



Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

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Commissioners

Rodney G. Romano

Michael H. Kugler

Peter L. Cruise

Michael S. Kridel

Danielle Sherriff

Executive Director

Christie E. Kelley

General Counsel

Rhonda Giger

Intake and Compliance Manager

Gina A. Levesque

Investigator

Mark A. Higgs

Investigator

Abigail Irizarry

Agenda

July 7, 2022 – 1:30 p.m.

Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

- I. Call to Order
- II. Pledge of Allegiance
- III. Introductory Remarks
- IV. Swearing-in of Danielle Sherriff, by Chief Judge Glenn D. Kelley, 15th Judicial Circuit of Florida, to complete the term of Carol E.A. DeGraffenreidt, which ends 2/28/2024 (appointed by the Palm Beach County Association of Chiefs of Police)
- V. Roll Call
- VI. Approval of Minutes
 - a. April 7, 2022
 - b. May 5, 2022
- VII. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 22-011
 - b. RQO 22-012
 - c. RQO 22-013
 - d. RQO 22-014
 - e. RQO 22-015
- VIII. Items Pulled from Consent Agenda
 - a.
- IX. Executive Director Comments
- X. Commission Comments
- XI. Public Comments
- XII. Adjournment

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

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

April 7, 2022

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

**COMMISSION CHAMBERS
WEISMAN GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Peter L. Cruise
Carol E. A. DeGraffenreidt – via teleconference
Michael H. Kugler, Vice Chair
Rodney G. Romano, Chair

STAFF:

Gina A. Levesque, COE Intake and Compliance Manager

ADMINISTRATIVE STAFF:

Julie Burns, Deputy Clerk, Clerk of the Circuit Court & Comptroller's Office

MOTION to allow Commissioner DeGraffenreidt to attend the meeting telephonically. Motion by Vice Chair Kugler, seconded by Commissioner Cruise, and carried 3-0. Commissioner DeGraffenreidt abstained.

III. INTRODUCTORY REMARKS

Commissioner DeGraffenreidt thanked the board members for allowing her to participate in the proceedings telephonically.

Chair Romano stated that the pledge of allegiance would be incorporated into the COE meetings going forward.

IV. APPROVAL OF MINUTES FROM FEBURUARY 3, 2022

MOTION to approve the minutes from November 2021, December 2021, and January 2022. Motion by Vice Chair Kugler, seconded by Commissioner Cruise, and carried 4-0.

(CLERK'S NOTE: The dates of the minutes to be approved were inadvertently stated incorrectly.)

MOTION to approve all past minutes listed in Item IV. Motion by Commissioner Cruise, seconded by Commissioner DeGraffenreidt, and carried 4-0.

(CLERK'S NOTE: Chair Romano noted that the vote to approve past minutes encompassed Items IV and V.)

V. APPROVAL OF MINUTES FROM MARCH 10, 2022

See Item IV.

RECESS

At 1:34 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 1:58 p.m., the meeting reconvened with Chair Romano, Vice Chair Kugler, Commissioner Cruise, and Commissioner DeGraffenreidt present.

VI. EXECUTIVE SESSION

a. C22-002

Vice Chair Kugler read the following into the record regarding Palm Beach County COE, *In Re: Juli Casale*, Public Report and Final Order of Dismissal:

Complainant, Charles G. Halberg, filed the above referenced complaint on December 20, 2021, alleging Respondent, Juli Casale, violated §2-443(a), Misuse of public office or employment, and §2-443(b), Corrupt misuse of official position, of the Palm Beach County Code of Ethics by using her position on the City of Delray Beach Community Redevelopment Agency (CRA) to attempt to have the approval of funding for his client contingent on Complainant ceasing all criticism of the CRA online.

Pursuant to §2-258(a)1 of the Palm Beach County Commission on Ethics Ordinance, the Palm Beach County Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. On April 7, 2022, the Commission conducted a hearing and reviewed the Report of Investigation and the Probable Cause Recommendation submitted by the COE Advocate. After an oral statement by the Advocate [and Respondent], the Commission concluded that probable cause does not exist because there was no evidence that Respondent's actions violated the Palm Beach County Code of Ethics.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Juli Casale, is hereby DISMISSED.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on April 7, 2022.

By: Rodney Romano, Chair

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

a. RQO 22-004

MOTION to approve the consent agenda. Motion by Commissioner Cruise, seconded by Vice Chair Kugler, and carried 4-0.

VIII. ITEMS PULLED FROM CONSENT AGENDA – None

IX. EXECUTIVE DIRECTOR COMMENTS

Gina Levesque, COE Intake and Compliance Manager, provided some brief updates on behalf of COE Director III Christie Kelley, who was not in attendance. The following points were made:

A.

DISCUSSED: General Counsel Interview Process

Ms. Levesque indicated that the interview process was coming to a close and that the general counsel position would be filled soon.

B.

DISCUSSED: Supplemental Budget Request

Ms. Levesque stated that a supplemental budget request for the following year's budget had been submitted for a COE community outreach and marketing coordinator.

C.

