bannon, and the investigative staff for their great work on the processed advisory opinions.

X. PUBLIC COMMENTS – None

XI. ADJOURNMENT

At 1:41 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

Commission on Ethics Ordinance

(Effective date September 22, 2015)

Section 2-254 – Creation and jurisdiction

The Palm Beach County Commission on Ethics (hereinafter "commission on ethics") is hereby established. The jurisdiction of the commission on ethics shall extend to any person required to comply with the countywide code of ethics, the county lobbyist registration ordinance, and the county post-employment ordinance, and may further extend to persons or entities required to comply with additional ordinances and regulations duly adopted by other county, local, or municipal government and any commission, bureau, district, or other governmental entity located in Palm Beach County as more fully set forth below. The jurisdiction of the commission on ethics is not exclusive. Any person or entity subject to a complaint to the county's commission on ethics may also be subject to a separate complaint to the state commission on ethics or pursuant to a municipality's ethics ordinance. A finding by the county's commission on ethics is not binding on the state and may not be binding on the municipality, depending on the nature of the complaint and whether the municipality's ethics ordinance is more restrictive than the countywide ethics code.

Section 2-255 – Membership, qualifications, terms, vacancies

- (a) Composition and appointment. The commission on ethics shall be composed of five (5) members. The members of the commission on ethics shall be appointed as follows:
- (1) The president of the county association of chiefs of police shall be requested to appoint a former law enforcement official with experience in investigating white collar crime or public corruption.
 - (2) The president of the Hispanic Bar Association of Palm Beach County, in conjunction with the president of the F. Malcolm Cunningham, Sr. Bar Association, and the president of the Palm Beach County Bar Association, ~~county bar association~~ shall be requested to appoint an attorney with experience in ethics regulation of public officials and employees.
 - (3) The president of Florida Atlantic University (FAU) shall be requested to appoint a faculty member, who teaches at an accredited institution of higher education with a campus located within the county and ~~who~~ has taught a course in professional legal ethics or has published or performed services in the field of professional legal ethics.
 - (4) The president of the Palm Beach chapter of the Florida Institute of CPAs shall be requested to appoint a single member who possesses at least five (5) years of experience as a certified public accountant (CPA) with forensic auditing and/or government accounting or government auditing audit experience.
 - (5) The board of directors of the Palm Beach County League of Cities, Inc. shall be requested to appoint a person who has served as a former elected official or a former manager, chief administrative officer, or chief executive officer for a governmental entity in the county.

All appointing officers or entities identified in subsections (a)(1) through (5) shall in good faith endeavor to appoint members of the commission on ethics within forty-five (45) days of the effective date of the ordinance from which this division is derived. Each appointing entity shall promptly provide notice of each appointment to the eExecutive Director of the commission on ethics, inspector general, and the county administrator.

- (b) Additional qualifications. Each member of the commission on ethics shall be of outstanding reputation for integrity, responsibility and commitment to serving the community. Appointing entities should consider appointments to the commission on ethics that are ~~The members of the commission on ethics should be~~ representative of the community-at-large and ~~should~~ reflect the racial, gender, and ethnic

make-up of the community. Before entering upon the duties of office, each appointee on the commission on ethics shall take the prescribed oath of office pursuant to Florida Constitution, Art. II §5(b). Members of the commission on ethics shall serve without compensation.

- (c) Term. The members of the commission on ethics shall serve staggered terms of four (4) years each, provided that of the original members, two (2) members described in subsections (a)(1) and (2) shall be appointed for an initial term of two (2) years. The remaining three (3) members shall be appointed for an initial term of four (4) years. Thereafter, all members of the commission on ethics shall serve terms of four (4) years.
- (d) Vacancies. A vacancy occurring during or at the expiration of a member's term on the commission on ethics shall be filled as provided in subsections (a) and (b), no later than sixty (60) days after the vacancy occurs.
- (e) Additional requirements. No individual, while a member of the commission on ethics, shall:
 - (1) Hold or campaign for any elective political office;
 - (2) Hold office in any political party or political committee;
 - (3) Actively participate in or contribute to any political action committee, or to any campaign for state or local elective office or for any U.S. Congressional or Senate office serving the State of Florida; _
 - (4) Be employed by Palm Beach County, any municipality within the county, or any other governmental entity subject to the authority of the commission on ethics or the inspector general; or
 - (5) Allow their name to be used by a campaign in support of or against any candidate for political office or any referendum or other ballot question. Nothing herein shall preclude a member of the commission on ethics from signing a petition in support of or against any referendum or other ballot question.

(f) Removal process. If a violation of any of the enumerated requirements in subsection (e) herein and is substantiated, the commissioner in question, the appointing entity, and the other commissioners shall be notified. The commissioner may resign by providing notification to the executive director in writing, or; the appointing entity may remove the commissioner from office by providing notification to the executive director in writing. If the commissioner does not resign or the appointing entity does not remove the commissioner from office, the executive director shall place the matter on the next agenda for the discussion. A commissioner can be removed from office by the commission upon a majority vote of the remaining commissioners.

Section 2-256 – Applicability of code of ethics ordinance

The countywide code of ethics ordinance shall be applicable to all persons and/or entities within the jurisdiction of said ordinance and shall apply to the members ~~and staff~~ of the commission on ethics.

Section 2-257 – Organization

- (a) The commission on ethics shall elect one (1) of its voting members as chairperson and one (1) of its voting members as vice chairperson who shall serve a one (1) year term, of two (2) years. No chairperson shall be permitted to serve two (2) consecutive terms as chairperson in the same position. No vice chairperson shall be permitted to serve two (2) consecutive terms as vice chairperson.
- (b) The commission on ethics shall adopt bylaws and rules of procedure ~~which that~~ are consistent with the provisions of this division and rules and regulations for the commission on ethics' governance. The commission on ethics shall hold regular meetings in accordance with the bylaws of the commission and may hold such other meetings as it deems necessary.
- (c) All meetings of the commission on ethics that are not conducted in executive session as permitted by law, shall be public, and written minutes of the proceedings thereof shall be maintained by the ~~commission on ethics~~ minutes department of the clerk of courts. All matters heard by the commission on ethics in

~~executive session shall be audio recorded or audio/video recorded and made available to the public upon the conclusion of the matter. All actions taken at the meetings of the commission on ethics shall be promptly and properly recorded.~~ Copies of all minutes, resolutions, decisions, or advisory opinions of the commission on ethics shall be ~~published to the website of the commission on ethics forwarded to the clerk to the board of county commissioners~~ no later than thirty (30) days subsequent to any meeting of the commission on ethics.

- (d) The commission on ethics shall be empowered to appoint an executive director and to remove such appointee at will. The commission on ethics shall utilize a competitive selection process when selecting an executive director. The commission on ethics ~~in conjunction consultation with county administration~~ shall fix the executive director's salary, subject to ultimate budget approval by the board of county commissioners. The executive director shall be empowered to appoint, remove, and suspend employees or agents of the commission on ethics, subject to ultimate budget approval by the board of county commissioners. The executive director shall be further empowered to adopt personnel and management policies consistent with like policies in place for county personnel.

Section 2-258 – Powers and duties

- (a) The commission on ethics shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The commission on ethics shall be empowered to review, interpret, render advisory opinions and enforce the:
- (1) Countywide Code of Ethics;
 - (2) County Post-Employment Ordinance; and
 - (3) County Lobbyist Registration Ordinance.
- (b) As set forth in the Office of Inspector General, Palm Beach County, Florida Ordinance, the commission on ethics shall serve ~~along~~ with one (1) delegate each from the state attorney's office and public defender's office for the Fifteenth Judicial Circuit as the inspector general committee. The inspector general committee shall be authorized to select the inspector general ~~to~~ to determine whether or not to renew the term of an inspector general, and to participate in the removal of the inspector general as set forth in greater detail in the Office of Inspector General, Palm Beach County, Florida Ordinance.
- (c) The commission on ethics shall from time to time review ordinances and state and federal laws relating to ethics in government and shall report and make recommendations to the board of county commissioners and municipal elected officials as it deems appropriate.
- (d) The commission on ethics shall develop and deliver ethics training and outreach programs for the benefit of county and municipal employees and officials, county and municipal vendors, ~~other public or private entities representing residents of the county or any municipality, nonprofit corporations,~~ and other entities that do business with or are regulated by the county or the municipalities located within the county. The commission on ethics may recommend that the board enter into agreements with other entities to provide such training and outreach programs to be administered by the commission on ethics.

Section 2-258.1 – Extended jurisdiction by interagency agreements.

It is anticipated that taxing districts and other public officials and entities will recognize and desire to benefit from the services of the commission on ethics. The commission on ethics may additionally be empowered to review, interpret, render advisory opinions, and enforce similar rules or regulations duly adopted by any commission, bureau, district, or other governmental entity located in the county, pursuant to agreements or memoranda of understanding between the commission on ethics and said entity. The memorandum of understanding or agreement shall include a provision for fees to be paid to the commission on ethics from the public entity in exchange for such benefits at a rate established by the commission on ethics. All fees paid under any such agreement shall be used solely to fund the operations of the commission on ethics and its staff. Any such

agreement or memorandum of understanding is subject to final approval of the board of county commissioners, but such approval shall not be unreasonably withheld.

Section 2-259 – Financial support for the commission

- (a) The commission on ethics shall establish a fiscal year ~~that which~~ coincides with that of the county. Pursuant to its annual budget process, the county shall provide sufficient financial support for the commission on ethics to fulfill its duties as set forth in this division. ~~In conjunction with the county office of financial management and budget, the~~ commission on ethics shall timely submit to the board of county commissioners a budget request including a reasonable estimate of operating and capital expenditures, which request shall not be implemented until approved by the board of county commissioners.
- (b) The commission on ethics budget request shall be prepared by the county office of financial management and budget in consultation~~in conjunction with the commission on ethics' executive director and staff~~ on official county budget forms in a format prescribed by the county office of financial management and budget, shall be reviewed in a manner similar to that in which ~~of~~ other county departments are reviewed, and shall be incorporated in the proposed budget and timely submitted to the board of county commissioners each year. Nothing contained herein shall be construed to prohibit the commission on ethics from submitting to the board of county commissioners' supplemental budget requests which, if approved, shall constitute amendments to the county budget.
- (c) In addition to budgetary appropriations made by the county, the board of county commissioners, may, for the benefit of the commission on ethics, accept grants, contributions or appropriations from the federal government, state government, any municipality within the county, or any academic institution or nonprofit entity which has not entered into a contract or transacted business with the county or any governmental entity subject to the provisions of this ordinance. The commission on ethics may accept grants, contributions or appropriations from an academic institution or nonprofit entity ~~which that~~ has entered into a contract or transacted business with the county if the board of county commissioners by resolution approves the grant, contribution, or appropriation. No other grants, contributions, or appropriations may be accepted by the commission on ethics.

