



Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

300 North Dixie Highway
West Palm Beach, FL 33401

561.355.1915

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Commissioners

Michael S. Kridel, Chair

Clevis Headley, Vice Chair

Michael F. Loffredo

Judy M. Pierman

Sarah L. Shullman

Executive Director

Mark E. Bannon

Intake and Compliance Manager

Gina A. Levesque

General Counsel

Christie E. Kelley

Chief Investigator

Anthony C. Bennett

Investigator

Abigail Irizarry

Agenda

June 1, 2017 – 1:30 p.m.

Governmental Center,

301 North Olive Avenue, 6th Floor
Commissioners Chambers

Meeting will begin at 1:30pm

Executive Session at 1:35pm

Regular Agenda will resume at 2:30pm

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from May 4, 2017
- V. Executive Session Re: C16-011
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 17-007
 - b. RQO 17-008
 - c. RQO 17-009
- 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**

MAY 4, 2017

**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 M. Pierman
Sarah L. Shullman

STAFF:

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

ADMINISTRATIVE STAFF:

Victoria Torres, Minutes Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

IV. APPROVAL OF MINUTES FROM APRIL 6, 2017

MOTION to approve the April 6, 2017 minutes. Motion by Judy Pierman, seconded by Clevis Headley, and carried 4-0. Michael Loffredo absent.

V. PROPOSED ADVISORY OPINIONS (CONSENT AGENDA)

V.a. RQO 17-004

General Counsel Christie Kelley stated that:

- Mayor Burdick was asked to serve as an Executive Champion of Achieve Palm Beach County (Achieve).
- Achieve was a non-profit organization that did not have a formal board of directors; however it had executive champions who provided guidance and oversight.
- Mayor Burdick had asked what prohibitions of the Code of Ethics would apply to her if she served in her private capacity to fundraise on behalf of Achieve.
- Since the executive champions were fulfilling the same functions as a board of director, Mayor Burdick would be prohibited from using her official position as the Mayor of the Board of County Commissioners to participate in any fundraising efforts.
- In addition, if anything came before the BCC that would give a special financial benefit to Achieve, the mayor would have to disclose publicly the nature of the conflict, refrain from voting on or participating in the discussion, and file a state voting conflict form.
- In terms of fundraising, she would be prohibited from lending her name and official title to any efforts on behalf of the organization.
- Any solicitation in excess of \$100 from a county vendor or lobbyist would need to be logged under a charitable solicitation form and submitted to the Commission on Ethics within 30 days.

In response to Chair Kridel, Ms. Kelley clarified that Mayor Burdick could not use her official name to fundraise; however any solicitation would have to be under her personal name. She added that if the mayor wanted to use her official name or title, she could not serve as an executive champion.

MOTION to approve the RQO 17-004. Motion by Clevis Headley, seconded by Sarah Shullman, and carried 4-0. Michael Loffredo absent.

VI. EXECUTIVE DIRECTOR COMMENTS

VI.a.

DISCUSSED: Volunteer Advocates

COE Executive Director Mark Bannon stated that staff added two volunteers to the advocate list.

VI.b.

DISCUSSED: Trainings.

Mr. Bannon said that he and Ms. Kelley were conducting live trainings in the City of Riviera Beach. He added that staff had been attending municipal meetings to answer questions from official employees and presenting in front of private groups.

VI.c.

DISCUSSED: Reviewing the Ordinance.

Mr. Bannon said that staff was starting the process of reviewing the Code of Ethics lobbyist registration and post-employment ordinance to consider any potential changes and issues.

VII. COMMISSION COMMENTS – None

VIII. PUBLIC COMMENTS – None

IX. ADJOURNMENT

At 1:43 p.m., the chair declared the meeting adjourned.