DISCUSSED: Ordinance Review Committee

Ms. Levesque reported that the Ordinance Review Committee was scheduled to meet on Wednesday, April 13, 2022, to review the language that the commission had approved the prior month to replace the Palm Beach chapter of the Florida Institute of CPAs as an appointing entity. Once the final version of the language had been approved by the committee, it would be sent to the Board of County Commissioners for adoption.

X. COMMISSION COMMENTS

A.

DISCUSSED: Port of Palm Beach

Commissioner Cruise indicated that the Port of Palm Beach was not covered under the ethics ordinance and was therefore not under the jurisdiction of the COE.

Ms. Levesque explained that the Port of Palm Beach was an independent constitutional office over which the COE had no authority.

XI. PUBLIC COMMENTS – None

XII. ADJOURNMENT

At 2:04 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

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

May 5, 2022

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

**COMMISSION CHAMBERS
WEISMAN GOVERNMENTAL CENTER**

MEMBERS:

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

STAFF:

Christie E. Kelley, COE Director III
Gina A. Levesque, COE Intake and Compliance Manager
Mark A. Higgs, COE Investigator II
Abigail Irizarry, COE Investigator II

ADMINISTRATIVE STAFF:

Danielle Freeman, Deputy Clerk, Clerk of the Circuit Court & Comptroller's Office
Jillian Zalewska, Senior Board Meetings Specialist, Clerk's Office

I. CALL TO ORDER

The chair called the meeting to order at 1:30 p.m.

II. ROLL CALL

Present Chair Rodney Romano, Vice Chair Michael Kugler, and
Commissioner Peter Cruise

Absent Commissioner Carol DeGraffenreidt

III. INTRODUCTORY REMARKS

There were no introductory remarks.

**MOTION to recess for the executive session. Motion by Commissioner Cruise,
seconded by Vice Chair Kugler, and carried 3-0.**

COE Director III Christie E. Kelley introduced Rhonda Giger, who was scheduled to begin serving as COE general counsel on Monday, May 9, 2022.

RECESS

At 1:31 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 2:12 p.m., the meeting reconvened with Chair Romano, Vice Chair Kugler, and Commissioner Cruise present.

IV. EXECUTIVE SESSION C22-001

Vice Chair Kugler read the following into the record regarding Palm Beach County COE, *In Re: Shirley Johnson*, Public Report and Final Order of Dismissal:

Complainant, Charles G. Halberg, filed the above referenced complaint on December 20, 2021, alleging Respondent, Shirley Johnson, violated §2-443(b), Corrupt misuse of official position, of the Palm Beach County Code of Ethics by using her position on the City of Delray Beach Community Redevelopment Agency (CRA) to attempt to have the approval of funding for Complainant's client contingent on Complainant ceasing all criticism of the CRA online.

Pursuant to §2-258(a)1 of the Palm Beach County Commission on Ethics Ordinance, the Palm Beach County Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. On May 5, 2022, the Commission conducted a hearing and reviewed the Report of Investigation, the Probable Cause Recommendation, and the Negotiated Settlement Agreement submitted by the COE Advocate and Respondent. After an oral statement by the Advocate, Respondent, and Respondent's counsel, the Commission issued a Letter of Instruction pursuant to Section 2-260.3 of the Commission on Ethics Ordinance after determining that the violation was unintentional, inadvertent, or insubstantial.

Therefore it is:

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

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on May 5, 2022.

By: Rodney G. Romano, Chair

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

a. RQO 22-005

b. RQO 22-007

VI. ITEMS PULLED FROM CONSENT AGENDA

No items were pulled from the consent agenda.

MOTION to approve the consent agenda as published. Motion by Commissioner Cruise, seconded by Vice Chair Kugler, and carried 3-0.

VII. EXECUTIVE DIRECTOR COMMENTS

The following items were discussed:

- A.** Ms. Kelley had a meeting with County Administrator Verdenia Baker and the Office of Financial Management & Budget (OFMB) team to discuss the COE request for an education position to be included in the annual budget for fiscal year 2023. The COE's strategic plan was discussed and was found to be in alignment with the County's goals and strategic priorities. Ms. Kelley said that a decision on funding the position would be made once Ms. Baker had reviewed all budget requests and evaluated the needs of the County.
- B.** On Wednesday, April 13, 2022, the Ordinance Review Committee had approved the COE's suggested changes to the language of the COE ordinance regarding the appointing entities. On Tuesday, May 3, 2022, the Board of County Commissioners (BCC) had voted to approve the preliminary reading of the changes to the COE ordinance. Public hearing for the ordinance changes was scheduled for May 17, 2022, and the COE hoped to have the new ordinance go into effect on June 1, 2022.
- C.** Investigator Abigail Irizarry had been conducting code of ethics compliance training reviews in the municipalities. Ms. Kelley congratulated the Village of Wellington and the Village of Royal Palm Beach for 100 percent compliance in the training of all employees and elected or appointed officials; the City of Atlantis for 100 percent compliance by all employees; and the City of Belle Glade and the City of Boca Raton for 100 percent compliance by all of their elected and appointed officials.
- D.** Ms. Kelley thanked the COE Intake and Compliance Manager Gina Levesque for ensuring that the prior month's COE meeting had proceeded smoothly when Ms. Levesque had been the only staff member to attend.