Section 2-260 – Procedure on Complaints filed

- (a) Filing of complaints.
 - (1) Any person may file a complaint with the commission on ethics.
 - (2) The executive director of the commission on ethics, the inspector general, or the state attorney may file a complaint with the commission on ethics.
- (b) Legal sufficiency of complaints.
 - (1) In order to be found legally sufficient, complaints filed by persons under section (a)1 above, must:
 - a. Be in writing, and executed on a form prescribed by the commission on ethics;
 - b. Allege the elements of a violation within the commission on ethics' jurisdiction in the complaint and/or supporting documents provided;
 - c. Be based substantially upon the personal knowledge of the complainant; and
 - d. Be signed under oath or affirmation by the complaining person.
 - (2) In order to be found legally sufficient, complaints filed by the executive director of the commission on ethics, the inspector general, or the state attorney must:
 - a. Be in writing, and executed on a form prescribed by the commission on ethics;
 - b. Allege the elements of a violation within the commission on ethics' jurisdiction in the complaint and/or supporting documents provided;
 - c. Be sworn to by the person filing the complaint before a notary public and contain the following language: "Personally known to me and appeared before me, _____, whose signature appears below, being duly sworn, says that the allegations set forth in this complaint are based upon facts

which have been sworn to as true by a material witness or witnesses and which if true would constitute the offenses alleged and that this complaint is instituted in good faith.”

Upon a finding of legal sufficiency by the executive director or general counsel, commission on ethics staff shall initiate a preliminary investigation.

- (c) Documents Provided to the Respondent. Within twenty (20) days of a legal sufficiency finding, a copy of the complaint and all documents in support thereof shall be sent to the alleged violator, otherwise known as the respondent.
- (d) Preliminary investigation and public hearing. A preliminary investigation shall be undertaken by the commission on ethics of each legally sufficient complaint over which the commission on ethics has jurisdiction to determine whether there is probable cause to believe that a violation has occurred. If, upon completion of the preliminary investigation, the commission on ethics finds no probable cause to believe that a violation has been committed, the commission on ethics shall dismiss the complaint with the issuance of a report to the complainant and the respondent. If the commission on ethics finds from the preliminary investigation probable cause to believe that a violation has been committed, it shall set the matter for a public hearing and notify ~~complainant and~~ respondent via certified mail, hand delivery, or courier. The commission on ethics may use telephone or electronic mail as a secondary means of notice. The commission on ethics or the hearing officer conducting the public hearing may order commission staff to conduct such further investigation as it deems necessary, and may enter into such stipulations and settlements as it finds to be just and in the best interest of the citizens of the county. The public hearing provided for in this section shall be held within one hundred twenty (120) days of the probable cause determination unless extended by the commission on ethics or the hearing officer ~~conducting the public hearing~~ for good cause based on the request of a party or on its own initiative.
- (e) Investigations. Investigations shall be conducted by commission on ethics staff or by any other person or agency so designated by the commission on ethics under the supervision of the executive director ~~and/or the inspector general~~. Investigations shall be limited to the allegations of the complaint, but shall include an investigation of all facts and persons materially related to the complaint at issue. Where other potential violations of any ordinance within the commission on ethics' jurisdiction are found during an investigation of all facts and persons materially related to the complaint at issue, the additional violations may be added by the executive director by amendment of the complaint, or may be filed as a new complaint. Subsequent to the filing of a complaint and notice to the respondent, the commission on ethics has an ongoing duty to disclose to the respondent any and all additional documents, statements of witnesses and other evidence, not otherwise subject by statute to nondisclosure, obtained by the commission pursuant to the ongoing investigation of a complaint.
- (f) Counsel.
 - (1) Counsel to commission on ethics. The ~~executive director and general counsel of the~~ commission on ethics shall ~~act as select~~ counsel to advise the commission on ethics.
 - (2) Advocate. The commission on ethics shall retain legal counsel to serve as the advocate. The advocate shall prosecute all probable cause hearings cases before the commission on ethics where commission on ethics staff is recommending a finding of probable cause, and all final hearings before the or hearing officer. The executive director or general counsel may serve as advocate, provided the ~~execute director is a~~ they are members of the Florida Bar in good standing, and provided they serve as advocate only during proceedings before the commission on ethics or hearing officer where they are presenting a stipulation of settlement, are recommending a finding of no probable cause, or are recommending a dismissal. The advocate may serve on a volunteer basis.
 - ~~(3) Counsel to the commission on ethics, the advocate, or both may serve on a volunteer basis.~~

- (34) Respondent. The respondent may appear on their own behalf or may be represented by a lawyer. All notices and communications to a respondent represented by a lawyer shall be made through respondent's lawyer.
- (g) Public records exemption. The commission on ethics and its staff shall be considered "an appropriate local official" for the purposes of whistleblower protection provided for in Florida Statutes, §112.3188(1). The complaint and all records held by the commission on ethics and its staff related to an active preliminary investigation are confidential and exempt from disclosure in a manner consistent with the provisions in Florida Statutes, §112.324(2) and (3) and ~~§112.3188(2)~~. In addition, any proceeding conducted by the commission on ethics pursuant to a complaint or preliminary investigation is exempt from the provision §286.011, Florida Statutes, and Article 1, §24(b), Florida Constitution, as set forth in §112.324(2) and (3), Florida Statutes. Once a preliminary investigation is complete and a probable cause determination made, all other proceedings conducted pursuant to this subsection shall be public meetings within the meaning of Florida Statutes, ch. 286, and all other documents made or received by the commission on ethics or hearing officer shall be public records within the meaning of Florida Statutes, ch. 119, subject to whistleblower confidentiality as provided for in Florida Statutes §112.3188(1).
- (h) General power of subpoena. The commission on ethics shall be empowered to subpoena and investigate. In the case of a refusal to obey a request for documents or for an interview during an investigation, the commission on ethics may subpoena relevant witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other relevant items. The commission on ethics may delegate to its staff the authority to administer oaths and affirmations. In the case of a refusal to obey a subpoena issued to any person, the commission on ethics may make application to any circuit court of this state, which shall have jurisdiction to order the witness to appear before the commission on ethics and to produce evidence, if so ordered, or to give testimony relevant to the matter in question. Any person who fails to obey the order may be punished in a court of law. Seventy-two (72) hours prior to serving a subpoena, the executive director shall provide written notice to the state attorney and the U.S. Attorney for the Southern District of Florida. The commission on ethics shall not interfere with any ongoing criminal investigation or prosecution of the state attorney or the U.S. Attorney for the Southern District of Florida. When the state attorney or the U.S. Attorney for the Southern District of Florida has explicitly notified the commission on ethics in writing that ~~the commission's investigation is interfering with an~~ they are conducting an ongoing criminal investigation or prosecution, and they believe the commission's investigation or other procedures may interfere with their ongoing investigation or prosecution, the commission on ethics shall suspend service of subpoena, examination of witnesses, or other investigative activities as set forth in the notice until such time as the ongoing investigation or prosecution is completed. During this period, the two-year statute of limitations under Section 2-260.8, of the Commission on Ethics Ordinance shall be tolled until the completion of the ongoing investigation or prosecution. During the tolled period, the commission on ethics staff shall contact the prosecuting authority every 90 days to determine the status of the investigation or prosecution until the completion of the ongoing investigation or prosecution.
- (i) The Florida rules of civil procedure shall apply to discovery. The hearing officer may order any additional discovery that they deem fair and just.
- (#i) Subpoenas for discovery. At any time after the commission on ethics orders a public hearing of the matter, ~~the commission on ethics or~~ the hearing officer conducting the public hearing may issue subpoenas, as provided in subsection (h), to effect discovery upon the written request of respondent or advocate. The requesting person shall give submit to the commission on ethics staff, for dissemination to the hearing officer, a list of all witnesses they wish to have deposed. The list shall contain the name and address of each witness ~~he or she wishes to have deposed~~ and shall describe with particularity those documents or other items that the person wishes to have the witness produce pursuant to a subpoena *duces tecum*.

The ~~chairperson or a member of the commission on ethics designated by the chairperson, or the~~ hearing officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.

- (j) Subpoenas for public hearing. The respondent and the advocate shall submit to ~~the executive director the~~ commission on ethics staff, for dissemination to the hearing officer, a list of all witnesses ~~he or she~~ they wishes to have subpoenaed to attend the hearing. The lists shall contain the correct names and addresses of the witnesses and shall describe with particularity those documents or other items that ~~he or she~~ the person wishes to have the witness bring to the hearing pursuant to subpoena *duces tecum*. Subpoenas shall be issued as provided in subsection (h).

- (k) Motions.

- (1) All motions shall be in writing unless made on the record during a hearing and shall fully state the actions requested and the grounds relied upon. The motion shall include a statement that the movant has conferred with the advocate and all other parties of record and shall state whether there is any objection to the motion.
- (2) The original ~~of a~~ written motion shall be filed with the commission on ethics ~~staff~~ and a copy served on all parties or their attorneys. The commission on ethics staff shall send a copy of the motion to ~~the chairperson or~~ the hearing officer conducting the public hearing.
- (3) The ~~chairperson, or a member of the commission on ethics designated by the chairperson, or the~~ hearing officer conducting the public hearing shall conduct such proceedings and make such orders as are deemed necessary to dispose of issues raised by motions, but is not required to hold a hearing on the motion in order to rule upon it.
- (4) Every written motion may be accompanied by, or included in, a written memorandum stating the grounds upon which the motion is based. Other parties to a proceeding may, within seven (7) days of service of a written motion, file written memoranda in opposition. The hearing officer may accept additional information from the parties that is deemed relevant. The hearing officer may impose limitations that are deemed appropriate.

- (l) Prehearing conferences. The ~~chairperson, a member of the commission on ethics designated by the chairperson, or the~~ hearing officer ~~conducting the public hearing~~ may conduct one (1) or more prehearing conferences for the purpose of hearing arguments on pending motions, clarifying and simplifying issues, discussing the possibilities of settlement of the issues, examining exhibits and documents, exchanging names and addresses of witnesses, and resolving other procedural matters.

- (m) Exchange of witness lists. Unless otherwise ordered by ~~the chairperson, a member of the~~ commission on ethics designated by the chairperson, or the hearing officer ~~conducting the public hearing~~ as a result of a prehearing conference, the advocate and the respondent(s) or counsel for respondent(s) shall exchange the names and addresses of witnesses at least ten (10) days prior to the public hearing, with a copy being provided to the ~~chairperson~~ hearing officer. Names and addresses of witnesses discovered subsequently shall be disclosed to the other party or parties and to the ~~chairperson~~ hearing officer as soon as possible. Failure to disclose the name and address of a witness may result in the exclusion of the witness's testimony, according to the rule applied in civil judicial proceedings.

