



Palm Beach County
Commission on Ethics
300 North Dixie Highway
West Palm Beach, FL 33401

561.355.1915

FAX: 561.355.1904

Hotline: 877.766.5920

E-mail:

ethics@palmbeachcountyethics.com

Commissioners

Michael S. Kridel, Chair

Clevis Headley, Vice Chair

Michael F. Loffredo

Judy M. Pierman

(Vacant)

Executive Director

Steven P. Cullen

Intake Manager

Gina A. Levesque

Staff Counsel

Christie E. Kelley

Senior Investigator

Mark E. Bannon

Investigator

Anthony C. Bennett

Agenda

September 3, 2015 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

- I. Call to Order
- II. Swearing and introduction of new Commissioner by Chief Judge Jeffrey Colbath, 15th Judicial Circuit
 - a. Sarah L. Shullman – appointed by The Palm Beach County Bar Association, Hispanic Bar Association and The Cunningham Bar Association
- III. Roll Call
- IV. Introductory Remarks
- V. Approval of Minutes from August 6, 2015
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 15-037
 - b. RQO 15-038
 - c. RQO 15-039
 - d. RQO 15-040
 - e. RQO 15-041
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Executive Director Comments
- IX. Commission Comments
- X. Public Comments
- XI. 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**

AUGUST 6, 2015

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

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

- I. CALL TO ORDER**
- II. ROLL CALL**

MEMBERS:

Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo – Absent
Judy Pierman

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Senior Investigator
Anthony C. Bennett, COE Investigator
Steven P. Cullen, COE Executive Director
Christie E. Kelley, COE Staff Counsel
Gina A. Levesque, COE Intake Manager

ADMINISTRATIVE STAFF:

Barbara Strickland, Deputy Clerk, Clerk & Comptroller's Office

- III. INTRODUCTORY REMARKS – None**
- IV. APPROVAL OF MINUTES FROM JULY 9, 2015**

MOTION to approve the July 9, 2015, minutes as presented. Motion by Judy Pierman, seconded by Clevis Headley, and carried 3-0. Michael Loffredo absent.

V. EXECUTIVE SESSION – Page 4

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VI.a. RQO 15-031

VI.b. RQO 15-032

VI.c. RQO 15-033

VI.d. RQO 15-034

VI.e. RQO 15-035

VI.f. RQO 15-036

MOTION to accept the advisory opinions as published. Motion by Judy Pierman, seconded by Clevis Headley, and carried 3-0. Michael Loffredo absent.

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. PROPOSED ADVISORY OPINIONS

VIII.a. RQO 15-011

Christie E. Kelley, COE staff counsel, stated that:

- A captain with the City of West Palm Beach (City) Police Department (Department) asked whether the Code of Ethics (Code) prohibited the City Chief of Police (Chief) from writing a generic letter on official letterhead stating the fact that the West Palm Beach Police Foundation (Foundation) was the only charitable organization in partnership with the Department.
- The Department was regularly asked to identify relationships with specific charitable organizations.
- The letter would be generic, and it would be available to anyone who asked for verification of the Department's relationship with the Foundation. The letter would not request donations.

VIII.a. – CONTINUED

- Based on the facts submitted, the Chief was not prohibited from writing a letter on official letterhead verifying that the Foundation was the only charitable foundation affiliated with the Department.
- The COE previously ruled that an elected official may write a letter of recommendation, using official letterhead, so long as the elected official gained no improper benefit in exchange.
- In this case, writing such a letter was similar to writing a recommendation letter.
- Therefore, the Chief was not prohibited from writing such a letter as long as no improper benefit were gained in exchange for the letter, or a special financial benefit to any of the prohibited persons or entities listed in Section 2-443(a) of the Code.

Steven P. Cullen, COE Executive Director, stated that:

- This item appeared on a prior agenda.
- Two prior COE members expressed a desire to review a sample letter. However, Ms. Kelley was unsuccessful in obtaining one.
- Current commissioners could consider whether to approve a generic letter.

MOTION to approve a generic letter as written. Motion by Clevis Headley, seconded by Judy Pierman, and carried 3-0. Michael Loffredo absent.

(CLERK'S NOTE: The agenda was reordered.)

RECESS

At 1:37 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 2:52 p.m., the meeting reconvened with Chair Kridel, Vice Chair Headley, and Commissioner Pierman present.