VIII. COMMISSION COMMENTS

There were no commissioner comments.

IX. PUBLIC COMMENTS

There were no public comments.

X. ADJOURNMENT

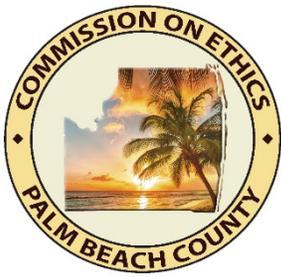
MOTION to adjourn. Motion by Vice Chair Kugler, seconded by Commissioner Cruise, and carried 3-0.

At 2:17 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

Palm Beach County Commission on Ethics



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Commissioners

Rodney G. Romano, Chair
Michael H. Kugler, Vice Chair
Michael S. Kridel
Peter L. Cruise
Vacant

Executive Director

Christie E. Kelley

June 21, 2022

Ms. Phillis Maniglia, Council Member
Town of Loxahatchee Groves
P.O. Box 13
Loxahatchee Groves, FL 33470

Re: RQO 22-011

Dear Ms. Maniglia,

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:

May Loxahatchee Groves (Town) councilmembers hold private events to raise money, including the solicitation of donations, to benefit, for example, a town scholarship fund and/or Project 425?¹

BRIEF ANSWER:

Within the noted parameters, the Palm Beach County Code of Ethics (Code) does not prohibit councilmembers from raising or soliciting money for charitable causes.²

FACTS:

In general, the COE does not render opinions related to events that have already occurred. Here, the original question seemed to be general in nature, but specific examples of past events were provided. The details of the events are described below, based on provided documentation, to provide a guideline and to show the facts upon which this opinion is based. In the future, a proactive approach is preferred, and the COE recommends that any questions be presented prior to a charitable event's occurrence.

The Town offers multiple \$1,000 scholarships to local high school graduates who will be attending college, vocational, or technical schools.³ This appears to be an annual award, thus the COE anticipates there will be future fundraising for this fund. Additionally, at least one council member supports Project 425, which is a self-funded local group dedicated to the preservation of military vehicles and aircraft. Because two of the events described in this opinion support this organization, the COE assumes, for purposes of clarity, that there will be continued support with similar fundraising efforts.

You provided three different past events as examples. One was a trail ride held to benefit both of the noted entities. It was posted on Facebook under a group called "Trail Riding Friends." One comment referenced a raffle and requested anyone attending to RSVP. This comment came from "Rober Shorr" (sic) and stated that the event was a fundraiser for the Town scholarship fund and Project 425. After viewing the Facebook page of "Rober Shorr" (sic), it appears that this is the account of Mayor Robert Shorr as the page header says "Mayor of Loxahatchee Groves." No other information was provided regarding this event.

¹ Both of these appear to be charitable events that benefit specific causes, but are not non-profit organizations.

² The specified events are used as examples based on the information provided. This opinion assumes that future charitable events will be of a similar nature.

³ No information was provided regarding the parameters of this fund. The requirements for 2021 were located online, and the above information is based upon that documentation.

The next event was a treasure hunt. This event was posted on Facebook in the feed of a group called "Town of Loxahatchee Groves (unofficial/non moderated)." The posting party appears to be Laura Danowski, who is a Town Council Member. The entry fee was \$50 per team and the post indicated that "all funds go to the Loxahatchee Scholarship Fund." This event mentioned breakfast, lunch, raffle, and prizes, but it is unclear whether those were included with the entry fee. A later post on the same page noted that the event raised \$700. This appears to coincide with the amount presented to the Town by Councilmember Danowski at the Town council meeting on May 17, 2022.

The final event was a poker run. This event was promoted in a Facebook post by Linda Rainbolt on December 30, 2021. The entry for this event was \$40. This included drinks, BBQ, and live music. Also available were "goodie bags and raffle items." It is unknown if these were included in the entry fee. The posting indicated that the event was to benefit Project 425 and the Loxahatchee Groves Scholarship Fund. It is unknown specifically how this is related to the Town Council; however, the telephone number contained in the post for RSVPs or information is the same as the telephone number associated with the trail ride, so it appears that Mayor Shorr is also associated in some way with this event.

It is unknown who attended these events as well as who donated to support these events. There is nothing in the facts submitted to indicate that any of the money obtained during these fundraisers was not donated as promised in the promotional posts.

ANSWER:

Section 2-444(a)(1) of the Code prohibits Town officials from soliciting or accepting over \$100, in the aggregate per calendar year, from any Town vendor or lobbyist or principal or employer of a lobbyist who lobbies the Town. The Code does not prohibit Town officials from soliciting or accepting donations of any amount for charitable causes from persons and/or entities who are not Town vendors or lobbyists or principals or employers of lobbyists who lobby the Town, as long as there is no quid pro quo or other benefit given for an official act or the past, present, or future performance of a public duty.