Section 2-260.1 – Public hearing procedures

- (a) *Right to public hearing.* After finding of probable cause, a respondent is entitled to a public hearing on the complaint. The ~~respondent may elect to have the~~ hearing shall be conducted by ~~the commission on ethics or by a~~ hearing officer selected from a list of hearing officers or special magistrates established by ~~the~~ Palm Beach County, who have received training in the code of ethics by commission on ethics staff. Payment for hearings officers conducting final public hearings for the commission on ethics shall be paid by the county in accordance with the current schedule established by the county for hearing officers or special magistrates at the time of the assignment of the hearing officer to the matter to be heard. ~~Bar Association, the F. Malcolm Cunningham, Sr. Bar Association, and the Hispanic Bar Association of Palm~~

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~~Beach County. The associations will strive to reflect the racial, general and ethnic make-up of the community in creating and maintaining the list. The list of hearing officers shall contain no more than ten (10) names of individuals who shall serve on a rotating basis. Hearing officers shall serve without compensation. Hearing officers shall be appointed for a term of two (2) years.~~ In order to be eligible for inclusion on the list, hearing officers for the commission on ethics shall have the following minimum qualifications:

- (1) Be a member, in good standing of the Florida Bar for at least the preceding five years; and
- (2) Be ~~experienced~~ competent in matters of governmental ethics, including the current version of the Palm Beach County Code of Ethics, related ordinances, and rules, practices and advisory opinions of the Palm Beach County Commission on Ethics; and
- (3) Attorneys with prior judicial experience or experience as a hearing officer, magistrate, mediator, or special master shall be deemed uniquely qualified; and
- (4) Be of outstanding reputation for integrity, responsibility, and commitment to serving the community; and
- (5) No individual, while a hearing officer for the commission on ethics shall:
 - (a) Hold or campaign for any elective political office;
 - (b) Hold office in any political party or political committee;
 - (c) Actively participate in or contribute to any political action committee, or to any campaign for state or local elected office or for any U.S. Congressional or Senate office serving the State of Florida;
 - (d) Be employed by Palm Beach County, any municipality within the county, or any other governmental entity subject to the authority of the commission on ethics or the inspector general, other than as a county hearing officer or special magistrate;
 - (e) Allow their name to be used by a campaign in support of or against any candidate for political office or any referendum or other ballot question. Nothing herein shall preclude a hearing officer from signing a petition in support of or against any referendum or other ballot question.
- (6) Hearing Officers shall be subject to the Palm Beach County Code of Ethics in the same manner as an individual serving as a Palm Beach County advisory board member.
 - (a) *Presentation of the case.* The advocate shall present their case first. Respondent may then present their case. Rebuttal evidence may be permitted ~~in at~~ the discretion of the ~~commission on ethics or~~ hearing officer.
 - (b) *Opening and closing statements.* Opening and closing statements may be presented by the advocate and the respondent. The advocate may make the first statement and the respondent may follow. Rebuttal by the advocate may be permitted or may be denied.
 - (c) *Evidence.*
 - (1) Stipulations may be received and are encouraged as to uncontested matters.
 - (2) Oral evidence shall be taken only on oath or affirmation.
 - (3) The respondent and the advocate shall have the right: to present evidence relevant to the issue; to cross-examine opposing witnesses on any matter relevant to the issue; and to impeach any witness regardless who first called ~~him or her~~ the witness to testify.
 - (4) The hearing shall not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted. Hearsay evidence may be used to supplement or explain other evidence, but shall not be sufficient itself to support a finding. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. The ~~commission on ethics or~~ hearing officer shall not allow the introduction into evidence of an affidavit of a person when that person can be called to testify; this shall not preclude the admission of a deposition of such a person, however, for any reason, permissible in a court of law under the Florida Rules of Civil Procedure.

- (d) *Transcript of proceedings.* The proceedings shall be recorded by recording instruments or by a court reporter. Respondent may, at their own expense, provide a court reporter or ~~additional~~ recording instruments. The commission on ethics may provide a court reporter to any proceeding conducted by the commission or a hearing officer. No transcript of the proceedings shall be prepared unless requested by the commission on ethics, the hearing officer ~~conducting the public hearing~~, or by the respondent. If the respondent requests that a transcript be prepared by a court reporter, the respondent shall pay the expense of transcription. If the ~~r~~Respondent requests that the commission on ethics prepare a transcript from recording instruments and the commission on ethics grants such request, the respondent shall pay the commission on ethics the actual cost of transcription. If a court reporter records the proceedings, the court reporter's transcript shall be the official transcript.
- (e) *Proposed public report.* After the conclusion of the hearing, the respondent and the advocate may present written proposed public reports, within a time designated by the ~~chairperson, a member of the commission on ethics designated by the chairperson, or the~~ hearing officer ~~conducting the public hearing~~. If a proposed public report is filed by the respondent or the advocate, each proposed finding in the proposal that is rejected shall be accompanied by a statement summarizing the reasons for rejection.
- (f) *Motions to dismiss filed by advocate.* After probable cause is found and a public hearing is ordered by the commission on ethics, and after further investigation or discovery is made by the advocate, the advocate may move to dismiss the proceeding if the advocate concludes that there is insufficient evidence to proceed to the public hearing in good faith. Such a motion shall specifically state the grounds upon which it is made. The motion shall be heard by the commission on ethics in accordance with the procedure provided for in section 2-260(i).
- (g) *Public ~~order~~report-imposing-penalty.* Upon completion of any hearing initiated under this subsection, the ~~commission on ethics or~~ hearing officer shall make a finding and public report as to whether any provision within its jurisdiction has been violated. ~~If the commission on ethics or hearing officer finds, by clear and convincing evidence, based upon competent substantial evidence in the record, that a violation has been committed, the commission on ethics or hearing officer shall issue an order imposing the appropriate penalty as provided in the ordinance being enforced. The hearing officer shall determine whether the violation was intentional or unintentional and include that determination in the public report, and final order shall include a determination as to whether the violation was intentional or unintentional. The commission on ethics or hearing officer shall, within ninety (90) days of the final hearing, twelve (12) months of the filing of a complaint, render the public report and submit it to the commission on ethics unless extended by the hearing officer for good cause. a final order disposing of said complaint unless extended by the commission or hearing officer for good cause. If a person fails to comply with an order issued by the commission on ethics or hearing officer, the commission on ethics on its own behalf or on behalf of the hearing officer may make application to any circuit court of this state, which shall have jurisdiction to order the violator to comply with the order of the commission on ethics or hearing officer. Any violator who fails to obey the order may be punished by the court.~~
- (h) *Order Imposing Penalty.* If the hearing officer finds, by clear and convincing evidence, based upon competent substantial evidence in the record, that a violation has been committed, the commission on ethics shall hold a hearing to determine an appropriate penalty and render a final order imposing the appropriate penalty as provided in the ordinance being enforced and disposing of said complaint. The hearing provided for in this subsection shall be held within ninety (90) days of the issuance of the public report by the hearing officer, unless extended by the commission on ethics for good cause based on the request of a party or on its own initiative. If a person fails to comply with an order issued by the commission on ethics, the commission on its

own behalf may make application to any circuit court of this state, which shall have jurisdiction to order the violator to comply with the order of the commission on ethics. Any violator who fails to obey the order may be punished by the court.

Section 2-260.2 – Notification and referral to other authorities

As provided for by ordinance within its jurisdiction, the commission on ethics- ~~or hearing officer conducting the public hearing shall~~ may refer a matter to the state attorney or any other appropriate official or agency having authority to initiate prosecution when deemed appropriate. The state attorney or other appropriate agency may decline prosecution or enforcement of any matter referred under this division, ~~and refer the matter back to the commission on ethics or hearing officer. The commission on ethics shall notify the State of Florida Commission on Ethics, the state attorney, the U.S. Attorney for the Southern District of Florida, and other appropriate law enforcement agencies within ten (10) thirty (30) days of a finding of no probable cause or of a final order being rendered disposing of a complaint.~~

Section 2-260.3 – Dismissal of complaints

Notwithstanding any other provisions of this division, the commission on ethics or hearing officer ~~conducting the public hearing~~ may, at its discretion: (a) dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, or (b) dismiss any complaint at any stage of disposition and issue a letter of instruction to the respondent when it appears that the alleged violation was inadvertent, unintentional or insubstantial. In the event the commission on ethics or hearing officer dismisses a complaint as provided in this subsection, the commission on ethics or hearing officer shall issue a public report and final order stating with particularity its reasons for the dismissal. ~~The commission on ethics or hearing officer conducting the public hearing may, at the request of the state attorney or any other law enforcement agency, stay an ongoing proceeding. The commission on ethics or hearing officer shall not interfere with any ongoing criminal investigation of the state attorney or the U.S. Attorney for the Southern District of Florida.~~

Section 2-260.4 – Frivolous or groundless complaints

In any case in which the commission on ethics or hearing officer ~~conducting the public hearing~~ determines that the complaining party filed a frivolous or groundless complaint as defined in Florida Statutes, §57.105, or a complaint with malicious intent and with the knowledge that the complaint contains one or more false allegations, or with reckless disregard for whether the complaint contains material false allegations, the commission on ethics or ~~the~~ hearing officer shall order the complaining party to pay any costs and attorney's fees incurred by the commission on ethics and/or the alleged violator. The determination by the commission on ethics or hearing officer regarding whether a complaint is frivolous or groundless shall be deemed conclusive.

Section 2-260.5 – Effect on other laws

The provisions of this division shall be deemed supplemental to any other applicable county ordinance or state or federal law and are not intended to replace or repeal any provision of state or federal law or of this Code.

Section 2-260.6 – Prospective jurisdiction

The commission on ethics shall be empowered to consider alleged violations within its jurisdiction committed on or after the effective date of the ordinances set forth in section 2-258(a), as each may be amended from time to time. Any alleged violation committed before the effective date of any such ordinance or amendment shall be governed by the applicable law in effect at the time of the alleged violation.

Section 2-260.7 – Personnel proceeding

Where an employee of the county or other governmental entity subject to the jurisdiction of this ordinance is alleged to have violated an ordinance within the jurisdiction of the commission on ethics and, based upon the

same set of facts, is subject to an ongoing disciplinary action initiated by the county or other governmental entity subject to the jurisdiction of this ordinance the commission on ethics shall stay consideration of a complaint until the conclusion of the personnel proceeding. Nothing herein shall abridge employees' constitutional right to collective bargaining.

Section 2-260.8 – Statute of limitations

- (a) No action may be taken on a complaint filed more than two (2) years after the violation is alleged to have occurred unless a person, by fraud or other device, prevents discovery of the violation. Where the allegations are the subject of a personnel proceeding or where the complainant is required to exhaust their administrative remedies prior to filing a complaint, the statute of limitations shall be tolled until the termination of said personnel proceeding or the exhaustion of administrative remedies. As provided in Section 2-260(h), where the commission on ethics has suspended investigative activities after the state attorney or the U.S. Attorney for the Southern District of Florida has notified the commission on ethics that the commission's investigation may interfere with an ongoing criminal investigation or prosecution, the statute of limitations shall be tolled until the completion of the ongoing investigation or prosecution.
- (b) Notwithstanding any limitation of actions under subsection (a), a prosecution for willful violations referred to the State Attorney pursuant to Code of Ethics § 2-448(d) may be commenced at any time when the respondent is in public office or employment, within 2 years from the time the respondent leaves public office or employment, or within 2 years of the offense, whichever time is greater.

Section 2-260.9 – Advisory opinion

Any person within the jurisdiction of the commission on ethics, when in doubt about the applicability or interpretation of any provision within the commission on ethics' jurisdiction to ~~himself themselves or herself~~ in a particular context, may submit in writing the facts of the situation to the commission on ethics with a request for an advisory opinion to establish the standard of public duty, if any. A person requesting an advisory opinion may withdraw the request at any time up to ten (10) days before the commission on ethics convenes a public meeting to consider the request. An advisory opinion shall be rendered by the commission on ethics on a timely basis, and each such opinion shall be numbered, dated and published.

Section 2-260.10 – Appeals

- (a) Any final order of the commission on ethics or hearing officer may be appealed by filing a petition for writ of certiorari in the Fifteenth Judicial Circuit Court in and for Palm Beach County. The commission on ethics shall provide the index and record on appeal when required by, and in accordance with, the Florida Rules of Appellate Procedure. A fee shall be charged by the commission on ethics for the preparation and transmission of the record on appeal to the court of appropriate jurisdiction. Such fee may be waived by the executive director if the party requesting the record is indigent.
- (b) Costs or fees may not be assessed against the commission on ethics or hearing officer in any appeal from a final order or advisory opinion issued by the commission on ethics or hearing officer pursuant to this division.
- (c) Unless specifically ordered by the commission on ethics or by a court of competent jurisdiction, the commencement of an appeal does not suspend or stay a final order or advisory opinion of the commission on ethics or hearing officer.