V. EXECUTIVE SESSION

V.a. C15-016

Vice Chair Headley read the following Public Report and Final Order of Dismissal that was discussed during the executive session:

Complainant, Todd McLendon, filed the above-captioned complaint on June 3, 2015, alleging that Respondent, James Rockett, Council Member of the Town of Loxahatchee Groves, violated Section 2-443(c) of the Palm Beach County Code of Ethics by participating in discussions on a matter, even though Respondent believed he had a voting conflict on that matter, prior to disclosing his conflict and abstaining from voting.

Pursuant to Section 2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. On August 6, 2015, the Commission conducted a hearing. The Commission reviewed and considered the Memorandum of Inquiry, Report of Investigation, Probable Cause Recommendation, and oral statements of the Respondent and the Advocate. At the conclusion of the hearing, the Commission issued a Letter of Instruction and dismissed the case.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, James Rockett, 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 August 6, 2015.

By: Michael S. Kridel, Chair

V. – CONTINUED

(CLERK'S NOTE: The clerk added the language as printed in the Public Report Finding No Probable Cause and Order of Dismissal.)

V.b. C15-017

Vice Chair Headley read the following Public Report Finding No Probable Cause and Final Order of Dismissal that was discussed during the executive session:

Complainant, Carol Stuart, filed the above referenced complaint on June 11, 2015, alleging that Respondent, Steven Kennedy, Chief Plans Examiner for the City of West Palm Beach, violated Section 2-2443(b) and Section 2-443(i) of the Palm Beach County Code of Ethics.

Pursuant to Section 2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. On August 6, 2015, the Committee conducted a hearing. The Commission reviewed and considered the Memorandum of Inquiry, Report of Investigation, Probable Cause Recommendation, and oral statements by the Advocate and the Respondent. At the conclusion of the hearing, the Commission concluded no probable cause exists to believe any violation occurred.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Steven Kennedy, is hereby **DISMISSED**.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on August 6, 2015.

By: Michael S. Kridel, Chair

(CLERK'S NOTE: The clerk added the language as printed in the Public Report Finding No Probable Cause and Order of Dismissal.)

IX. 2015 CODE OF ETHICS DRAFT AMENDMENTS

Mr. Cullen stated that:

- The Ordinance Drafting Committee (committee) considered changes to the Code and to the COE's ethics ordinance (ordinance) at the COE's request.
- Although the Code's definition of vendor was unclear, no changes were made.
- The committee recommended changes for the Board of County Commissioners' (BCC) review and adoption. They included:
 - Amended Code language requiring that a gift report form filed with the State must be filed with the COE at the same time.
 - An amended ordinance procedure offering those accused of committing Code violations an option to have their final hearings conducted by either the COE or by hearings officers (officers).
 - Language changes throughout the ordinance stating that either the COE or officers would conduct final hearings.
- Three bar associations would confer to name a new COE member to be sworn in at the September 2015 COE meeting.

X. 2015 COMMISSION ON ETHICS DRAFT AMENDMENTS – Taken up under Item IX.

XI. EXECUTIVE DIRECTOR COMMENTS – None

XII. COMMISSION COMMENTS – None

XIII. PUBLIC COMMENTS – None

XIV. ADJOURNMENT

At 3:03 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

Commissioners

Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman
(Vacant)

Executive Director

Steven P. Cullen

August 19, 2015

Mr. Leonard Berger, Chief Assistant County Attorney
Palm Beach County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401

Re: RQO 15-037
Conflict of Interest

Dear Mr. Berger,

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:

Would a conflict of interest arise for Sheri Scarborough, a member of the Palm Beach County Zoning Commission, if G.L. Homes appears before her board when her client, Tuscan Property Owners Association, Inc. (POA), presently consists of officers who are associated with G.L. Homes?

ANSWER:

Based on the facts submitted, a prohibited conflict of interest would not arise for Ms. Scarborough if G.L. Homes appears before the Zoning Commission because G.L. Homes and the POA are separate legal entities.

The Palm Beach County Code of Ethics (Code) prohibits Ms. Scarborough from using her official position in any way to give a special financial benefit to a customer or client.¹ Here, the POA is a customer or client of Ms. Scarborough's outside business. Neither G.L. Homes nor any of the other separate legal entities created by G.L. Homes are clients of Ms. Scarborough. Therefore, based on the facts, Ms. Scarborough would not have a prohibited conflict of interest if G.L. Homes appears before the Palm Beach County Zoning Commission.