When Town officials participate in soliciting donations for charitable events, attention must be paid to the status of the charity or whether any vendors, lobbyists, or principals or employers of lobbyists who sell, lease, or lobby the Town are being solicited or making donations and. Section 2-444(h), Solicitation of contributions on behalf of a non-profit charitable organization, provides an exception for soliciting or accepting donations on behalf of a non-profit charitable organization from a Town vendor or a lobbyist or principal or employer of a lobbyist who lobbies the Town.

Where an organization is a non-profit charitable organization, as defined under the Internal Revenue Code, the solicitation or acceptance of a donation of over \$100 by a vendor, lobbyist, or principal or employer of a lobbyist who sells, leases, or lobbies the Town would then be permissible with certain requirements. Section 2-444(h) permits the solicitation and acceptance funds for a non-profit charitable organization from a Town vendor or a lobbyist or principal or employer of a lobbyist who lobbies the Town provided there is no quid pro quo or other special consideration given. Additionally, a record of any solicitations or any donations from any Town vendor or a lobbyist or principal or employer of a lobbyist who lobbies the Town must be maintained and submitted to the COE within 30 days of the event or if not solicited or donated for an event, then within 30 days of the solicitation or donation.⁴

However, using the past events as a guideline, considering that neither of the listed charitable recipients is a registered non-profit charity, Town officials would be prohibited from soliciting or accepting donations that exceed \$100 from vendors, lobbyists, or principals or employers of lobbyists who sell, lease, or lobby the Town, unless an exception in Section 2-444(g) applies. Town officials may still solicit and/or accept donations in any amount from other persons or entities, who do not fall into the above vendor or lobbyist category.

⁴ §2-444(h)(2), Solicitation of contributions on behalf of a non-profit charitable organization.

Further, although the Code generally prohibits the solicitation or acceptance of any gift that is valued over \$100, from any person or entity that is a vendor, lobbyist, principal or employer of a lobbyist, there is an exception in the Code for gifts that are solicited or accepted by Town officials in performance of their official duties on behalf of the Town for use solely by the Town for a public purpose. For example, this exception would apply to the Town's scholarship fund if it is determined to have a public purpose. Therefore, before Town officials solicit or accept any donations, the Town Council must make a determination that the scholarship fund is for a public purpose. If the scholarship fund is determined to have a public purpose, then Town officials would not be prohibited from soliciting and accepting donations over \$100 for the fund from Town vendors or from lobbyists or principals or employers of lobbyists who lobby the Town as long as the donor does not receive any unlawful quid pro quo in exchange for providing such a donation.

In addition, you are reminded that public officials are prohibited from using their official positions to give a special financial benefit to any organization of which they, or their spouse, are an officer or director. Lending their name and official title to a fundraising effort for such an organization would, per se, constitute using their elected office to give a special financial benefit to that organization. In order to use their official title to solicit donations on behalf of such an organization, they would need to resign their position with the charity. In the alternative, should they remain as an officer or director, any solicitation would need to be in their name only without reference to their public title. This prohibition applies directly to them, as well as to anyone indirectly soliciting on their behalf.

IN SUM, under the circumstances provided, councilmembers of the Town are allowed to solicit donations for charitable causes. The Code does not prohibit the solicitation of donations - in any amount - from a person or entity that is not a Town vendor, lobbyist, or principal or employer of a lobbyist for the stated purpose. However, no solicitation may be made, or donation accepted from any person or entity based on any official quid pro quo or the past, present or future performance or non-performance of any of any public action or legal duty. Finally, councilmembers may not solicit or accept donations valued at greater than \$100 from vendors of the Town or from lobbyists or principals or employers of lobbyists that lobby the Town unless the benefitting charity meets the Internal Revenue Code's definition of a non-profit charitable organization or an exception in Section 2-444(g) applies.

LEGAL BASIS:

The legal basis for this opinion is found in §2-442, §2-443(a)(7), §2-444(a)(1), §2-444(e), and §2-444(h) of the Code:

Sec. 2-442. Definitions.

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. 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.

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:

(7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

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.
- (g) Exceptions. For the purposes of this section, the following shall not be considered a gift:
- (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;
- (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

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted but assumes they are true for purposes of this advisory opinion. This opinion is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

Sincerely,



Christie E. Kelley
Executive Director

RG/gal



Palm Beach County Commission on Ethics

Commissioners

Rodney G. Romano, Chair
Michael H. Kugler, Vice Chair
Michael S. Kridel
Peter L. Cruise
Vacant

Executive Director

Christie E. Kelley

Honesty - Integrity - Character

June 1, 2022

Mr. Darnell Gardener, CIPS
1st Source Realty
3481 Briar Bay Blvd.
West Palm Beach, FL 33411

Re: RQO 22-012
Advisory Board Member Conflict

Dear Mr. Gardener,

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:

As a realtor and appointed member of the Impact Fee Review Committee (IFRC), are you prohibited from representing a buyer who may petition Palm Beach County (County) and/or the city of West Palm Beach (City) for gap funding to complete a property purchase? If you are not prohibited, are you required to disclose your membership on the IFRC to the parties involved in the purchase and sale?

BRIEF ANSWER:

In your capacity as a real estate broker and member of the IFRC, you are not prohibited from representing a purchaser who is seeking gap funding from the County and/or the City.