Code of Ethics

(Effective Date ~~September 22, 2015~~ January 1, 2020)

Sec. 2-441. Title; statement of purpose.

This article shall be known as the Palm Beach County Code of Ethics. This code of ethics is enacted pursuant to Florida Constitution, Article VIII, section 1(g), Florida Statutes, ch. 125, and the Charter of Palm Beach County. The Municipalities located within Palm Beach County are subject to the provisions of this code of ethics pursuant to referendum. The purpose of this code is to provide additional and more stringent ethics standards as authorized by Florida Statutes, §112.326. This code shall not be construed to authorize or permit any conduct or activity that is in violation of Florida Statutes, ch. 112, pt. III. This code of ethics shall be deemed additional and supplemental to any and all state and federal laws governing ethical conduct of officials and employees, as well as all local laws, rules, regulations and policies.

Officials and employees in the public service shall be conscious that public service is a public trust, shall be impartial and devoted to the best interests of the people of Palm Beach County, and shall act and conduct themselves so as not to give occasion for distrust of their impartiality.

Nothing herein shall abridge employees' constitutional right to collective bargaining.

(Ord. No. 2011-011, §1(Exh. 1), 5-17-11)

Sec. 2-442. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Advisory board shall mean any advisory or quasi-judicial board created by the board of county commissioners, by the local municipal governing bodies, or by the mayors who serve as chief executive officers or by mayors who are not members of local municipal governing bodies.

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).

Domestic partner is an adult, unrelated by blood, with whom an unmarried or separated official or employee has an exclusive committed relationship and maintains a mutual residence.

Financial benefit includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value. This term does not include campaign contributions authorized by law.

Gift shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise of these, or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single setting or a meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift may consult, among other sources, Florida Statutes, §112.3148, and the Florida Administrative Code as may be amended.

Household member includes anyone whose primary residence is in the official or employee's home, including non-relatives who are not ~~rent-payers~~renters or employees of the head of the household.

Inspector general shall mean the office established in article XII of this chapter.

Lobbying shall mean seeking to influence a decision through oral or written communication or an attempt to obtain the goodwill of any county commissioner, any member of a local municipal governing body, any mayor or chief executive officer that is not a member of a local municipal governing body, any advisory board member, or any employee with respect to the passage, defeat or modification of any item which may foreseeably be presented for consideration to the advisory board, the board of county commissioners, or the local municipal governing body lobbied as applicable.

Lobbyist shall mean any person who is employed and receives payment, or who contracts for economic consideration, or who registers in the county's central lobbyist registration database or with any municipality, for the purpose of lobbying on behalf of a principal, and shall include an employee whose principal responsibility to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government.

"Lobbyist" shall not include:

- (1) Any employee, contract employee, or independent contractor of a governmental agency or entity lobbying on behalf of that agency or entity, any elected local official when the official is lobbying on behalf of the governmental agency or entity which the official serves, or any member of the official's staff when such staff member is lobbying on an occasional basis on behalf of the governmental agency or entity by which the staff member is employed.
- (2) Any person who is retained or employed for the purpose of representing an employer, principal or client only during a publicly noticed quasi-judicial hearing or comprehensive plan hearing, provided the person identifies the employer, principal or client at the hearing, and providing that the person is not otherwise registered as a lobbyist in the county's central lobbyist registration database, or with any municipal lobbyist registration system when that municipality has its own lobbyist registration process.
- (3) Any expert witness who is retained or employed by an employer, principal or client to provide only scientific, technical or other specialized information provided in agenda materials or testimony only in public hearings, so long as the expert identifies the employer, principal or client at the hearing.
- (4) Any person who lobbies only in ~~his or her~~their individual capacity for the purpose of self-representation and without compensation.
- (5) Any employee, contract employee, or independent contractor of the Palm Beach County League of Cities, Inc., lobbying on behalf of that entity.

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "employee" includes but is not limited to all managers, department heads, and personnel of the county or the municipalities located within the county. The term also includes volunteers of the county or the municipalities located within the county when such volunteers exercise discretionary police, fire, or parking enforcement department authority. ~~contract personnel and contract administrators performing a government function, and~~ The term "employee" also includes the chief executive officer of the county or any municipality, who is not part of the local governing body. If the county or municipality utilizes and contracts for "privatized" chief administrative officers or chief executive officers, then the person providing such services, or the

officers, directors, and employees of any entity providing such services, shall be considered the employees of the county or municipality that they serve. However, it shall not include local government attorneys as defined in Florida Statutes § 112.313, or attorneys who render contracted services to the county or municipality that are limited in scope to a specific issue or subject, to specific litigation, or to a specific administrative proceeding. The term "official" shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies, and members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi-judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.

Outside employer or business includes:

- (1) Any entity, other than the county, the state, or any other federal, regional, local, or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced. For purposes of this definition, "compensation" does not include reimbursement for necessary expenses, including travel expenses; or
- (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.
- (3) ~~The~~ term outside employer or business shall not apply to an employee who is employed by a certified bargaining agent solely to represent employees.

Palm Beach County Commission on Ethics means the commission established in section 2-254 et seq. to administer and enforce the ethics regulations set forth herein, and may also be referred to as the "commission on ethics" in this article.

Persons and entities shall be defined to include all natural persons, firms, associations, joint ventures, partnerships, estates, trusts, business entities, syndicates, fiduciaries, corporations, and all other organizations.

Principal shall mean the person or entity a lobbyist represents, including a lobbyist's employer, for the purpose of lobbying.

Relative unless otherwise specified in this article, means an individual who is related to an official or employee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, ~~half brother~~half-brother, ~~half sister~~half-sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to the official or employee or who otherwise holds ~~himself themselves or herself~~ out as or is generally known as the person whom the official or employee intends to marry or with whom the official or employee intends to form a household, or any other natural person having the same legal residence as the official or employee.

Transaction shall refer to the purchase or sale by the county or municipality of goods or services for a consideration.

Vendor means any person or entity who has a pending bid proposal, an offer or request to sell goods or services or to sell or lease real or personal property, or who currently sells goods or services, or sells or leases real or personal property, to the county or municipality involved in the subject contract or transaction as applicable. For the purposes of this definition, a vendor entity includes an owner, director, manager or employee. Currently sells goods or services shall mean the period of time of an actual transaction or contract between a vendor and the government entity if such transaction or contract exceeds \$500. Where no formal contract exists for the sale or lease of goods and services, it shall include the period of time from the point the government entity orders or otherwise agrees to purchase goods and services from a vendor, to the point that all obligations on the part of both the vendor and the government entity have been satisfied by delivery of the goods and/or services by the vendor, and payment has been received for those goods and services by the vendor, and where no other obligations by either party concerning the purchase of the goods and/or services remain unsatisfied. However, it shall not include any warranty period provided by the vendor once payment for the goods and services has been received and the goods and services have been delivered, even where an obligation to provide warranty service on the part of the vendor shall exist.

_(Ord. No. 2011-011, §1(Exh. 1), 5-17-11)

Sec. 2-443. Prohibited conduct.

- (a) **Misuse of public office or employment.** An official or employee shall not use ~~his or her~~their official position or office, or take or fail to take any action, or influence others to take or fail to take any action, or attempt to do any of these things, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:

- (1) ~~Himself or herself~~Themselves;
- (2) ~~His or her~~Their 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;
- (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of ~~his or her~~their spouse or domestic partner, or the employer or business of any of these people;
- (4) An outside employer or business of ~~his or her~~theirs, or of ~~his or her~~their 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;
- (6) A substantial debtor or creditor of ~~his or her~~theirs, or of ~~his or her~~their spouse or domestic partner—"substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
- (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which ~~he or she~~they (or ~~his or her~~their spouse or domestic partner) ~~is-are~~ an officer or director.

However, this sub-section shall not apply to any official or employee who is required to serve on the board of directors of any not-for-profit organization solely based on ~~his or her~~their official position (ex officio), regardless of whether they have voting rights on the board, and who receives no financial compensation for such service on the board of directors, and otherwise has no personal ownership interest in the not-for-profit organization.

- (b) **Corrupt misuse of official position.** An official or employee shall not use or attempt to use ~~his or her~~their official position or office, or any property or resource which may be within ~~his or her~~their trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for ~~himself~~themselves, 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~~their 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 term "participate" as used in this section shall be defined as: "To take any action, or to influence others to take any action, or to attempt to do any of these things, in order to affect the passage or defeat of the specific matter before the voting body in which the official is required to abstain from voting." 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~~their 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 ~~his or her~~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. This prohibition shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality. This prohibition also shall not apply to officials or employees who purchase goods from the county or municipality on the same terms available to all members of the public. This prohibition shall also not apply to advisory board members provided the subject contract or transaction is disclosed at a duly noticed public meeting of the governing body and the advisory board member's board provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.

(e) **Exceptions and waiver.** The requirements of subsection (d) above may be waived as it pertains to advisory board members where the advisory board member's board is purely advisory and provides regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction. No waiver shall be allowed where the advisory board member's board is not purely advisory and provides regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction. Waiver may be effected by the board of county commissioners or by the local municipal governing body as applicable upon full disclosure of the contract or transaction prior to the waiver and an affirmative vote of a majority plus one (1) of the total membership of the board of county commissioners or the local municipal governing body as applicable. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after full disclosure of the contract or transaction at a public hearing, by the appointing person. In addition, no official or employee shall be held in violation of subsection (d) if:

- (1) The business is awarded under a system of sealed, competitive bidding to the lowest bidder and:
 - a. The official or employee, or his or her ~~their~~ relative or household member, has in no way participated in the determination of the bid specifications or the determination of the lowest bidder;
 - b. The official or employee, or ~~a member of his or her~~ their relative or household member, has in no way used or attempted to use the official or employee's influence to persuade the agency, governmental entity or any personnel thereof to enter such a contract other than by the mere submission of the bid; and
 - c. The official or employee, prior to or at the time of the submission of the bid, has filed a statement with the supervisor of elections and the commission on ethics, disclosing the nature of the interest in the outside employer or business submitting the bid.
- (2) An emergency purchase or contract, which would otherwise violate a provision of subsection (d) must be made in order to protect the health, safety, or welfare of the citizens of the county or municipality as applicable.
- (3) The outside employer or business involved is the only source of supply within the county or municipality under applicable law or county or municipal policy ~~as applicable~~, and there is full disclosure by the official or employee of his or her ~~their~~ interest in the outside employer or business to the county or municipality as applicable and the ethics commission prior to the purchase, rental, sale, leasing, or other business being transacted.
- (4) The total amount of the contracts or transactions in the aggregate between the outside employer or business and the county or municipality as applicable does not exceed five hundred dollars (\$500) per calendar year.
- (5) Notwithstanding any provision to the contrary, subsection (d) shall not be construed to prevent an employee from seeking part-time employment with an outside employer who has entered into a contract for goods or services with the county or municipality as applicable provided that:
 - a. The employee, or ~~or their~~ his or her ~~their~~ spouse, domestic partner, household member or relative or relative as listed in relative of the employee ~~does not work in the county or municipal department as applicable which will enforce, oversee or administer the subject contract; and~~