APPROVED

Chair/Vice Chair



Palm Beach County Commission on Ethics

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Commissioners

Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman
Sarah L. Shullman

Executive Director
Mark E. Bannon

May 17, 2017

Mr. Javarious Jackson
PBC Office of Equal Opportunity
301 N. Olive Ave, 10th Floor
West Palm Beach, FL 33401

Re: RQO 17-007
Conflict of Interest/Advisory Board

Dear Mr. Jackson,

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 an employee of Palm Beach County, would a conflict of interest arise for you if you are appointed to the One-Cent Citizen Surtax Committee and the Charter Review Board for the City of Riviera Beach?

ANSWER:

Based on the facts submitted, the Palm Beach County Code of Ethics (Code) does not prohibit you from serving on the either advisory board, as these board memberships do not create a *per se* conflict of interest with your county employment.

As a county employee, you are under the jurisdiction of the COE and the Code. In addition, as an advisory board member, you would also be under the jurisdiction of the COE and the Code while serving on either of these boards. The Code defines an advisory board as any advisory or quasi-judicial board created by a local municipal governing bodies.¹ Therefore, both the One-Cent Citizen Surtax Committee and the Charter Review Board are advisory boards. Under the Code, an official means members appointed by members of local municipal governing bodies to serve on any advisory, quasi-judicial, or any other board of the municipality.² Because the City of Riviera Beach City Council appoints the members of both of these advisory boards, if you are selected to serve on one board or both boards, then you would also be considered an official under the Code.³

The Palm Beach County Code of Ethics (Code) prohibits public employees and officials from using their official position in any manner to give a special financial benefit to specified persons or entities, including to yourself.⁴ In addition, advisory board members are prohibited from participating or voting on an issue that would give a special financial benefit to themselves.⁵

Therefore, you may not use your official position as a municipal advisory board member or as a county employee in any way to give a special financial benefit to yourself or to any of the prohibited persons or entities listed in §2-443(a). In addition, because you would have the ability to participate in discussions as well as to vote on matters

¹ §2-442

² Id.

³ Id.

⁴ §2-443(a)

⁵ §2-443(c)

before these board, as a member of the One-Cent Citizen Surtax Committee member or as a member of the Charter Review Board, you must also understand that under §2-443(c) of the Code, you may neither participate in nor vote on any matter that will give a special financial benefit to yourself or any of the persons or entities listed in §2-443(a).

FACTS:

You are a county employee, serving as a secretary for the Office of Equal Opportunity (OEO). OEO's mission is to promote a discrimination free quality of life for county residents through educating and advocating a policy of nondiscrimination and enforcing local, state and federal civil rights laws. OEO is responsible for investigating and resolving complaints of discrimination in employment, housing and public accommodations on the basis of race, sex, color, religion, national origin, disability, age, sexual orientation, marital status or familial status and gender identity or expression. Additionally, OEO provides human relations training and referral services and oversees the county's Disability Accessibility program.

You are seeking board appointments to the One-Cent Citizen Surtax Committee and the Charter Review Board for the City of Riviera Beach. You would serve on these boards as a volunteer, and without compensation. Both boards are advisory boards for the City, not the county. The City Council appoints the members of each board.

LEGAL BASIS:

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

Sec. 2-442. Definitions.

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

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "employee" includes but is not limited to all managers, department heads and personnel of the county or the municipalities located within the county. The term also includes contract personnel and contract administrators performing a government function, and chief executive officer who is not part of the local governing body. 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:

- (1) Himself or herself;
- (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 people;
- (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
- (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;
- (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner— "substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include

- forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
- (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.
- (c) ***Disclosure of voting conflicts.*** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. 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. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

Sincerely,



Mark E. Bannon
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

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Commissioners

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Clevis Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman
Sarah L. Shullman

Executive Director
Mark E. Bannon

May 17, 2017

Mr. Tony Brown
P.O Box 15340
Fernandina Beach, FL 32035

Re: RQO 17-008
Conflict of Interest

Dear Mr. Brown,

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:

You are in the final round of the hiring process for the Director of the Department of Economic Sustainability (DES) position for Palm Beach County. In general, you would not be entitled to an advisory opinion because you 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.¹ However, if you are selected as the Director of the Department of Economic Sustainability, you would be a county employee and would be subject to the Code. Because you are seeking an opinion proactively to avoid any potential issues, the COE will make an exception and provide an opinion.