FACTS:

You are a recently appointed member of the IFRC. You are also employed by 1st Source Realty as a real estate and mortgage broker working within the County. In your capacity as a realtor, you are representing a property buyer who needs additional funding. The buyer is applying to the County and/or the City to obtain gap funding for a portion of the purchase price. You are not assisting them in their efforts to obtain the gap funding and are not participating in that process.

The IFRC is comprised of 7 members and is appointed by the Palm Beach County Board of County Commissioners (BCC). The IFRC holds meetings at its discretion, typically two or three a year. The main function of the IFRC is to submit a report to the BCC whenever the County conducts a full review or an update of the impact fee system. Impact fees are fees assessed against new development that are used to provide capital facilities, such as roads, schools, and parks, that are demanded by growth in Palm Beach County. While the IFRC is also tasked with performing "other duties as the BCC deems appropriate", a review of both the county code and prior IFRC meetings, confirms that there is an accepted understanding that the IFRC's role is purely advisory. The IFRC does not participate in selecting recipients of the gap funding from the County.

ANSWER:

As a member of the IFRC, you would be considered an official under the Code.¹ The Code prohibits officials from using their official positions in any way, including influencing others to take some action, to give a

¹ §2-442, Definitions

special financial benefit to specified persons or entities, including to themselves, their outside business, or to a customer of their outside business.² Here, you would be prohibited from using your official position as a member of the IFRC in any way to give a special financial benefit to yourself, to 1st Source Realty, or to any customer or client of 1st Source Realty.

Additionally, Section 2-443(d), Contractual relationships, prohibits a public official from entering into any contract or other transaction, directly or indirectly, for goods or services with his or her respective county or municipality. Thus, it must be determined if the described situation creates a contractual relationship, even indirectly, between you and the County. Here, you represent the buyer in a real estate transaction. Your contractual relationship is with the buyer. Even if the buyer applies for, and obtains, gap funding from the County or from the City, this does not, even indirectly, create a contractual relationship between the County and you or your outside business.

Moreover, even if these facts did create an indirect contractual relationship, the contractual prohibition would not apply to you as an IFRC member because the prohibition does not apply to an advisory board member under some circumstances. Here, the contractual relationships prohibition would not apply to you as an advisory board member if the IFRC is purely advisory and does not have any role in the oversight of the subject transaction and the subject transaction is disclosed at a public meeting of the BCC.

Thus, it must first be determined whether the IFRC's role is purely advisory. A purely advisory board is authorized only to make recommendations to another board or a government administrator. A board with any measure of final decision-making authority is not purely advisory. Based on the limited statutory authority granted to the IFRC, it appears their role is purely advisory. Next, it must be determined whether the IFRC has transactional oversight. A board has transactional oversight if it plays any role in the oversight, regulation, management, or policy-setting recommendations regarding the subject transaction. Based on the facts provided, the IFRC has no involvement in the gap funding program and does not provide any oversight of the subject transaction.

Because the IFRC is purely advisory and does not exercise transactional oversight, even if there was a contractual relationship between you and the County, you would not be prohibited from representing the buyer in the noted purchase and sale as long as the existence of the subject transaction was disclosed at a duly noticed public meeting of the BCC.

Finally, although there may be no per se prohibited conflict of interest under the Code, an appearance of impropriety may exist due to your IFRC association. If you are concerned about this potential appearance of impropriety, you may choose to disclose your position to the involved entities. Additionally, you have an ongoing responsibility to refrain from using your official position as an IFRC member to give a special financial benefit to yourself or to your outside business and its clients.³

LEGAL BASIS:

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

Sec. 2-442. Definitions.

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. 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.

² §2-443(a)(1) & (4)

³ §2-443(a)

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, 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;
 - (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
 - (5) A customer or client of the official or employee's outside employer or business;
- (d) **Contractual relationships.** No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable. 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.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted but assumes they are true for purposes of this advisory opinion. This opinion is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

Sincerely,



Christie E. Kelley
Executive Director

RG/gal



Palm Beach County Commission on Ethics

Commissioners

Rodney G. Romano, Chair
Michael H. Kugler, Vice Chair
Michael S. Kridel
Peter L. Cruise
Vacant

Executive Director

Christie E. Kelley

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June 15, 2022

Aimee Kelley, Commissioner
City of Boynton Beach
100 E. Ocean Ave.
Boynton Beach, FL 33435

Re: RQO 22-013
Conflict of Interest

Dear Commissioner Kelley,

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 and voting on the potential merger between the city of Boynton Beach (City) and the Palm Beach County Sheriff's Office (PBSO) when your spouse works for the City's police department?

BRIEF ANSWER:

You are not prohibited from participating in the discussions and voting on the matter because the size of the class affected is large enough and there is no indication that your spouse's personal gain or loss from the merger would exceed significantly that of other City police officers.

FACTS:

You are a City commissioner, and your husband is a police captain for the City's police department. The City is contemplating entering into an agreement with PBSO wherein the City would merge its police department with PBSO. The City Commission is awaiting the proposal from PBSO. There are approximately 128 police officers employed by the City. These officers would be affected by the merger with PBSO.