- b. The outside employment would not interfere with or otherwise impair ~~his or her~~their independence of judgment or otherwise interfere with the full and faithful performance of ~~his or her~~their public duties to the county or municipality as applicable; and
 - c. The employee ~~, or his or her~~their ~~or their spouse, or domestic partner, household member or close family relative or relative relative of the employee~~ has not participated in determining the subject contract requirements or awarding the contract; and
 - d. The employee's job responsibilities and job description will not require ~~him the employee or her~~ to be involved in the outside employer's contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance; and
 - e. The employee demonstrates compliance with applicable ~~merit county or municipal policy rules~~ regarding outside employment and obtains written permission from ~~his or her~~their supervisor; and
 - f. The employee has obtained a conflict of interest waiver ~~from signed by~~ the chief administrative officer ~~or their~~his or hertheir designee and the employee's ~~department head of the county or municipality direct supervisor, or his or her~~their designee, based on a finding that no conflict exists. The employee shall submit the request for waiver in writing and under oath. ~~The request for the waiver shall be signed by the employee under oath~~ or affirmation on an approved form provided by the commission on ethics. The document shall contain written acknowledgment of compliance with the provisions of subsection (5)a. through (5)e. of this subsection, together with such pertinent facts and relevant documents that support such waiver. A waiver under this subsection must be approved by both the employee's ~~direct~~ supervisor and ~~the~~ chief administrative officer of the county or municipality ~~or their designees~~. The county or municipality shall record such waiver in the employee's personnel file and shall submit a copy of the waiver and all related documents to the commission on ethics. The commission on ethics in its discretion may elect to review, comment on, or investigate any waiver. The commission on ethics review or investigation shall not delay an employee's ability to take the part-time employment.
 - g. ~~Official municipal law enforcement approved or county or municipal fire/rescue department approved overtime or extra duty details approved by the county or municipality of the employee.~~ The provisions of subsection (d) shall be waived for outside employment when that employment consists of a certified police agency ~~uniformed external security or~~extra duty detail, ~~or a certified firefighter and/or paramedic extra duty detail, when~~ contracted or administered by the police ~~or fire/rescue~~ agency as applicable. For the purpose of this subsection, all records of external, extra duty or overtime security details, including supervisor approval, identity of contracting parties, and including time, date and manner of detail shall be maintained by the individual contracting or administering police ~~or fire/rescue~~ agency, records of which shall be accessible to the public subject to state public records disclosure exemptions.
- (f) **Accepting travel expenses.** No official or employee shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees and incidentals from any county or municipal contractor, vendor, service provider, bidder or proposer as applicable. The board of county commissioners or local municipal governing body as applicable may waive the requirements of this subsection by a majority vote of the board or local municipal governing body. The provisions of this

subsection shall not apply to travel expenses paid by other governmental entities or by organizations of which the county or municipality as applicable is a member if the travel is related to that membership.

- (g) **Contingent fee prohibition.** No person shall, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person shall, in whole or in part, receive or agree to receive a contingency fee. As used herein, "contingency fee" means a fee, bonus, commission, or nonmonetary benefit as compensation, which is dependent on or in any way contingent on the passage, defeat, or modification of: an ordinance, resolution, action or decision of the board of county commissioners or local municipal governing body as applicable, any employee authorized to act on behalf of the board of county commissioners or local municipal governing body as applicable, the county administrator or municipal administrator as applicable, or any action or decision of an advisory board or committee. This prohibition does not apply to real estate brokers when acting in the course of their profession as regulated by Florida Statutes, §§475.001—475.5018, as may be amended. Nothing in this section may be construed to prohibit any salesperson from engaging in legitimate government business on behalf of a company from receiving compensation or commission as part of a bona fide contractual arrangement with that company provided such compensation or commission is ordinary and customary in the industry. Nothing in this section may be construed to prohibit an attorney from representing a client in a judicial proceeding or formal administrative hearing pursuant to a contingent fee arrangement if allowed by the rules of the Florida Bar.
- (h) **Honesty in applications for positions.** No person seeking to become an official or employee, or seeking any promotion or job reassignment within the public entity that currently employs them, or seeking to enter into a contract or otherwise seeking to provide goods or services to the county or municipality as applicable, may make any false statement, submit any false document, or knowingly withhold information about wrongdoing in connection with employment by or services to the county or municipality as applicable.
- (i) **Disclosure or use of certain information.** A current or former official or employee shall not disclose or use information not available to members of the general public and gained by reason of ~~his or her~~their official position, except for information relating exclusively to governmental practices, for ~~his or her~~their personal gain or benefit or for the personal gain or benefit of any other person.

(Ord. No. 2011-011, §1(Exh. 1), 5-17-11)

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~~their 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.
- (2) No vendor, lobbyist, or principal or employer of a lobbyist that lobbies, sells or leases to the county or a municipality as applicable, shall knowingly give, directly or indirectly, any gift with a value greater than one hundred dollars (\$100) in the aggregate for the calendar year to a person who the vendor, lobbyist, or principal knows, or should know with the exercise of reasonable care, is an official or employee of that county or municipality. For the purposes of this subsection (a)(2), the term vendor

also includes any person or entity that, because of the nature of their business, may respond to an invitation to bid, request for proposal or other procurement opportunity that has been published by the county or a municipality.

- (b) (1) No advisory board member, or any other person on ~~his or her~~their 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 recipient's advisory board or any county or municipal department as applicable that is subject in any way to the advisory board's authority, influence or advice.
- (2) No vendor, lobbyist, or principal or employer of a lobbyist who lobbies, sells or leases to an advisory board or any county or municipal department as applicable that is subject in any way to the advisory board's authority, influence or advice, shall knowingly give, directly or indirectly, any gift with a value greater than one hundred dollars (\$100) in the aggregate for the calendar year to a person who the vendor, lobbyist, or principal knows, or should know through the exercise of reasonable care, is a member of that advisory board. For the purposes of this subsection (b)(2), the term vendor also includes any person or entity that, because of the nature of their business, may respond to an invitation to bid, request for proposal or other procurement opportunity that has been published by the county or a municipality.
- (c) No county commissioner, member of a local governing body, mayor or chief executive officer when not a member of the governing body, or employee, or any other person or business entity on ~~his or her~~their behalf, shall knowingly solicit a gift of any value 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, where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee. No advisory board member or any other person or business entity on ~~his or her~~their behalf, shall knowingly solicit a gift of any value 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 recipient's advisory board, or any county or municipal department as applicable that is subject in any way to the advisory board's authority, influence or advice, where the gift is for the personal benefit of the advisory board member, another advisory board member, ~~or another~~ official or employee, or any relative or household member of the official or employee.
- (d) For purposes of this section, a principal or employer of a lobbyist shall include any officer, partner or director of the principal or employer entity, or any employee of a principal or employer who is not an officer, partner or director, provided that the employee knows or should know with the exercise of reasonable care that the principal or employer employs a lobbyist.
- (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.

(f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.

(1) *Gift reports for officials and employees ~~and~~ identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended, including, but not limited to, the state's definition of gift, exceptions thereto, and gift valuations. The county code of ethics' definition of gift and exceptions thereto shall not be used by reporting individuals to complete and file state gift reporting disclosures. When a state reporting individual files or is required to file a gift report with the state, a copy of each report shall also be filed ~~contemporaneously~~ with the county commission on ethics no later than ten (10) days after the report is filed with the state. Failure to file a State of Florida Quarterly Gift Disclosure Form with the county commission on ethics within the required timeframe shall be a violation of this section.

(2) *All other officials and employees who are not reporting individuals under state law.*

a. *Personal gifts.* All officials and employees who are not reporting individuals under state law are not required to report gifts in excess of one hundred dollars (\$100) so long as those gifts are given to the official or employee by a personal friend or co-worker and the circumstances demonstrate that the motivation for the gift was the personal or social relationship rather than an attempt to obtain the goodwill or otherwise influence the official or employee in the performance of ~~his or her~~ her/their official duties. Factors to be considered in determining whether a gift was motivated by a personal or social relationship may include but shall not be limited to: whether the relationship began before or after the official or employee obtained ~~his or her~~ her/their office or position; the prior history of gift giving between the individuals; whether the gift was given in connection with a holiday or other special occasion; whether the donor personally paid for the gift or sought a tax deduction or business reimbursement; and whether the donor gave similar gifts to other officials or employees at or near the same time. If the personal friend or co-worker is a vendor, lobbyist or principal or employer of a lobbyist that lobbies the county or municipality as applicable, then the official or employee shall not accept a gift in excess of one hundred dollars (\$100) in accordance with subsections (a)(1) and (b)(1).

b. *All other gifts.* All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics no later than ~~November 1~~ January 31st of each year ~~beginning November 1, 2011, for the previous calendar year period ending from (January 1st through September 30 December 31)st of each year.~~ All officials or employees, who are not reporting individuals under state law and who do not receive a gift in excess of one hundred dollars (\$100) during a given reporting period shall not file an annual gift disclosure report. The annual gift disclosure report shall be created by the county commission on ethics and shall be in a form substantially similar in content as that required by state law. The county code of ethics' definition of gift and exceptions thereto shall be used by non state-reporting individuals in completing and filing annual gift disclosure reports required by this section.

- (g) ~~For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise of these, or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single setting or a meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift may consult, among other sources, Florida Statutes, §112.3148, and the Florida Administrative Code as may be amended.~~
- (1) ~~Exceptions. The provisions of subsection (g) shall not apply to:~~ For the purposes of this section, the following shall not be considered a gift:
- (1) ~~a.~~ Political contributions specifically authorized by state or federal law;
- (1) ~~b.~~ —
- (2) ~~Gifts from any close family relatives, relatives,~~ domestic partners, and dependents named on the official's or employee's latest federal income tax return, or one's household member;
- (2) ~~c.~~ —
- (3) ~~Awards for professional or civic achievement;~~
- (3) ~~d.~~ —
- (4) ~~Materials such as books, reports, periodicals or pamphlets which that~~ are solely informational or of an advertising nature;
- (4) ~~e.~~ —
- (5) ~~Gifts solicited or accepted by county or municipal officials or employees as applicable on behalf of the county or municipality in performance of their official duties for use solely by the county or municipality for a public purpose;~~
- (5) ~~f.~~ —
- (6) ~~Publicly advertised offers for goods or services from a vendor under the same terms and conditions as are offered or made available to the general public;~~
- (6) ~~g.~~ —
- (7) ~~Inheritance or other devise;~~
- (7) ~~h.~~ —
- (8) ~~Registration fees and other related costs associated with educational or governmental conferences, meetings or seminars and travel expenses either properly waived or inapplicable pursuant to section 2-443(f), provided that attendance is for governmental purposes, and attendance is related to their his or her their~~ duties and responsibilities as an official or employee of the county or municipality;
- (8) ~~i.~~ —
- (9) ~~A ticket, pass or admission in connection with public events, appearances or ceremonies related to official county or municipal business, if furnished by a nonprofit sponsor organization of such public event, or if furnished pursuant to a contract between the event's non-profit sponsor and the county or municipality as applicable, provided the sponsor organization does not employ a lobbyist, and further provided the ticket, pass or admission is given by a representative of the sponsor organization who is not otherwise a vendor, lobbyist, or a principal or employer of a lobbyist. Notwithstanding the exception as provided in this subsection, the ticket, pass or admission must be disclosed in accordance with the gift law reporting requirements of subsections (f)(1) and (f)(2);~~

~~(9) j.~~

(10) Expenditures made in connection with an event sponsored by a nonprofit organization funded in whole or in part with public funds whose primary function is to encourage and attract tourism or other business opportunities for the benefit of Palm Beach County or the municipalities as applicable, provided the sponsor organization does not employ a lobbyist, and further provided that the invitation to the event is made by a representative of the sponsor organization and the representative is not otherwise a ~~vendor~~, lobbyist, or a principal or employer of a lobbyist. Notwithstanding the exception as provided in this subsection, the expenditure must be disclosed in accordance with the gift law reporting requirements of subsections (f)(1) and (f)(2).

