

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

AUGUST 3, 2017

**THURSDAY
1:36 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

- I. SWEARING IN NEW COMMISSIONER BY CHIEF JUDGE KRISTA MARX**
- II. CALL TO ORDER**
- III. ROLL CALL**

MEMBERS:

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

STAFF:

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

ADMINISTRATIVE STAFF:

Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

IV. INTRODUCTORY REMARKS

Chair Michael Kridel introduced new Commissioner Bryan Kummerlen and asked him to elaborate on his background.

IV. – CONTINUED

Commissioner Kummerlen shared that he was with the West Palm Beach Police Department for 30 years and retired as chief in February 2017.

V. APPROVAL OF MINUTES FROM JULY 6, 2017

MOTION to approve the July 6, 2017 minutes. Motion by Commissioner Judy Pierman, seconded by Vice Chair Clevis Headley, and carried 5-0.

VI. STATUS CONFERENCE C16-011 (Commissioner Sarah Shullman presiding)

Representative Al Jacquet said that the original attorney withdrew and a new attorney had been identified. The new attorney communicated with staff and a new date had been discussed between both parties.

Gina Levesque, COE Intake and Compliance Manager, said she would continue to discuss alternative dates for another meeting and would notify all parties.

Commissioner Shullman said that the August 7, 2017 hearing was cancelled.

A status check meeting was scheduled for September 7, 2017.

VII. REVIEW OF EVIDENTIARY STANDARDS

Commissioner Shullman requested that there be a discussion about the definitions of misuse of position and corrupt misuse.

Regarding the 3 evidentiary standards used by the COE, Christie E. Kelley, COE General Counsel, said that:

- The legal sufficiency standard was used to decide if a complaint could be filed. The person must be under the jurisdiction of the COE and the alleged actions, if true, must constitute a violation of the Code of Ethics.
- The probable cause standard applied when there were reasonably trustworthy facts and circumstances that warranted proceeding to a final public hearing.

VII. – CONTINUED

- The clear-and-convincing evidence standard required credible evidence and explicit testimony and it produced a firm belief of conviction without hesitation.

Commissioner Shullman requested that Ms. Kelley provide any case law about misuse of position and corrupt misuse in preparation for the September 7, 2017 status meeting.

Ms. Kelley stated that Blackburn v. State Commission on Ethics defined wrongful intent as acting with reasonable notice that the conduct is inconsistent with the proper performance of their public duties. She added that the evidence must show that the public employee or official used his or her official position to obtain a special benefit for any person when he or she was aware that the action was inconsistent with the proper performance of public duties.

VIII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VIII.a. Request for Opinion (RQO) 17-014

VIII.b. RQO 17-016

MOTION to approve the consent agenda. Motion by Vice Chair Headley, seconded by Commissioner Pierman, and carried 5-0.

IX. ITEMS PULLED FROM CONSENT AGENDA – None

X. PROPOSED ADVISORY OPINIONS

X.a. RQO 17-015

Mark E. Bannon, Commission on Ethics (COE) Executive Director, said that the request came from Commissioner Cheryl Schneider and Commissioner Mary Beth Hague of the Town of Jupiter Planning and Zoning Commission and involved a possible conflict of interest.

Mr. Bannon stated:

- The matter involved amendments to a previously approved planned unit development (PUD), known as the Love Street PUD.

X.a. – CONTINUED

- Ms. Schneider and Ms. Hague were officers or directors of Citizen Owners of Love Street, Inc. (COOLS), a non-profit entity that opposed the project.
- Both commissioners had voiced their opposition to the Love Street project in public meetings.
- They received letters from the Town of Jupiter attorney dated July 11, 2017 notifying them that there was a conflict of interest and should consider recusing themselves from the issue.
- Ms. Schneider moved to table the issue until the August 8, 2017 town meeting to allow for an advisory opinion from the COE.
- On July 12, 2017, COE staff received the joint request for an advisory opinion and later received additional information from various sources regarding the conflict of interest.
- Ms. Schneider and Ms. Hague were asked to recuse themselves due to:
 - State ethics laws
 - A general concern for lack of impartiality
 - Concerns over their participation being a violation of the applicant's due-process rights
 - Violation of Palm Beach County Code of Ethics
 - Misuse of public office by providing improper special financial benefit to a prohibited party
 - Failure to disclose a voting conflict
 - Corrupt misuse of official position

The proposed advisory opinion only addressed the issue of whether these actions violated any provisions of the Code of Ethics because that was the jurisdictional limit of the COE. Staff concluded that:

X.a. – CONTINUED

- Participating in discussions and voting on these amendments did not violate the code.
- Ms. Schneider and Ms. Hague nor COOLS will receive any direct or indirect financial benefit by voting on the proposed amendments.
- Such a vote would not be for the purpose of obtaining a special privilege, benefit, or exception.

Chair Kridel read into the record a public comment card submitted by Ms. Schneider.

Ms. Schneider clarified that her role was to give recommendations to the town council and she had no decision making authority.

Chair Kridel read into the record a public comment card submitted by Ms. Hague.