ANSWER:

The Code prohibits you from using your official position to give a special financial benefit, not shared with similarly situated members of the general public, to any of the persons or entities listed in Section 2-443(a)(1-7), which includes yourself or your spouse.¹ Similarly, the Code prohibits you from voting on an issue or participating in any matter coming before the City Commission which would give a special financial benefit, not shared with similarly situated members of the general public, to yourself or your spouse.² Whether a matter rises to the level of a prohibited conduct and voting conflict turns on whether a special financial benefit is shared

¹ Sec. 2-443(a)

² Sec. 2-443(c)

with similarly situated members of the general public. Financial benefit is defined as economic gain or loss.³

Although there is no bright line test or "magic number" of individuals who would need to be similarly affected to transform a personal gain into a gain shared with similarly situated members of the general public, the COE has previously opined that where the size of the class who stand to benefit is small, the likelihood of prohibited financial benefit is much greater.⁴ Where the size of the class affected is large, a prohibited financial gain only arises if there are unique circumstances which would enable one person to benefit more than the other persons within the class.⁵ In evaluating whether the size of the class is large enough, the COE has previously utilized the "one-percent rule."⁶ The general line drawn by the COE is where the interest of the person who will receive the financial benefit involves 1% or less of the class. In other words, 100 or more affected persons is a sufficiently large class to transform the benefit or loss into one that is shared by similarly situated members of the general public.

Based on the facts submitted, the affected class contains approximately 128 City police department employees. Your husband's interest in the class affected is 0.78%, which is less than 1%. Therefore, even though your spouse stands to receive a financial benefit (gain or loss) by this merger, any benefit received would not be considered "special" because the size of the class affected is sufficiently large enough to transform any benefit into one that is similarly shared by all those affected by the merger.

Further, there is nothing in the facts that currently indicate any unique circumstance wherein your spouse's personal gain or loss from the merger would exceed significantly that of other City police officers. The Code would only prohibit you from participating in discussions or voting on this matter if facts and circumstances showed that the merger would provide a unique benefit to your spouse. Therefore, because the exact language of the merger that you may be called to vote upon is not yet available for review, best practices dictate that you carefully examine the text, when available, to ensure that your participation and vote complies with these principles and does not give your spouse a special financial benefit.

LEGAL BASIS:

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

Sec. 2-443. Prohibited conduct.

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

³ RQO 10-013

⁴ Id.

⁵ RQO 12-071

⁶ RQO 14-006

- (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these person.
- (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 office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted but assumes they are true for purposes of this advisory opinion. This opinion is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

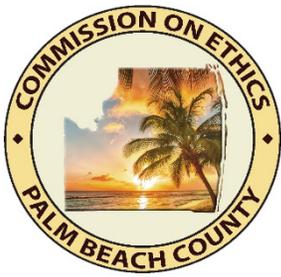
Sincerely,



Christie E. Kelley
Executive Director

CEK/gal

Palm Beach County Commission on Ethics



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Michael H. Kugler, Vice Chair
Michael S. Kridel
Peter L. Cruise
Vacant

Executive Director

Christie E. Kelley

June 29, 2022

Ms. Marianne Miles, Councilmember
Town of Loxahatchee Groves
155 F Road
Loxahatchee Groves, FL 33470

Re: RQO 22-014
Voting Conflict

Dear Councilmember Miles,

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 entering into settlement discussions and voting on matters related to the pending inverse condemnation lawsuit between the Town and the east side of North B Road?

BRIEF ANSWER:

You may not participate in discussions or votes involving the litigation or possible settlement of the lawsuit involving North B Road. In evaluating conflict of interest under the Code, the COE considers 1) the number of persons who stand to gain from a decision and 2) whether the gain or loss is remote and speculative. After reviewing the facts provided, your potential for loss or gain is not remote or speculative.

FACTS:

You are a Town Councilmember for the town of Loxahatchee Groves (Town). The Town is approximately 12.5 square miles with approximately 3,695 residents. In January of 2022, the owners of six separate properties on the east side of North B Road joined together and brought suit against the Town. The claim alleges that the Town, during the course of road improvement project, widened and paved North B Road beyond its lawful boundaries and encroached upon their private property, thereby giving rise to an inverse condemnation lawsuit. The litigation is still pending and the Town is considering a variety of possible settlement options.

You and your husband own ten acres of property within the Town. Your property is addressed on B Road, but to access the property, you must drive down B Road, and cross over a canal culvert, and drive on an access easement road, which is not separately named, but is known as West B Road. One five-acre lot of your property is considered to have frontage on B Road because it abuts the right-of-way for B Road. Your property is on the north portion of B Road, which runs from North Road to Okeechobee Boulevard (North B Road). North B Road is the only road available to access your property. Your property lies entirely on the west side of North B Road.

There are 44 property owners on 52 lots with frontage along North B, including those who use the access road and corner lots that access their property off another road. Each of these properties enjoys, in some way, the paving improvements which were recently completed on North B Road and are the subject of the lawsuit.