(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.~~

(Ord. No. 2011-011, §1(Exh. 1), 5-17-11)

Sec. 2-445. Anti-nepotism law.

An official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement in or to a position in the county or municipality as applicable in which the official is serving or over which the official exercises jurisdiction or control, any individual who is a relative or domestic partner of the official. An individual may not be appointed, employed, promoted, or advanced in or to a position in the county or a municipality if such appointment, employment, promotion, or advancement has been advocated by an official, serving in or exercising jurisdiction or control over the county or municipality as appropriate, who is a relative or domestic partner of the individual or if such appointment, employment, promotion, or advancement is made by a collegial body of which a relative or domestic partner of the individual is a member. However, this section shall not apply to appointments to boards other than those with land-planning or zoning responsibilities in those municipalities with less than thirty-five thousand (35,000) population. This section does not apply to persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services. Such persons may receive, without losing their volunteer status, reimbursements for the costs of any training they get relating to the provision

of volunteer emergency medical, firefighting, or police services and payment for any incidental expenses relating to those services that they provide. Mere approval of budgets shall not be sufficient to constitute "jurisdiction or control" for the purposes of this section.

- (1) For the purposes of this section, "official" means any official or employee in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in the county or municipality as applicable.
- (2) For the purposes of this section, "relative" means spouse, parent, child, sibling, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

(Ord. No. 2011-011, §1(Exh. 1), 5-17-11)

Sec. 2-446. Ethics training.

- (a) Officials and employees, as public servants, are considered stewards of the public trust and should aspire to the highest level of integrity and character. Officials and employees shall be informed of their ethical responsibilities at the start of their public service, and shall receive updates and training materials on ethics issues throughout the span of their public service. The county administrator or municipal administrator as applicable shall establish by policy a mandatory training schedule for all officials, ~~and employees,~~ and local government attorneys as defined in Florida Statutes §112.313, which shall include mandatory periodic follow-up sessions. This policy may also address ethics training for entities that receive county or municipal funds as applicable.
- (b) The commission on ethics shall develop and deliver, or contract with other entities to develop and deliver, training programs. The commission on ethics shall coordinate and cooperate with all affected county or municipal entities, departments, agencies, boards, councils and commissions to ensure that effective and meaningful training experiences are delivered in a timely and efficient manner.

(Ord. No. 2011-011, §1(Exh. 1), 5-17-11)

Sec. 2-447. Noninterference.

It shall be a violation of this article for any person: (a) to retaliate against, punish, threaten, harass, or penalize any person for communicating, cooperating with, or assisting the commission on ethics or the inspector general; or (b) to interfere, obstruct or attempt to interfere or obstruct without valid legal basis any investigation conducted by the commission on ethics or the inspector general.

(Ord. No. 2011-011, §1(Exh. 1), 5-17-11)

Sec. 2-448. Administration, enforcement and penalties.

- (a) The commission on ethics shall be empowered to review, interpret, render advisory opinions, and enforce this code of ethics pursuant to the procedures established in the county commission on ethics ordinance. Jurisdiction of the commission on ethics with respect to advisory opinions rendered shall extend to all county and municipal officials and employees, and all other persons and entities required to comply with

the provisions of this code and the county lobbyist registration ordinance, including but not limited to lobbyists, their employers and principals, and contractors and vendors and their employees.

- (b) A finding by the commission on ethics of a violation of any part of this article shall subject the person or entity to public reprimand, a fine of up to five hundred dollars (\$500), or both. The commission on ethics may also order the person or entity to pay restitution when the person or entity or a third party has received a pecuniary benefit as a result of the person's violation.
- (c) Upon a finding of the commission on ethics or hearing officer that a violation of this article or the lobbyist registration ordinance resulted in a contract, grant, subsidy, license, permit, franchise, use, certificate, development order or other benefit conferred by the county or municipality as applicable, then such contract, grant, subsidy, license, permit, franchise, use, certificate, development order or other benefit may be rescinded or declared void by the board of county commissioners or the local municipal governing body as applicable.
- (d) The commission on ethics may ~~in its discretion~~ refer willful violations of sections 2-443, 2-444(a), 2-444(b), 2-444(c), 2-444(e), or 2-447 to the state attorney when deemed appropriate. Pursuant to Florida Statutes, §125.69, a person who violates the sections of the article set forth in this section 2-448(d) shall be subject to prosecution in the name of the state in the same manner as first degree misdemeanors are prosecuted, and upon conviction, such person shall may be punished by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed one (1) year, or both.

(Ord. No. 2011-011, §1(Exh. 1), 5-17-11)

Lobbyist Registration Ordinance

(Effective Date ~~June 1, 2014~~ January 1, 2020)

Sec. 2-351. Title and purpose.

- (a) This article may be cited as the "Palm Beach County Lobbyist Registration Ordinance."
- (b) The board of county commissioners of the county and the governing bodies of the municipalities located within the county hereby determine that the operation of responsible government requires that the fullest opportunity be afforded to the people to petition their county and local governments for the redress of grievances and to express freely to the elected officials their opinions on legislation and other actions and issues; that to preserve and maintain the integrity of the governmental decision-making process, it is necessary that the identity and activities of certain persons who engage in efforts to influence the county commissioners, members of the local municipal governing bodies, mayors or chief executive officers that are not members of local municipal governing bodies, county and municipal advisory board members, and county and municipal employees on matters within their official duties, be publicly and regularly disclosed. In accordance with Section 1.3 of the County Charter, this Ordinance shall not apply in any municipality that has adopted an ordinance in conflict governing the same subject matter.

Sec. 2-352. Definitions.

Unless expressly provided herein to the contrary, for purposes of this article, the following definitions will apply:

Advisory board shall mean any advisory or quasi-judicial board created by the board of county commissioners, by the local municipal governing bodies, or by the mayors who serve as chief executive officers or by mayors who are not members of local municipal governing bodies.

Board ~~will~~shall mean the board of county commissioners of Palm Beach County, Florida.

Central Lobbyist ~~Registration Registry Site Database~~ ~~will~~shall mean the official location for countywide lobbyist registration.

County commissioner ~~will~~shall mean any member of the board of county commissioners of Palm Beach County, Florida.

Lobbying shall mean seeking to influence a decision through oral or written communication or an attempt to obtain the goodwill of any county commissioner, any member of a local municipal governing body, any mayor or chief executive officer that is not a member of a local municipal governing body, any advisory board member, or any employee with respect to the passage, defeat or modification of any item which may foreseeably be presented for consideration to the advisory board, the board of county commissioners, or the local municipal governing body lobbied as applicable.

Lobbyist shall mean any person who is employed and receives payment, or who contracts for economic consideration, or who registers in the county's central lobbyist registration database ~~registry~~ or with any municipality, for the purpose of lobbying on behalf of a principal, and shall include an employee whose principal responsibility to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government.

"Lobbyist" shall not include:

- (1) Any employee, contract employee, or independent contractor of a governmental agency or entity lobbying on behalf of that agency or entity, any elected local official when the official is lobbying on behalf of the governmental agency or entity which the official serves, or any member of the official's staff when such staff member is lobbying on an occasional basis on behalf of the governmental agency or entity by which the staff member is employed.

- (2) Any person who is retained or employed for the purpose of representing an employer, principal or client only during a publicly noticed quasi-judicial hearing or comprehensive plan hearing, provided the person identifies the employer, principal or client at the hearing, and providing that the person is not otherwise registered as a lobbyist in the county's central lobbyist registration database, or with any municipal lobbyist registration system when that municipality has its own lobbyist registration process.
- (3) Any expert witness who is retained or employed by an employer, principal or client to provide only scientific, technical or other specialized information provided in agenda materials or testimony only in public hearings, so long as the expert identifies the employer, principal or client at the hearing.
- (4) Any person who lobbies only in his or her individual capacity for the purpose of self-representation and without compensation.
- (5) Any employee, contract employee, or independent contractor of the Palm Beach County League of Cities, Inc., lobbying on behalf of that entity.

Local Municipal Governing Body ~~will~~shall mean the councils and commissions of the municipalities located within Palm Beach County, Florida.

Member of Local Municipal Governing Body ~~will~~shall mean any member of the municipal council or commission.

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "employee" includes but is not limited to all managers, department heads and personnel of the county or the municipalities located within the county. The term also includes volunteers of the county or the municipalities located within the county when such volunteers exercise discretionary police, fire, or parking enforcement department authority contract personnel and contract administrators performing a government function, and ~~The term "employee" also includes the chief executive officer of the county or any municipality, who is not part of the local governing body. If the county or municipality utilizes and contracts for "privatized" chief administrative officers or chief executive officers, then the person providing such services, or the officers, directors and employees of any entity providing such services, shall be considered the employees of the county or municipality that they serve. However, it shall not include local government attorneys as defined in Florida Statutes § 112.313, or attorneys who render contracted services to the county or municipality that are limited in scope to a specific issue or subject, to specific litigation, or to a specific administrative proceeding.~~ The term "official" shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies, and members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.

Palm Beach County Commission on Ethics means the commission established in section 2-254 et seq. to administer and enforce the ethics regulations set forth herein, and may also be referred to as the "commission on ethics" in this article.

Persons and entities shall be defined to include all natural persons, firms, associations, joint ventures, partnerships, estates, trusts, business entities, syndicates, fiduciaries, corporations, and all other organizations.

Principal shall mean the person or entity a lobbyist represents, including a lobbyist's employer or client, for the purpose of lobbying.

Sec. 2-353. Registration and expenditures.

- (a) **Registration required.** Prior to lobbying, all lobbyists shall submit an original, fully executed registration form to county administration, which shall serve as the official location for countywide lobbyist registration and which shall be known as the "Central Lobbyist ~~Registration-Registry~~ Site Database." The registration

may be submitted in paper or electronic form pursuant to countywide policies and procedures. Each lobbyist is required to submit a separate registration for each principal represented. A registration fee of twenty-five dollars (\$25) must be included with each registration form submitted. A registrant, or principal who is represented by the registrant, shall promptly send a written statement to county administration canceling the registration for a principal upon termination of the lobbyist's representation of that principal. This statement shall be signed by the lobbyist or principal. Lobbying prior to registration is prohibited. It is the responsibility of the lobbyist to keep all information contained in the registration form current and up to date.

(b) Registration form. The registration form shall be prepared by county administration and shall require the following information:

- (1) the name, phone number and address of the lobbyist;
- (2) the name, phone number and address of the principal represented;
- (3) the date the lobbyist was initially retained by the principal;
- (4) the nature and extent of any direct business association or partnership the lobbyist and principal might have with any current county commissioner, member of a local municipal governing body, mayor or chief executive office that is not a member of a local municipal governing body, advisory board member, or employee;
- (5) the area of legislative interest;
- (6) a statement confirming that the registrant is authorized to represent the principal;
- (7) signatures of both the registrant and principal where such signatures may be made electronically pursuant to countywide policies and procedures; and
- (8) the county or municipalities to be lobbied.