QUESTION #1:

FACTS:

You are the former Executive Director of the Riviera Beach Community Redevelopment Agency (CRA) and the former president of the Riviera Beach Community Development Corporation (CDC). The CDC is a certified Community Housing Development Organization and a recipient of grant funds from the county.

QUESTION:

Would a conflict of interest arise for you if you become the Director of DES when the county provides grants to the CRA and CDC?

ANSWER:

A conflict of interest would not arise for you as the former Executive Director of the CRA or as the former president of the CDC. The Code prohibits you from using your official position in any way to give a special financial benefit to specified persons or entities.² Among those specified persons or entities is an outside employer or business.³ Based on the facts provided here, you are not currently employed by the CRA or the CDC, thus Sec. 2-443(a)(4) is not implicated in this situation. Therefore, your past employment with the CRA and the CDC does not create a conflict of interest for you, even when the county provides grants to both organizations.

¹ COE Rule of Procedure 2.2

² §2-443(a)(1-7)

³ §2-443(a)(4)

QUESTION #2:

FACTS:

You are on the Board of Directors of the Palm Beach North Chamber of Commerce (PNCC). The PNCC is a non-profit organization serving the 10 municipalities that make up Palm Beach North. You initially served as a board member representing the Riviera Beach CRA. When you left employment with the CRA, you changed your board member affiliation to T. Brown Consulting Group. If you accept the position with the county, you will serve as a PNCC board member, representing Palm Beach County.

Question:

Would a conflict of interest arise for you if you continue to serve on the PNCC board of directors?

ANSWER:

The Code prohibits you from using your official position in any way to give a special financial benefit to the prohibited persons or entities specified in Sec. 2-443(a)(1-7), including a non-profit organization of which you are an officer or director. Therefore, if you continue to serve on the PNCC board of directors, you would be prohibited from using your official position as the Director of DES in any way to give a special financial benefit to PNCC.

QUESTION #3:

FACTS:

You are a member of the BB&T Bank's Community Advisory Board. As an advisory board member, you advise the bank on which services the community needs, and you receive \$500 annually in stock options.

QUESTION:

Would a conflict of interest arise for you if you continue to serve as an advisory board member who receives compensation for your board service?

ANSWER:

Sec. 2-443(a)(4) prohibits you from using your official position in any way to give a special financial benefit to your outside employer or business. An outside employer is defined as "any entity ...of which the official or employee is a member, official, director ... and from which he or she receives compensation for services rendered...." Since BB&T compensates you for your service on the advisory board, BB&T would be considered your outside employer. Therefore, if you continue to serve on the advisory board for BB&T Bank, you would be prohibited from using your official position as the Director of DES in any way to give a special financial benefit to BB&T.

In addition, if BB&T Bank is a vendor of the county, you must complete an outside employment waiver form. The Code prohibits an employee or the employee's outside employer from entering into any contract or other transaction to provide goods or services to their public employer.⁴ Here, if BB&T is a vendor of the county, you would be prohibited from continuing to serve as a compensated board member unless you are eligible for an outside employment waiver.⁵ To be eligible for a waiver, you may not work in the county department that enforces, oversees, or administers the contract between the county and your outside employer, and you cannot be involved in the contract in any way. In addition, you cannot have participated in determining the contract requirements or awarding the contract. Further, the outside employment cannot interfere with your County work performance, and you must comply with the county's outside employment merit rules. Finally, you must complete the conflict of interest waiver form under oath, have it signed by your supervisor and the chief administrative officer for the county, and submit the form to the COE.

⁴ §2-443(d)

⁵ §2-443(e)(5)

QUESTION #4:

FACTS:

You are a member of the board of directors for the Community Reinvestment Fund (CRF). CRF is a national non-profit organization with a mission to empower people to improve their lives and strengthen their communities through innovative financial solutions. CRF provides loans to people in low income areas and to small businesses. It is one of the nation's largest Community Development Financial Institutions. As a board member, you are not compensated, but CRF pays for all travel and lodging for members to attend its meetings. In the future, CRF may partner or buy loans from other local groups that are funded by DES, so you believe that a business purpose exists from staying involved with this organization.