However, while there may be no per se conflict of interest created for Ms. Scarborough under the Code regarding the appearance of G.L. Homes before the Zoning Commission, since officers associated with G.L. Homes currently control the POA, there may be an appearance of impropriety if G.L. Homes appears before her board. This appearance of impropriety would exist until developer control of the POA cedes to the unit owners.

While it is not likely that the POA would appear before the Zoning Commission, a prohibited conflict of interest would arise under those circumstances. In that instance, Ms. Scarborough would need to abstain from voting, not participate in the matter and comply with the requirements of Sec. 2-443 (c).

¹ §2-443(a)

FACTS:

You are the Chief Assistant County Attorney, and you are requesting an advisory opinion on behalf of Sheri Scarborough. Ms. Scarborough serves on the Palm Beach County Zoning Commission. She is also a member of Superior Association Management, LLC, (Superior) a limited liability corporation that provides property management services for various clients in South Florida. Superior has recently entered into an agreement to provide such services to the Tuscany Property Owners Association, Inc. (POA). Tuscany is a residential project developed and marketed by G.L. Homes. G.L. Homes, through various corporate entities, frequently appears before the Zoning Commission.

G.L. Homes creates separate legal entities to develop and sell a single project. Atlantic Commons Associates, LLLP is the developer of Tuscany. Superior's client, the POA, is also a separate corporate entity which presently consists of officers who are also associated with G.L. Homes. Developer control of the POA will eventually cede to unit owners as units are sold. However, it is unlikely that this transition will occur in the very near future. In the event of a legal dispute between Superior and the POA, Superior's claim would be against the POA and not G.L. Homes or any corporation created to develop any residential project.

The Palm Beach County Zoning Commission provides recommendations to the Board of County Commissioners on a number of zoning-related applications and makes final decisions regarding certain variance applications. It is not a purely advisory board. It is not likely that the POA or Atlantic Commons Associates, LLLP will appear before the Zoning Commission, but it is probable that G.L. Homes will.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-443(a) 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:

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

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



Palm Beach County Commission on Ethics

Commissioners

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Judy M. Pierman
(Vacant)

Executive Director

Steven P. Cullen

August 26, 2015

Mr. Michael Dutko, Assistant City Attorney
City of Delray Beach
200 NW 1st Ave
Delray Beach, FL 33444

Re: RQO 15-038
Contractual Relationships

Dear Mr. Dutko,

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:

Would an employee of the City of Delray Beach violate the Palm Beach County Code of Ethics' (Code) contractual relationship prohibition if the employee also works as a youth basketball referee for the City?

ANSWER:

Based on the facts submitted, the Code prohibits the City employees from also working as City youth basketball referees because none of the exceptions to the contractual relationship prohibition apply.

Under the Code, public employees may not use their official position to give or influence others to give a special financial benefit to themselves.¹ In addition, the Code prohibits public employees from entering into any contract or transaction for goods or services with their public employer.² There are exceptions to the contractual relationship prohibition; however, none of those exceptions apply to this situation. One of the exceptions is for contracts or transactions that do not exceed \$500 per calendar year.³ However, since the City youth basketball referees receive over \$500 per calendar year, this exception does not apply. In addition, the facts reveal that this transaction also does not meet either the sealed bid/low bid exception, the emergency purchase exception, or the sole source of supply exception.⁴ Therefore, the City employees cannot also work as City youth basketball referees without violating the Code.

¹ §2-443(a)

² §2-443(d)

³ §2-443(e)(4)

⁴ §2-443(e)(1); §2-443(e)(2); §2-443(e)(3)

The Historic 1916 Palm Beach County Courthouse

300 North Dixie Highway, Suite 450, West Palm Beach, FL 33401 561.355.1915 FAX: 561.355.1904

Hotline: 877.766.5920 E-mail: ethics@palmbeachcountyethics.com

Website: www.palmbeachcountyethics.com

FACTS:

You are the Assistant City Attorney for the City of Delray Beach. The City has identified two City employees that, in addition to their official employment with the City, serve as basketball referee for the City's youth basketball league. Both employees are otherwise full-time City employees, who earn both salary and benefits for their official employment. For their service as basketball referees, each employee is paid \$25 per game by the City. Typically, there are several games on a given date. Both employees have received in excess of \$500 for serving as basketball referees during the current year.