ANSWER:

Section 2-443(a), *Misuse of public office or employment*, prohibits officials from using their official position to give a special financial benefit, not shared with similarly situated members of the general public, to specified entities or persons, including themselves. Similarly, Section 2-443(c), *Disclosure of voting conflicts*, requires officials abstain from voting on and not participate in any matter coming before their board which would result in a special financial benefit to specified persons or entities, including themselves. In the context of the Code, "financial benefit" constitutes any economic gain or loss.¹

In evaluating a conflict of interest under the Code, the COE must first consider whether the gain or loss is remote and speculative. To constitute a prohibited voting conflict, the possibility of a financial gain or loss must be direct and immediate, rather than remote and speculative.² Where an official's gain or loss would require many steps and be subject to many contingencies, any gain or loss is remote and speculative and cannot be said to inure to one's special financial benefit.³

If the financial benefit is direct and immediate, then the COE must consider the number of persons who stand to gain from a decision. The determination of whether a measure will result in a financial benefit not shared with similarly situated members of the general public turns on the size of the class of persons who stand to benefit from the measure.⁴ As the COE has previously opined, there is no bright line in determining the number of individuals who would need to be affected to transform a personal gain or loss into a gain or loss shared with similarly situated members of the general public.⁵ In general, where a class is large, a prohibited financial gain or loss would result only if there are circumstances unique to the voting official, which would enable him to gain or lose more than the other members of the class. However, where the class of persons who stand to gain or lose from a decision is small, the likelihood of prohibited financial benefit is much greater.⁶ The general line drawn by the Florida Commission on Ethics involves situations where the interest of the public official involves 1% or less of the class. In other words, 100 or more affected persons is a sufficiently large class to transform the benefit or loss into one shared by similarly situated members of the public. While the "1% Rule" may be an arbitrary cut-off point, it provides certainty and guidance in an area of the law which otherwise lacks clarity.

Were the Town to elect to resolve the lawsuit by making the petitioners whole in a non-monetary way, for example, by removing the completed paving and returning their property to them, this would have a clear financial impact on any properties situated on North B Road. Alternatively, if the decision was to settle the lawsuit only by a financial payment to the plaintiffs, the properties on North B Road would be in a substantially better position than if the Town chose to remove the paving improvements and return the property to its previous condition. Based on the limited information that was provided about potential settlement negotiations, the nature of the lawsuit's resolution will have an unavoidable impact on your property. If the lawsuit is resolved by way of a financial payment, then your property is not likely to be impacted as that financial burden will be borne by the taxpayers as a whole; if the lawsuit is resolved differently – by removal of installed improvements to the roadway, all of the properties on North B Road will be negatively affected. Your property is directly adjacent to North B Road, thus, the specific nature of the lawsuit's resolution creates a possibility of a financial benefit to your property that is direct and immediate.

The question then becomes, given the number of similarly situated members of the general public, whether voting on and participating in discussions related to the North B Road litigation, will result in a special financial benefit to you. As such, the COE must look at the size of the class affected. Here, the class affected by any road and drainage projects along North B Road is at most 44 property owners. Therefore, your interest in the affected class is 2.27%. Because the class or persons affected is small and your interest

¹ RQO 10-013

² RQO 12-063

³ CEO 05-15, CEO 91-61, CEO 12-19

⁴ RQO 14-006; RQO 31-011

⁵ RQO 10-013

⁶ See CEO 92-37 (two percent or eight percent of the property to be affected or 5 of 60 sites and 5 of 168 sites is of sufficient size to result in a "special" gain); CEO 93-19 (measure to construct a sidewalk affecting 40 homes would not affect enough persons in order for its effect not to be considered "special" under the voting conflicts law).

exceeds 1%, the benefit is considered special and the Code prohibits you from voting on or participating in litigation settlement discussions related to North B Road. The number of persons or entities directly affected by the choice of potential settlement options is too small a class to be considered similarly situated to members of the general public and the financial benefit received would be considered special. Therefore, when these discussions come before the Town Council, you must 1) publicly disclose the nature of your conflict before the Town Council discusses the matter; 2) abstain from voting and discussing or otherwise participating in the matter; and 3) file a state voting conflict form (8B) with the Town Clerk and submit a copy to the COE.⁷

Finally, you are also reminded that §2-443(b), *Corrupt misuse of official position*, also prohibits public officials from using their official position to corruptly secure or attempt to secure a special privilege, benefit or exemption for themselves or others. Corruptly means done with a wrongful intent and for the purpose of obtaining any benefit resulting from some act which is inconsistent with the proper performance of the official's duties. Therefore, you also must ensure you do not use your position as a councilmember to take some action which would corruptly secure a special privilege, benefit, or exemption for yourself or anyone else.

LEGAL BASIS:

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

Sec. 2-442. Definitions.

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. 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.