QUESTION:

May you accept the payment of travel expenses from CRF? May you attend CRF meetings without using personal or vacation time?

ANSWER:

Sec. 2-443(a)(7) prohibits you from using your official position in any way to give a special financial benefit to a non-profit organization of which you are an officer or director. Therefore, if you continue to serve on the board of CRF, you would be prohibited from using your official position as the Director of DES in any way to give a special financial benefit to CRF.

In addition, county employees and officials are prohibited from accepting, directly or indirectly, any travel expenses from any county contractor, vendor, service provider, bidder or proposer.⁶ Under the Code, travel expenses include meals, lodging, transportation and other expense. However, the Board of County Commissioners may waive this prohibition by a majority vote of the board.⁷ Thus, if CRF is a county contractor, vendor, service provider, bidder or proposer, in order for you to be reimbursed for the travel expenses, the expense must be waived by the board of county commissioners. If CRF is not a county contractor, vendor, service provider, bidder or proposer, then the Code does not prohibit you from accepting payment of travel expenses from CRF. However, you may have to report the travel expenses on your annual Palm Beach County gift form.⁸

If your attendance at the CRF meetings is in your official capacity and for educational or governmental purposes, the payment of your travel expenses by CRF would not be considered a gift as defined by §2-444(g) of the gift law and, therefore, does not need to be reported. However, if the travel is not in your official capacity and for educational or governmental purposes, then you may be required to report travel expenses in excess of \$100 that you receive.

The COE cannot opine on whether attendance at CRF meetings has an educational or governmental purpose and whether you must take vacation time to attend CRF meetings. The COE does not have jurisdiction over a department's policies and procedures.

QUESTION #5:

FACTS:

You are a member of the board of directors for New Markets Tax Credit Coalition (NMTCC). You serve in your personal capacity under your company's name (T. Brown Counseling Group). NMTCC is a non-profit, 501(c)(4) national membership organization which advocates on behalf of the New Markets Tax Credit program. You personally spend about \$12,000 per year serving on the board and attending board meetings. You would take personal leave when attending board meetings.

⁶ §2-443(f)

⁷ Id.

⁸ §2-444(f)

QUESTION:

May you continue your membership and board service under your company's name? Would a conflict of interest arise for you if you continue to serve as a board member of NMTCC?

ANSWER:

The Code does not prohibit you from continuing your membership and board service in your private capacity. However, the Code prohibits you from using your official position in any way to give a special financial benefit to a non-profit organization of which you are an officer or director.⁹ Therefore, if you continue to serve on the NMTCC board of directors, you would be prohibited from using your official position as the Director of DES in any way to give a special financial benefit to NMTCC.

QUESTION #6:

FACTS:

You own a consulting and real estate development firm under the corporate umbrella of T. Brown Consulting Group (TBCG). Your firm devises capital solutions for community advancement, developing local real estate, and implementing small business initiatives. Your real estate interests are located outside of Palm Beach County. You stated that if you are hired as the Director of DES, you would not assume any consulting contracts if it conflicted or interfered with your job.

In addition, you recently agreed to be an investment partner in TBCG Capital Group with 50% ownership. The TBCG Capital Group has responded to an "Invitation to Negotiate" for the development of a site owned by the West Palm Beach Community Redevelopment Agency in Northwood Village. TBCG Capital Group is one of only three firms under consideration. Your partner is the managing member and runs the day-to-day operations. As the potential Director of DES, your department would have the ability to provide additional funds to projects in West Palm Beach.

QUESTION:

Would your outside businesses create a conflict of interest for you while serving as the Director of DES? Are you required to complete any financial disclosures while serving as Director of DES?