The referees' schedules are managed by a youth basketball league coach who volunteers to coordinate the schedules. The City does not require referees for the youth basketball league to have any particular certifications or licenses. Neither of the identified City employees works within the City's Parks and Recreation Department, and neither is involved in the organization or administration of the youth basketball league. "Basketball referee" is not a part of either employee's official job duties and responsibilities with the City.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-443(a), §2-443(d), and §2-443(e) 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;
- (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.
- (e) ***Exceptions and waiver.***
- (1) The business is awarded under a system of sealed, competitive bidding to the lowest bidder and:
 - a. The official or employee or member of his or her household 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 member of his or her household 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 as applicable and there is full disclosure by the official or employee of his or her interest in the outside employer or business to the county or municipality as applicable and the ethics commission prior to the purchase, rental, sale, leasing, or other business being transacted.
- (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.

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



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Judy M. Pierman
(Vacant)

Executive Director

Steven P. Cullen

August 26, 2015

Mr. Michael Dutko
Assistant City Attorney
200 NW 1st Ave
Delray Beach, FL 33444

Re: RQO 15-039
Contractual Relationships

Dear Mr. Dutko,

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:

Would an employee of the City of Delray Beach violate the contractual relationship prohibition of the Palm Beach County Code of Ethics (Code) if the employee also works as a dance team instructor for the City's dance team?

ANSWER:

Based on the facts submitted, the Code prohibits the City employees from also working as dance team instructors for the City's dance team because none of the exceptions to the contractual relationship prohibition apply.

The Code prohibits public employees from using their official position to give or influence others to give a special financial benefit to themselves.¹ In addition, the Code prohibits the employees from entering into any contract or other transaction for goods or services with their public employer.² There are exceptions to the contractual relationship prohibition; however, none of those exceptions apply to this situation. First, the facts reveal that this transaction was not awarded in accordance with the sealed bid/low bid exception.³ Further, the emergency purchase exception and the sole source of supply exception also do not apply.⁴ Finally, the exception for transactions that do not exceed \$500 per calendar year would not apply since the dance team instructors receive over \$500 per calendar year.⁵ Therefore, since none of the exceptions to the contractual relationship prohibition apply here, the City employees cannot also work as dance instructors for the City's dance team without violating the Code.

¹ §2-443(a)

² §2-443(d)

³ §2-443(e)(1)

⁴ §2-443(e)(2); §2-443(e)(3)

⁵ §2-443(e)(4)

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Website: www.palmbeachcountyethics.com

FACTS:

You are the Assistant City Attorney for the City of Delray Beach. The City has identified two part-time City employees who, in addition to their official employment with the City, also serve as dance team instructors for the Diamonds & Pearls Dance Team. The dance team, which is comprised of City residents, is sanctioned and organized by the City and participates in local and collegiate homecoming parades and special events. These two City employees are the only instructors for the team and have worked with the team since its inception. The City employees serve as team instructors under separate independent contractor agreements with the City by which they are each compensated \$10 per hour for a maximum of 300 hours per year. The contracts are overseen by the City's Parks and Recreation Department. Outside of the independent contractor agreements, the two individuals work within the Parks and Recreation Department with the children's after-school programs. Neither employee is involved in the department's oversight or management of the independent contractor agreements. "Dance team instructor" is not a part of the employees' official job duties or responsibilities with the City. Both employees have received in excess of \$500 for serving as dance team instructors during the current year. In their official part-time employment with the City, each employee works 29 hours or less per week and neither receives benefits from the City.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-443(a), §2-443(d), and §2-443(e) 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;
- (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.
- (e) ***Exceptions and waiver.***
- (1) The business is awarded under a system of sealed, competitive bidding to the lowest bidder and:
 - a. The official or employee or member of his or her household 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 member of his or her household 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 as applicable and there is full disclosure by the official or employee of his or her interest in the outside employer or business to the county or municipality as applicable and the ethics commission prior to the purchase, rental, sale, leasing, or other business being transacted.
 - (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.