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, 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;
 - (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
- (b) *Corrupt misuse of official position.* An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.
- (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 88 pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 88, the official shall

⁷ Sec. 2-443(c)

submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted but assumes they are true for purposes of this advisory opinion. This opinion is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

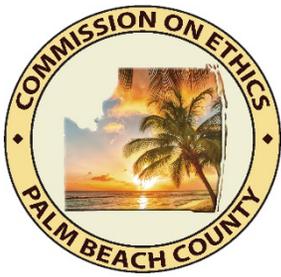
Sincerely,



Christie E. Kelley
Executive Director

RG/gal

Palm Beach County Commission on Ethics



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Michael S. Kridel
Peter L. Cruise
Vacant

Executive Director

Christie E. Kelley

July 1, 2022

Thomas J. Baird
Town Attorney
Town of Jupiter
4741 Military Trail
Jupiter, FL 33458

Re: RQO 22-015
Conflict of Interest

Dear Mr. Baird,

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 Councilor Cameron May from participating in and voting on matters related to contract negotiations between the town of Jupiter (Town) and Palm Beach County's (County) Fire Rescue Department (PBCFR) when Councilor May works for PBCFR as a firefighter/paramedic?

BRIEF ANSWER:

Councilor May is not prohibited from participating in the discussions and voting on the matter because the size of the class affected is large enough and there is no indication that his personal gain or loss from a change to the contract would be significantly different from that of any other firefighter/paramedic employed by PBCFR.

FACTS:

Councilor May is a Town councilmember and is employed by the County as a firefighter/paramedic for PBCFR. The Town contracts with the County for PBCFR to provide fire/rescue services. Though Councilor May works for PBCFR as a firefighter/paramedic, he is not currently assigned to a station within the Town. The Town is contemplating a PBCFR contract extension, but it has been made aware that a contract extension will result in a significant tax increase to Town residents. The Town Manager will need to discuss the negotiations and potential extension or termination of the contract with the councilmembers as the Town Council will ultimately need to approve the extension or termination of the contract. The contract extension or termination will not have a direct impact on the pay received by firefighters/paramedics working for PBCFR, including those who are assigned to work stations in the Town. PBCFR employs approximately 1,200 firefighters/paramedics. The Town has approximately 65,000 residents.

ANSWER:

The Code prohibits Councilor May from using his official position to give a special financial benefit, not shared with similarly situated members of the general public, to any of the persons or entities listed in

Section 2-443(a)(1-7), including himself.¹ Similarly, the Code prohibits him from voting on an issue or participating in any matter coming before the Town Council which would give him a special financial benefit, not shared with similarly situated members of the general public.² Financial benefit is defined as economic gain or loss.³ Whether a matter rises to the level of a prohibited conduct and voting conflict turns on whether a special financial benefit is shared with similarly situated members of the general public. Here, it must be noted that an analysis under Section 2-443(a)(4), which references the prohibition against giving a special financial benefit to an outside employer, is unnecessary despite Councilor May's employment with the County, who is a party of the subject contract. This is because Section 2-442 excludes the County from the definition of outside employer.⁴ Consequently, this narrows the analysis to determining if Councilor May's vote or participation in the contract issues has the possibility of bringing him, individually, a special financial benefit.

Although there is no bright line test or "magic number" of individuals who would need to be similarly affected to transform a personal benefit into a benefit shared with similarly situated members of the general public, the COE has previously opined that where the size of the class who stand to benefit is small, the likelihood of prohibited financial benefit is much greater.⁵ Where the size of the class affected is large, a prohibited financial benefit only arises if there are unique circumstances which would enable one person to gain or lose more than the other persons within the class.⁶ In evaluating whether the size of the class is large enough, the COE has previously utilized the "one-percent rule."⁷ The general line drawn by the COE is where the interest of the person who will receive the financial benefit involves 1% or less of the class. In other words, 100 or more affected persons is a sufficiently large class to transform the gain or loss into one that is shared by similarly situated members of the general public.

Based on the facts submitted, the affected class contains approximately 1,200 firefighters. Councilor May's interest in the class affected is 0.08%, which is less than 1%. Therefore, even if Councilor May were likely to receive a financial benefit (gain or loss) by the extension or termination of the contract, any benefit received would not be considered "special" because the size of the class affected is sufficiently large enough to transform any benefit into one that is similarly shared by all those affected by the contract.

Additionally, there is nothing in the facts to indicate that any firefighter/paramedic employed by the PBCFR would encounter a special financial benefit based on the extension or termination of the contract with the Town. Further, there are no facts supporting a unique circumstance wherein Councilor May's personal gain or loss from the contract decision would exceed significantly that of other firefighters/paramedics. The Code would only prohibit him from participating in discussions or voting on this matter if facts and circumstances showed that the extension or termination of the contract would provide a unique benefit to him. Thus, because neither the specific nature of the discussions, nor the exact language of the contract is yet known, best practices dictate that Councilor May carefully examines the subject matter and the text of any contract, when available, and ensures that his participation and vote complies with these principles and does not give him a special financial benefit.

LEGAL BASIS:

¹ Sec. 2-443(a)

² Sec. 2-443(c)

³ RQO 10-013

⁴ Sec. 2-442, Outside employer or business

⁵ Id.

⁶ RQO 12-071

⁷ RQO 14-006

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

Sec. 2-442, 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.

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, 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;
 - (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
- (c) Disclosure of voting conflicts. County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The 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 office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted but assumes they are true for purposes of this advisory opinion. This opinion is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

Sincerely,



Christie E. Kelley
Executive Director

RG/gal