



# Palm Beach County Commission on Ethics

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December 22, 2014

Ms. Deidra Gibson, Customer Service Consultant  
Area Agency on Aging of Palm Beach/Treasure Coast Inc.  
4400 North Congress Avenue  
West Palm Beach, FL 33407

Re: RQO 14-039  
Advisory Board Waiver/Disclosure

Dear Ms. Gibson,

Your request for an expedited advisory opinion pursuant to Commission on Ethics (COE) Rule of Procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

### **QUESTION:**

Would a prohibited conflict of interest exist if an employee of the Area Agency on Aging of Palm Beach/Treasure Coast Inc. (Agency), which has a contract with Palm Beach County (County) for paratransit services, becomes a member of the Palm Train Service Board (PTSB), which makes recommendations to the County about the paratransit services provided by Palm Tran Connection?

### **ANSWER:**

In general, employees of the Agency would not be entitled to an advisory opinion because they are not currently under the jurisdiction of the Palm Beach County Code of Ethics (Code). COE Rule of Procedure 2.2 states, in relevant part, that only persons who are under the jurisdiction of the Code of Ethics may request an advisory opinion regarding the interpretation or application of the Code of Ethics.<sup>1</sup> However, since their appointment to an advisory board would bring them under the Code of Ethics, and the Agency is seeking an opinion proactively to avoid any potential issues, the COE will make an exception and provide an opinion.

Depending on the type of advisory board it is and whether the board has any contract oversight, there are three possible requirements for the Agency employee: a disclosure, a waiver, or decline the appointment. Under the Code, the employee should first determine whether the PTSB will have any oversight of the contract between the County and the Agency. An advisory board is considered to exercise contract oversight when the board will play any role in the oversight, regulation, management, or policy-setting recommendations regarding the contract. If the advisory board does not have any contract oversight, then only a disclosure is required.<sup>2</sup> A disclosure requires that the existence of the contract be made public. This disclosure should occur at the time of the employee's appointment.

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<sup>1</sup> COE Rule of Procedure 2.2

<sup>2</sup> §2-443(d)

Next, the employee should determine whether the advisory board is purely advisory or not purely advisory. A purely advisory board means the board is authorized to only make recommendations. A board that is not purely advisory is authorized to make final decisions. If the advisory board is purely advisory and provides contract oversight, a waiver is required.<sup>3</sup> A waiver requires the Palm Beach County Board of County Commissioners (BOCC), upon full disclosure of the contract at a public meeting, to waive the conflict.<sup>4</sup> If the advisory board is not purely advisory and has contract oversight, an unwaivable conflict of interest would exist.<sup>5</sup> As such, the employee would be prohibited from serving on that advisory board.

Based on the facts submitted, the PTSB is not purely advisory because the Palm Beach County Board of County Commissioners (BOCC) delegated its authority to approve Palm Tran fixed route transportation service adjustments to the PTSB. However, the PTSB does not have any oversight, regulation, management, or policy-setting recommendations regarding its contract. Thus, if selected to serve on the PTSB, the Agency employee will need to disclose the existence of the contract when the employee is appointed.

#### **FACTS:**

You are a Consumer Services Consultant for the Agency. Employees of the Agency would like to become advisory board members on the Palm Tran Service Board (PTSB). The PTSB is not a purely advisory board of Palm Tran and consists of 13 members. The BOCC delegated its authority to approve Palm Tran fixed route transportation service adjustments to the PTSB. Additionally, the PTSB serves in an advisory function regarding matters concerning or impacting public transportation. The PTSB does not have a role in the oversight, regulation, management, or policy-setting recommendations of the contract.

The Agency has a contract with the County for paratransit services, which is required by Florida Statute. The 2014 Florida Department of Elder Affairs Programs and Services Handbook requires that "all transportation provided with federal, state, and local government funds shall be purchased through a contractual arrangement with the community transportation coordinator or approved coordination provider within the coordinated system." Additionally, the amended Older Americans Act of 1965 requires that the Agency "will coordinate planning, identification, assessment of needs, and provision of services for older individuals with disabilities, with particular attention to individuals with severe disabilities, and individuals at risk for institutional placement with agencies that develop or provide services for individuals with disabilities..." The Older Americans Act also requires the Agency to assist "the area-wide development and implementation of a comprehensive, coordinated system for providing long-term care in home and community-based settings...[by] collaborating, coordinating activities, and consulting with other local public and private agencies and organizations responsible for administering programs, benefits, and services related to providing long-term care."

#### **LEGAL BASIS:**

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

#### **Sec. 2-443. Prohibited conduct.**

- (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

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<sup>3</sup> §2-443(e)

<sup>4</sup> Id.

<sup>5</sup> Id.



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.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. 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,



Steven P. Cullen  
Executive Director

CEK/gal