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



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Judy M. Pierman
(Vacant)

Executive Director

Steven P. Cullen

August 26, 2015

Ms. Merlene Reid, Human Resources Director
Village of Tequesta
345 Tequesta Drive
Tequesta, FL 33469

Re: RQO 15-040
Gift law

Dear Ms. Reid,

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 Village of Tequesta (Village) from accepting an offer of free pressure cleaning services for the gutter and sidewalk area of a public roadway, where the provider is a Village resident who resides along that roadway?

ANSWER:

Based on the facts submitted, the Code does not prohibit the Village from accepting an offer of free pressure cleaning services for the gutter and sidewalk area of a public roadway from the Village resident as long as the pressure cleaning services are determined to have a public purpose and the resident offering the service does not receive any unlawful benefit for providing such a service.

The Code defines "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 In addition, public officials and employees are prohibited 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 However, the Code specifically exempts gifts accepted by public officials or employees on behalf of their government which will be used solely for a public purpose.⁴ Whether the pressure cleaning service meets the definition of a public purpose must be determined by the administration or by the governing body of the municipality.⁵

Under the facts, since the pressure cleaning services are being offered to the Village itself and the resident is offering to do so without any expectation of action by the Village in return, the Code does not prohibit the Village from accepting an offer of free pressure cleaning services for the gutter and sidewalk area of a public roadway as long as the pressure cleaning services are determined to have a public purpose.

¹ §2-444(g)

² §2-444(e)(1, 2 & 3)

³ §2-444(a)(1)

⁴ §2-444(g)(1)e.

⁵ RQO 15-009; RQO 12-062; RQO 12-044; RQO 11-084

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FACTS:

You are the Human Resources Director for the Village of Tequesta. A pressure cleaning company, M&H Pressure Cleaning, has offered the Village free pressure cleaning services for a particular section of sidewalks and gutters of a public roadway. The company is a vendor of the Village. The owner of the company is a Tequesta resident and lives on the street where the work would be performed. He does not like the way the sidewalks have been cleaned. He has been cleaning the section in front of his home for years and wants to extend the area that he has been cleaning to include an additional block of public roadway. The Village is responsible for cleaning these sidewalks.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-444(a)(1), §2-444(e), 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.
- (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 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



Palm Beach County Commission on Ethics

Commissioners

Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman
(Vacant)

Executive Director

Steven P. Cullen

August 25, 2015

Ms. Coles-Dobay, Public Art Manager
City of Boynton Beach
100 E. Boynton Beach Boulevard
P. O. Box 310
Boynton Beach, FL 33425

RE: RQO 15-041
Conflict of Interest

Dear Ms. Coles-Dobay,

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:

Is it a prohibited conflict of interest for you under the Code of Ethics (Code) as a City of Boynton Beach (City) employee, as part of your outside employment, to assist two artists with bid proposals in cities other than Boynton Beach?

ANSWER:

Based upon the facts submitted, the two artists may be or become customers or clients of your outside business, based on the amount you are paid by them for work on their behalf¹. As such, you are prohibited from using your official position to give a special financial benefit to them as customers or clients of your outside business.² This would include using your official position to assist them in securing any work for the public entity that employs you, the City of Boynton Beach, should they choose to bid on a City project. No other provisions of the Code would be applicable to the facts as presented.

FACTS:

You are the Public Art Manager for the City. Two artists have requested your assistance in submitting bids pursuant to Requests for Proposals to governmental entities outside of the City. You would be compensated for your time in providing this assistance. The compensation would be paid directly to you and you will not form any business entity to conduct this work. Although these artists have in the past, and may in the future, submit bids to the City, you would not be providing this service to artists in submitting those bids. The City uses independent selection panels in awarding its bids. Although you facilitate the work of the selection panels, you do not sit on these panels nor formulate the City's bid specifications.

¹ Sec. 4-442, *Definitions*, which defines a customer or client of your outside business as any person or entity to whom your outside business has supplied goods and services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).

² Sec. 2-443 (a)(5).

The Historic 1916 Palm Beach County Courthouse

300 North Dixie Highway, Suite 450, West Palm Beach, FL 33401 561.355.1915 FAX: 561.355.1904

Hotline: 877.766.5920 E-mail: ethics@palmbeachcountyethics.com

Website: www.palmbeachcountyethics.com

LEGAL BASIS:

The legal basis for this opinion is found in Section 2-443 (a)(5) 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:

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

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

SPC/gal