(c) Registration exceptions. Registration shall not be required for the following:

- (1) Persons under contract with the county or municipalities as applicable who communicate with county commissioners, members of local municipal governing bodies, mayors or chief executive officers that are not members of a local municipal governing body, advisory board members or employees regarding issues related only to the performance of their services under their contract;
- (2) Any attorney representing a client in an active or imminent judicial proceeding, arbitration proceeding, mediation proceeding where a mediator is present, or formal administrative hearing conducted by an administrative law judge in the Division of Administrative Hearings, in which the county or municipality as applicable is a party, who communicates with county or municipal attorneys on issues related only to the subject matter of the judicial proceeding, arbitration proceeding, mediation proceeding, or formal administrative hearing. This exception to the registration requirement includes communications with other government officials and employees conducted during depositions, mediation, arbitration hearings or trial, judicial hearings or trial, and settlement negotiations for active litigation, so long as the county or municipal attorneys are present for those communications.

(d) Reporting of expenditures. Commencing ~~November 1, 2011~~January 1, 2020, and by ~~November 1~~February 1 of each year thereafter, all lobbyists shall submit to the Central Lobbyist ~~Registration-RegistrySite~~ a signed statement under oath listing all expenditures made by the lobbyist in lobbying county or municipal officials and employees in excess of twenty-five dollars (\$25) for the preceding ~~fiscal calendar~~calendar year, ~~commencing on~~

~~October 1 and ending on September 30.~~ A statement ~~shall not be required to be filed -be filed even-~~ if there have been no expenditures ~~in excess of twenty-five dollars (\$25)~~ during the reporting period. The statement shall list in detail each expenditure category, including food and beverage, entertainment, research, communications, media advertising, publications, travel, lodging and special events. Political contributions and expenditures which are reported under election laws as well as campaign-related personal services provided without compensation are excluded from the reporting requirements. A lobbyist or principal's salary, office overhead expenses and personal expenses for lodging, meals and travel also are excluded from the reporting requirements. Research is an office expense unless it is performed by independent contractors rather than by the lobbyist or the lobbyist's firm.

- (1) The county administrator of the Central Lobbyist ~~Registration-Registry Site~~ shall provide notice of violation to any lobbyist who fails to timely file an expenditure report ~~and shall also notify the county commission on ethics of this failure.~~ In addition to any other penalties which may be imposed under this article, any lobbyist who fails to file the required expenditure report within thirty (30) days of the date of notice of violation shall be suspended from lobbying unless the notice of violation has been appealed to the commission on ethics.

(e) False statements. A lobbyist shall not knowingly make, or cause to be made, a false statement or misrepresentation in maintaining registration or when lobbying county commissioners, members of local municipal governing bodies, mayors or chief executive officers that are not members of local municipal governing bodies, advisory board members, or employees.

(f) Existing County registrations. All registrations on file and in effect with the County before the effective date of this ordinance shall remain in full force and effect.

Sec. 2-354. Record of lobbying contacts.

(a) Contact log. Except when appearing before the board, local municipal governing body, or any advisory board, all persons shall sign, for each instance of lobbying, contact logs maintained and available in the office of reception of each department of county or municipal government as applicable. The person shall provide his or her name, whether or not the person is a lobbyist as defined in this article, the name of each principal, if any, represented in the course of the particular contact, and the subject matter of the lobbying contact. All contact logs shall be maintained by the County or municipality as applicable for a period of five (5) ~~fiscal~~ calendar years.

(b) Lobbying outside of county or municipal offices. In the event that a lobbyist engages in lobbying which is outside of county or municipal offices as applicable, and which is a scheduled appointment initiated by any person for the purpose of lobbying, the lobbyist shall advise in writing the commissioner's office, the member of a local municipal governing board's office, the mayor or chief executive officer's office, the advisory board member's office, or the employee's department office as appropriate of the calendar scheduling of an appointment and the subject matter of the lobbying contact.

Sec. 2-355. Cone of silence.

(a) **Cone of silence** means a prohibition on any communication, except for written correspondence, regarding a particular request for proposal, request for qualification, bid, or any other competitive solicitation between:

- (1) Any person or person's representative seeking an award from such competitive solicitation; and
- (2) Any county commissioner or commissioner's staff, any member of a local governing body or the member's staff, a mayor or chief executive officer that is not a member of a local governing body or the mayor or chief executive officer's staff, or any employee authorized to act on behalf of the commission or local governing body to award a particular contract.

- (b) For the purposes of this section, a person's representative shall include but not be limited to the person's employee, partner, officer, director, consultant, lobbyist, or any actual or potential subcontractor or consultant of the person.
- (c) The cone of silence shall be in effect as of the deadline to submit the proposal, bid, or other response to a competitive solicitation. The cone of silence applies to any person or person's representative who responds to a particular request for proposal, request for qualification, bid, or any other competitive solicitation, and shall remain in effect until such response is either rejected by the county or municipality as applicable or withdrawn by the person or person's representative. Each request for proposal, request for qualification, bid or any other competitive solicitation shall provide notice of cone of silence requirements and refer to this article.
- (d) The provisions of this article shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before selection committees, contract negotiations during any public meeting, presentations made to the board or local municipal governing body as applicable, and protest hearings. Further, the cone of silence shall not apply to contract negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence at any time with any employee, county commissioner, member of a local municipal governing body, mayor or chief executive officer that is not a member of the local municipal governing body, or advisory board member or selection committee member, unless specifically prohibited by the applicable competitive solicitation process.
- (e) The cone of silence shall not apply to any purchases made in an amount less than the competitive bid threshold set forth in the county purchasing ordinance (County Code, chapter 2, article III, division 2, part A, section 2-51 et seq.) or municipal ordinance as applicable.
- (f) The cone of silence shall terminate at the time the board, local municipal governing body, or a county or municipal department authorized to act on behalf of the board or local municipal governing body as applicable, awards or approves a contract, rejects all bids or responses, or otherwise takes ~~action~~ which action that ends the solicitation process.
- (g) Any contract entered into in violation of the cone of silence provisions in this section shall render the transaction voidable.

Sec. 2-356. Enforcement.

- (a) If the county administrator or municipal administrator as applicable is informed of any person who has failed to comply with the requirements of this article, he or she shall conduct a preliminary investigation as deemed necessary under the circumstances. In the event the county administrator or municipal administrator as applicable determines that a violation may have occurred based on the results of the investigation, the county administrator or municipal administrator as applicable shall forward the matter to the county commission on ethics for further investigation and enforcement proceeding as set forth in article XIII of this chapter, the countywide code of ethics. For the purposes of further investigation and enforcement by the commission on ethics, a complaint submitted under this subsection by the county administrator or municipal administrator shall be deemed legally sufficient.
- (b) The commission on ethics may process any other legally sufficient complaints of violations under this article pursuant to the procedures established in article XIII of this chapter.

Sec. 2-357. Penalties.

Violations of this article shall be punishable as follows:

- (1) Failure to properly register as required by section 3-353 of this article shall be deemed a single violation,

punishable by a fine of two hundred fifty dollars (\$250) per day for each day an unregistered lobbyist engages in lobbying activity, in an amount not to exceed a total of two thousand five hundred dollars (\$2,500).

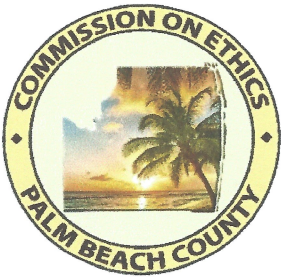
- (2) Failure to properly provide lobbying contact information as required by section 2-354 of this article shall be punishable by a fine of two hundred fifty dollars (\$250) for each violation.
- (3) Violations of the cone of silence set forth in section 2-355 of this article shall be punishable by a fine of two hundred fifty dollars (\$250) for each violation.
- (4) Any person who knowingly makes or causes to be made a false statement or misrepresentation in maintaining a lobbyist registration shall be subject to a fine of two hundred fifty dollars (\$250) for each violation.

(5) Any person who violates the provisions of this article regarding yearly reporting of expenditures as required shall result in a suspension of lobbying activity until such time as the required expenditure report is filed. A first violation shall also include a suspension of all lobbying activity for an additional 90 days beyond the point the expenditure report is filed. A second violation shall result in a suspension from lobbying for an additional 180 days; three or more violations shall result in suspensions from lobbying for an additional 365 for each violation. Three or more violations shall result in a permanent suspension from lobbying; a petition for reinstatement may be filed with the commission on ethics 365 days after permanent suspension is ordered.

(5)(6) A violation of any provisions of this article not related to expenditure reporting more than once during a twelve-month period shall result in being ~~be~~ prohibited from lobbying as follows: A second violation shall result in a prohibition of one (1) year; a third violation shall result in a prohibition of two (2) years.

(6)(7) The penalties provided in this section shall be exclusive penalties imposed for any violation of the registration, contact log, and cone of silence requirements of this article. Willful and knowing violations of this article shall be referred by the commission on ethics to the state attorney for prosecution in the same manner as a first degree misdemeanor pursuant to Florida Statutes, §125.69. Failure or refusal of any lobbyist to comply with any order of the commission on ethics shall be punishable as provided by law, and shall otherwise be subject to such civil remedies as the county or municipality as applicable may pursue, including injunctive relief.

Secs. 2-358—2-370. Reserved



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July 30, 2020

Ryan Boylston, Vice Mayor
City of Delray Beach
100 NW First Avenue
Delray Beach, FL 33444

Re: RQO 20-007
Conflict of Interest

Dear Vice Mayor Boylston,

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 participating in discussions and voting on a matter involving an investor in 88 Napkins, LLC, where 88 Napkins is a client of a company that has an ownership interest in your outside business?

FACTS:

You are the vice mayor of the city of Delray Beach. As a city official, you also serve as a member of the city's Community Redevelopment Agency. In your private capacity, you own Palm Beach Agency LLC, a marketing agency. A separate company, Levatas LABS LLC, is a substantial investor in Palm Beach Agency LLC. The investors from Levatas LABS have a five percent or more ownership interest in your company and are members of its board. Three of the individual investors in Levatas LABS are also either employees or investors in another company, Levatas LLC.

A separate company, 88 Napkins, LLC is a client of Levatas LLC. One of 88 Napkins' investors is likely to be involved in an upcoming solicitation that will come before either the Community Redevelopment Agency or the city. The 88 Napkins investor does not have an ownership interest in Levatas LABS, Levatas LLC, or Palm Beach Agency LLC. None of the investors in Levatas LABS or Levatas, LLC have an ownership interest in 88 Napkins, LLC.

You do not have an ownership interest in Levatas LABS, Levatas LLC, or 88 Napkins, LLC.

ANSWER:

Under the Code, as an elected official, you are prohibited from using your official position in any way to give a special financial benefit to yourself, your outside business or to anyone who works for that business, or a customer or client of your outside business.¹ Similarly, you must also abstain from both participating

¹ Sec. 2-443(a), Misuse of public office or employment

in and voting on a matter that would give a special financial benefit to yourself, your outside business or to anyone who works for that business, or a customer or client of your outside business.²

Based on the facts provided, 88 Napkins, LLC is only a customer or client of Levatas LABS and Levatas LLC. Because you do not have an ownership interest in Levatas LABS or Levatas LLC, 88 Napkins is not a customer or client of you or Palm Beach Agency LLC. As such, there is not a sufficient nexus between 88 Napkins, LLC and you or Palm Beach Agency LLC to prohibit a vote by you regarding the solicitation involving the investor in 88 Napkins, LLC. Similarly, because this 88 Napkins investor does not have an ownership interest in Levatas LABS or Levatas LLC, there also is not a sufficient nexus between the investor in Napkins 88, LLC and you or Palm Beach Agency LLC which would prohibit a vote by you in this matter. Therefore, based on the facts provided, you are not prohibited from voting on or participating in this matter as long as Levatas LLC, Levatas LABS, or the investors in those companies are not involved with this upcoming solicitation.