ANSWER:

Sec. 2-443(a)(4) prohibits you from using your official position in any way to give a special financial benefit to your outside business. An outside business as an entity in which the employee has an ownership interest. The Code defines an "ownership interest" as having at least five percent of the total assets or common stock owned by the employee or any combination of the employee's household members, spouse, or certain relatives. Therefore, TBCG and TBCG Capital Group are your outside businesses. As such, you are prohibited from using your official position in any way to give a special financial benefit to TBCG and TBCG Capital Group. You would also be prohibited from soliciting business during your county work hours and from identifying yourself as a county employee, including providing any written or verbal communication using your title or position, to attempt to obtain a customer for your outside businesses.

Furthermore, you would be prohibited from providing any funding, directly or indirectly, through DES to a project in which you have a financial interest.

In addition, Sec. 2-443(d) prohibits you or your outside business from contracting with the county. Therefore, TBCG and TBCG Capital Group are prohibited from entering into any contracts with the county, directly or indirectly, unless one of the six enumerated exceptions in Sec. 2-443(e) applies. For example, where county funds are paid to TBCG or TBCG Capital Group, directly or indirectly, to help fund a municipal or CRA project, unless one of the exceptions applied, it would violate this provision of the Code because an indirect contractual relationship would exist. Additionally, if a contract between your outside business and the county is in force prior to your employment as the

⁹ 2-443(a)(7)

Director of DES, you and your outside business would not be able to renew that contract once it expires unless one of the six exceptions applies.

Furthermore, Sec. 2-443(i) prohibits public employees from disclosing or using any information that is not available to the general public for their "personal gain or benefit or for the personal gain or benefit of any other person." Thus, you are prohibited from using any information gained through your position as Director of DES for your benefit, your outside business' benefit, or to benefit any other person.

Finally, the COE does not have jurisdiction over state law issues, such as financial disclosures.

LEGAL BASIS:

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

Sec. 2-442. Definitions

Outside employer or business includes:

- (1) Any entity, other than the county, the state, or any other federal, regional, local, or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced. For purposes of this definition, "compensation" does not include reimbursement for necessary expenses, including travel expenses; or
- (2) Any entity located in the county or which does business with or is regulated by the county or municipality as applicable, in which the official or employee has an ownership interest. For purposes of this definition, an "ownership interest" shall mean at least five (5) percent of the total assets or common stock owned by the official or employee or any combination of the official or employee's household members, spouse, child, step-child, brother, sister, parent or step-parent, or a person claimed as a dependent on the official or employee's latest individual federal tax return.

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

- (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.

- (e) **Exceptions and waiver.** In addition, no official or employee shall be held in violation of subsection (d) if:
- (1) The business is awarded under a system of sealed, competitive bidding to the lowest bidder and:
 - a. The official or employee or 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.
 - (5) Notwithstanding any provision to the contrary, subsection (d) shall not be construed to prevent an employee from seeking part-time employment with an outside employer who has entered into a contract for goods or services with the county or municipality as applicable provided that:
 - a. The employee or relative of the employee does not work in the county or municipal department as applicable which will enforce, oversee or administer the subject contract; and
 - b. The outside employment would not interfere with or otherwise impair his or her independence of judgment or otherwise interfere with the full and faithful performance of his or her public duties to the county or municipality as applicable; and
- (f) **Accepting travel expenses.** No official or employee shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees and incidentals from any county or municipal contractor, vendor, service provider, bidder or proposer as applicable. The board of county commissioners or local municipal governing body as applicable may waive the requirements of this subsection by a majority vote of the board or local municipal governing body. The provisions of this subsection shall not apply to travel expenses paid by other governmental entities or by organizations of which the county or municipality as applicable is a member if the travel is related to that membership.
- (i) **Disclosure or use of certain information.** A current or former official or employee shall not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person.

Sec. 2-444. Gift law.

- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
- (1) *Gift reports for officials and employees identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. When a state reporting individual files a gift report with the state, a copy of each report shall also be filed contemporaneously with the county commission on ethics.
- (2) *All other officials and employees who are not reporting individuals under state law.*
- b. *All other gifts.* All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics no later than November 1 of each year beginning November 1, 2011, for the period ending September 30 of each year. All officials or employees who are not reporting individuals under state law and who do not receive a gift in excess of one hundred dollars (\$100) during a given reporting period shall not file an annual gift disclosure report. The annual gift disclosure report shall be created by the county commission on ethics and shall be in a form substantially similar in content as that required by state law.
- (g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single setting or a meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift may consult, among other sources, Florida Statutes, §112.3148, and the Florida Administrative Code as may be amended.
- (1) Exceptions. The provisions of subsection (g) shall not apply to:
- 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;
- h. Registration fees and other related costs associated with educational or governmental conferences, meetings or seminars and travel expenses either properly waived or inapplicable pursuant to section 2-443(f), provided that attendance is for governmental purposes, and attendance is related to their duties and responsibilities as an official or employee of the county or municipality;

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. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

Sincerely,



Mark E. Bannon
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

Honesty - Integrity - Character

Commissioners
Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman
Sarah L. Shullman

Executive Director
Mark E. Bannon

May 24, 2017

Omari Hardy, Commissioner
City of Lake Worth
7 North Dixie Highway
Lake Worth, FL 33460

Re: RQO 17-009
Conflict of Interest

Dear Commissioner Hardy,

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:

Under the Palm Beach County Code of Ethics (Code), what prohibitions would exist for you as a City of Lake Worth City Commissioner when you are employed with Adopt-A-Family of the Palm Beaches (AAF) in your private capacity and AAF has matters presented before the City Commission?

ANSWER:

The Code prohibits public employees and officials from using their official position in any manner to give a special financial benefit to specified persons or entities.¹ Among the prohibited persons or entities is an outside employer.² The Code defines an outside employer as "any entity . . . of which the official . . . 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."³ Thus, under the Code, Adopt-a-Family is your outside employer. As such, you are prohibited from using your official position as a City of Lake Worth City Commissioner in any way to give a special financial benefit to AAF.

Under the Code, officials must abstain from voting and not participate in any matter that will result in a special financial benefit being given to any of the prohibited persons or entities listed in §2-443(a).⁴ Therefore, if AAF has a matter before the City Commission that would give a special financial benefit to AAF, you are prohibited from both participating in discussions on the matter and voting on the matter. This does not mean that the Lake Worth City Commission cannot give a special financial benefit to AAF, only that you may not participate in discussions to influence the City Commission and may not vote on such a matter if it should come before the City Commission. You must also take care not to act in your official position as a City Commissioner to attempt to influence City staff in their recommendation to the City Commission regarding matters where AAF would receive any special financial benefit.

Finally, the Code also prohibits officials from using their official position to corruptly secure or attempt to secure a special benefit for themselves or others.⁵ As defined by the Code, corruptly means done with a wrongful intent and

¹ §2-443(a)(1-7)

² §2-443(a)(4)

³ §2-442

⁴ §2-443(c)

⁵ §2-443(b)

for the purpose of obtaining a special benefit for any person, resulting from some act, such as voting, which is inconsistent with the proper performance of his or her public duties. Thus, as a City Commissioner, you are prohibited from wrongfully securing any special benefit for anyone, including AAF.

FACTS:

You are a City of Lake Worth City Commissioner. You work at Adopt-A-Family of the Palm Beaches (AAF) as a Resident Manager in the Housing Department. AAF is a non-profit organization that provides housing and social services to vulnerable families in Palm Beach County. Its main office is located in Lake Worth, as are many of its residential properties. As a result, AAF interacts with the City of Lake Worth on a regular basis, and the City Commission has voted on items involving AAF in the past. AAF expects that additional items will come before the City Commission for a vote.

LEGAL BASIS:

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

Sec. 2-442. Definitions.

Outside employer or business includes:

- (1) Any entity, other than the county, the state, or any other federal, regional, local, or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced. For purposes of this definition, "compensation" does not include reimbursement for necessary expenses, including travel expenses;

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

- (b) ***Corrupt misuse of official position.*** An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

- (c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. 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. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

Sincerely,



Mark E. Bannon
Executive Director

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