Jeff Collins, Vice President of 1116 Love Street, LLC, stated that after his project was approved by the town council, Ms. Schneider and Ms. Hague formed COOLS and sued the Town of Jupiter to overthrow the approval of the project. They did not recuse themselves from voting and were fundraising to stop the project, which constituted a benefit and conflict of interest.

Darren Leiser, 1116 Love Street, LLC attorney, stated that the issue was clear and dealt with public officials who participated in a hearing for a project they were suing to block. He said that they had received financial benefit because they were petitioners in a lawsuit challenging the project on which they voted. He added that COOLS raised money and thus benefitted financially, lessening their litigation costs.

Ms. Schneider stated that:

- The Jupiter Planning and Zoning Commission received notice of the items appearing on the agenda 4 days before the meeting.
- She received the letter from the town attorney 5 hours before the town meeting.

X.a. – CONTINUED

- The judicial review requested by COOLS came as a result of concerns that the town had not applied the town code correctly, which deprived the community the opportunity to make comments on the Love Street PUD.
- Concerns also included absence of disclosures and several code waivers.
- The matter was about how the town processed the application and making sure the laws were applied correctly.

Mr. Bannon stated that both he and Ms. Kelley had reviewed the petition filed by COOLS and acknowledged that there were both procedural and substantive challenges in the document.

Commissioner Shullman asked Ms. Schneider if COOLS had done any fundraising.

Ms. Schneider indicated that the only fundraising done was to hire the attorney to file a petition. She said that the GoFundMe account was still active and the only person who could access the money was the attorney representing COOLS. She said that she set up the GoFundMe account as an individual to raise money for legal fees and that COOLS did not have a bank account, Web site or links to the GoFundMe account.

Mr. Leiser stated that it was incorrect to state that COOLS had no affiliation to the GoFundMe page because the only way to find the GoFundMe page was by conducting a search for “Citizen Owners of Love Street” on the site.

Commissioner Headley asked Mr. Leiser whether or not he believed there was improper, special privilege, benefits, or exceptions.

Mr. Leiser responded that he believed there were special financial benefits because funds for the lawsuit were collected and other members of the community did not have this privilege. He added that corrupt intent and improper purpose was applicable as well because as litigants against the project, the town officials saw to its delay or defeat. Regarding wrongful intent, he said that the officials had reasonable notice that this was a conflict and did not do anything about it.

Ms. Schneider said that fees had already been paid and therefore she would close the GoFundMe account.

X.a. – CONTINUED

Mr. Collins stated that there were opportunity costs generated by the delay of the project, which affected its credibility and created uncertainty.

Ms. Hague stated that she followed the code when making decisions. She added that she was appointed to the Jupiter Planning and Zoning Commission by Tom Kuretski in April 2016 and prior to that, she served as a teacher and owned her own business. She said that she never had to vote on projects presenting issues such as waivers being given and codes being ignored.

Mr. Bannon stated that if a *quid pro quo* existed and no one knew about it, then it did make it an improper vote.

Commissioner Shullman stated that:

- The COE needed to consider if there was a conflict and if there was a financial benefit that would preclude the town officials from voting on the issue.
- Ms. Schneider and Ms. Hague formed a non-profit, sued the town, and raised funds for the lawsuit, which was a pure conflict in her opinion.
- Fundraising was clearly a benefit.
- Corruptness use did not only refer to a financial benefit but any benefit resulting from an official's actions.
- Voting on an action when special interest existed was inconsistent with the officials' duties and they should not be able to vote.
- The advisory opinion should be revised to state there was a conflict.

Commissioner Headly inquired if the GoFundMe page was reviewed prior to issuing the proposed advisory opinion.

Mr. Bannon stated that the GoFundMe page was reviewed and discussed in preparation for the opinion.

(CLERK'S NOTE: No motion was made to publish RQO 17-015.)

XI. EXECUTIVE DIRECTOR COMMENTS

Mr. Bannon asked for direction with regards to RQO 17-015.

Chair Kridel stated that in the absence of an advisory opinion, something else should be issued.

Commissioner Shullman stated that a revised advisory opinion should be presented and voted on at the next COE meeting.

Mr. Bannon stated that the revised opinion would be issued the following month.

XII. COMMISSION COMMENTS

XII.A.

DISCUSSED: Welcome

Chair Kridel, and commissioners Shullman, Pierman, and Headley welcomed Commissioner Kummerlen.

XII.B.

DISCUSSED: Position search

Chair Kridel thanked the Palm Beach Police Chiefs' Association President, North Palm Beach Police Chief Rick Jenkins, the Board of Directors, and Executive Director Ted Gonzalez for helping fill the position so quickly after the unfortunate passing of Michael Loffredo.

XII.C.

DISCUSSED: Gratitude

Commissioner Kummerlen thanked everyone for the opportunity to serve on the COE.

XIII. PUBLIC COMMENTS

Mr. Collins inquired about the process and when the revised advisory opinion for RQO 17-015 would be available.

XIII. – CONTINUED

Chair Kridel stated that the revised advisory opinion would be drafted before the next meeting on September 7, 2017.

Ms. Schneider stated that she would deactivate the GoFundMe page.

Chair Kridel clarified that deactivating the GoFundMe page was not a direction given by the COE.

XIV. ADJOURNMENT

TIME: 3:05 P.M.

APPROVED:



Chair/Vice Chair