Although the Code does not prohibit you from participating in and vote on this matter, you are reminded that you must also ensure that you do not use your official position to corruptly secure or attempt to secure a special privilege, benefit or exemption for yourself or anyone else, and that you do not vote on any matter in exchange for any quid pro quo or other special consideration.³

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:
- (1) Himself or herself;
 - (4) An outside employer or business of his or hers...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

² Sec. 2-443(c), Disclosure of voting conflicts

³ Sec. 2-443(b); Sec. 2-444(e)

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....

Sec. 2-444. Gift law.

- (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.

This opinion construes the Palm Beach County Code of Ethics 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. 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.

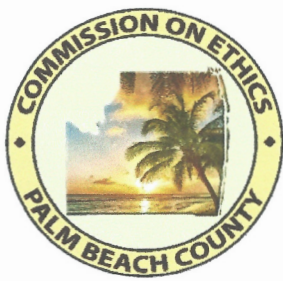
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

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July 17, 2020

Mr. Paul E. Petrino, Manager
Medical Examiner Operations
Palm Beach County Medical Examiner's Office
3126 Gun Club Road
West Palm Beach, FL 33406

Re: RQO 20-008
Gift law

Dear Mr. Petrino,

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

QUESTION:

Does the Palm Beach County Code of Ethics (Code) prohibit the Medical Examiner's Office from accepting the donation of furniture from a local business who is not a vendor, lobbyist, or a principal or employer of a lobbyist who lobbies Palm Beach County?

FACTS:

You are the Manager of Medical Examiner Operations for the Palm Beach County Medical Examiner's Office. A local business is vacating office space in Boca Raton, and they have surplus furniture, which they are eliminating without cost from their inventory. One of the investigators for the Medical Examiner's Office is married to an employee at this company, and the business has offered to donate the surplus furniture to your office. The business is not a vendor, lobbyist, or principal or employer of a lobbyist who lobbies Palm Beach County. Neither Palm Beach County nor the Medical Examiner's Office have a relationship with this business. They have offered this furniture as a kind gesture with no considerations or quid pro quo attached. The items being considered are a desk, office chair, and credenza. This office furniture would be used at the Medical Examiner's Office in conducting official business.

ANSWER:

The Code defines a "gift" as the transfer of anything of economic value without adequate and lawful consideration.¹ The Code prohibits any person or entity from offering or giving any gift to any public official or employee in return for any public action or legal duty as a quid pro quo for the gift.² You are aware of this prohibition, and you stated that the donation is not in exchange for any quid pro quo or special consideration. The Code also prohibits public officials and employees from accepting gifts valued in excess of \$100, annually in the aggregate, from vendors, lobbyists, principals or employers of lobbyists who lobby, sell or lease to their public employer.³

Based on the facts provided, because the furniture is not being donated in exchange for any quid pro quo or special consideration and the donor is not a vendor, lobbyist, or principal or employer of a lobbyist who lobbies the county,

¹ §2-444(g)

² §2-444(e)(1, 2 & 3)

³ §2-444(a)(1)

the Code does not prohibit employees in the Medical Examiner's Office from accepting a donation of furniture from the local business even if the value of the furniture exceeds \$100.

The next issues that need to be addressed is whether the employees who received the office furniture must report it as a gift because the Code requires that gifts from a non-prohibited source with a value over \$100 must be reported.⁴ However, the Code specifically exempts gifts accepted by public officials or employees on behalf of their government which will be used solely by the county for a public purpose.⁵ Whether the office furniture meets the definition of a public purpose must be determined by the administration or by the board of county commissioners.⁶ Here, as long as the Medical Examiner's Office administration determines that the use of the furniture would be for a public purpose because it would be used in conducting official county business, then the donation of the office furniture would not be considered a gift to employees who receive it, and they would not have to report it on a gift form.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-444(a)(1), §2-444(e), §2-444(f), and §2-444(g)(1)e. of the Code:

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.
- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
 - (1) Gift reports for officials and employees identified by state law as reporting individuals. Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. When a state reporting individual files a gift report with the state, a copy of each report shall also be filed contemporaneously with the county commission on ethics
 - (2) All other officials and employees who are not reporting individuals under state law.
 - a. Personal gifts. All officials and employees who are not reporting individuals under state law are not required to report gifts in excess of one hundred dollars (\$100) so long as those gifts are given to the official or employee by a personal friend or co-worker and the circumstances demonstrate that the motivation for the gift was the personal or social relationship rather than an attempt to obtain the goodwill or otherwise influence the official or employee in the performance of his or her official duties. Factors to be considered in determining whether a gift was motivated by a personal or social relationship may include but shall not be limited to: whether the relationship began before or after the official or employee obtained his or her office or position; the prior history of gift giving between the individuals; whether the gift was given in connection with a holiday or other special occasion; whether the donor personally paid for the gift or sought a tax deduction or business reimbursement; and whether the donor gave similar gifts to other officials or employees at or near the same time. If the personal friend or co-worker is a vendor, lobbyist or principal or employer of a lobbyist that lobbies the

⁴ §2-444(f)

⁵ §2-444(g)(1)e.

⁶ RQO 15-009; RQO 12-062; RQO 12-044; RQO 11-084

county or municipality as applicable, then the official or employee shall not accept a gift in excess of one hundred dollars (\$100) in accordance with subsections (a)(1) and (b)(1).

- b. All other gifts. All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics no later than November 1 of each year beginning November 1, 2011, for the period ending September 30 of each year. All officials or employees who are not reporting individuals under state law and who do not receive a gift in excess of one hundred dollars (\$100) during a given reporting period shall not file an annual gift disclosure report. The annual gift disclosure report shall be created by the county commission on ethics and shall be in a form substantially similar in content as that required by state law.

- (g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration.

- (1) Exceptions. The provisions of subsection (g) shall not apply to:

- e. Gifts solicited or accepted by county or municipal officials or employees as applicable on behalf of the county or municipality in performance of their official duties for use solely by the county or municipality for a public purpose;

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 it 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

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Executive Director

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July 24, 2020

Ms. Denise Coffman, Esquire
Deputy County Attorney, Palm Beach County
301 N Olive Ave, 6th Floor
West Palm Beach, FL 33401

Re: RQO 20-009
Conflict of Interest

Dear Ms. Coffman,

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 participation on the Palm Beach County Fair Housing Board (FHB) by a member who works as an attorney in his private capacity violate the Palm Beach County Code of Ethics (Code) where he represents various communities that have fair housing complaints filed against them which may come before the FHB?

FACTS:

You are the Deputy County Attorney and are requesting this opinion on behalf of Pamela Guerrier, Director of the Office of Equal Opportunity (OEO).

The OEO promotes a discrimination free quality of life for Palm Beach County residents through educating and advocating a policy of nondiscrimination and enforcement of local, state and federal civil rights laws. The initial process is that a complaint is filed with the OEO who assigns a staff investigator to conduct an investigation. At the conclusion of the investigation, the director of OEO determines whether there is reasonable cause to believe the Fair Housing Act and/or the Palm Beach County Code, Article III, Section 15-36, et seq. has been violated. If the OEO director finds reasonable cause to believe that a violation has occurred, the parties are informed that the complaint may be heard before the County's FHB or in civil court as part of the enforcement process. If the FHB finds that a discriminatory practice has occurred or is about to occur, it shall issue an order prohibiting the practice and awarding affirmative relief from the effects of the practice, including actual damages and reasonable attorney's fees and costs, and other injunctive or equitable relief. In addition, to vindicate the public interest, the FHB may assess civil penalties against the respondent that shall be paid to the general fund of the Palm Beach County Board of County Commissioners (BCC).

The FHB is composed of nine citizens of the county appointed by the BCC pursuant to Section 15-39, Palm Beach County Code. Seven of the nine are made as district appointments and two are at large appointments by the BCC. Each district appointee serves at the pleasure of the appointing Commissioner and may be removed without cause by the appointing Commissioner at any time, and at large appointees may be removed without cause by a majority vote of the BCC at any time. Members shall comply with the applicable provisions of the Code, as codified in Section 2-441 through 2-448, and the State Code of Ethics. Abstention from voting due to a conflict of interest on more than three separate matters during a calendar year shall result in automatic removal.

A member of the FHB is an attorney who also represents various communities regarding homeowner issues and defends fair housing and other complaints filed against them. Ms. Jane Doe (Name withheld to preserve confidentiality) lives in a housing community represented by the attorney, and she would like to file a discrimination complaint against the community represented by the attorney.

The OEO's director determines if there is reasonable cause to believe that a violation has occurred and the attorney, as a member of the FHB, has no role in that determination. The attorney would be required to abstain from participation in the hearing as a board member or as the attorney for the housing community of the case if it proceeds to presentation to the FHB.

ANSWER:

Under the Code, officials must abstain from both participating in and voting on a matter that would give a special financial benefit to a customer or client of their outside business or employer.¹ The Code defines a customer or client as any person or entity to which the official's outside employer or business has supplied services in excess of \$10,000 during the previous 24 months.² Financial benefit, in the context of the Code, constitutes economic gain or loss.³

Based on the facts provided, if the board member's law firm has supplied services in excess of \$10,000 to the housing communities during the previous 24 months, then they are considered customers or clients of his law firm, and he would be prohibited from voting on or participating in any matter that would give a special financial benefit to these customers or clients. The next issue to address is whether a special financial benefit is involved. Here, because the FHB has the authority to award damages and other civil penalties if they determine that a discriminatory action occurred, a financial benefit to the clients of this FHB member would be involved. Therefore, the FHB member would not only be prohibited from participating in any discussions on a fair housing complaint involving a customer or client of his law firm, but he would also be prohibited from voting on that matter as well. He would also be required to disclose the nature of his conflict before the board discusses the issue, and he must file a state voting conflict form (8B) with the clerk of the FHB and also submit a copy to the COE.

Further, the board member is also prohibited from using his official position as a member of the FHB to give a special financial benefit, not shared with similarly situated members of the general public, to the customers or clients of his law firm or to corruptly secure a special benefit for them.⁴ Although the FHB members are not involved in the investigation or the determination of probable cause, the board member must ensure that he does not influence the process in any way. This includes interfering with or attempting to influence the investigation by OEO staff or the determination of probable cause by the OEO director in any way. As long as the board member does not interfere with or attempt to influence the investigation or the determination of probable cause, the Code does not prohibit him from serving as a member of the FHB while the investigation occurs and the OEO Director determines whether there is reasonable cause to believe a violation occurred.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-442, §2-443(a), §2-443(b), 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).

¹ Sec. 2-443(c), Disclosure of voting conflicts

² Sec. 2-442, Definitions

³ RQO 10-013

⁴ Sec. 2-443(a), Misuse of public office or employment; Sec. 2-443(b), Corrupt misuse of official position

Financial benefit includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value. This term does not include campaign contributions authorized by law.

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...
- (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....

This opinion construes the Palm Beach County Code of Ethics 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. It is not applicable to any conflict under state law or rules regulating the Florida Bar. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics. Inquiries regarding Florida Bar Rules Regulating Professional Conduct should be directed to the Florida Bar.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon
Executive Director

CEK/gal