



Honesty - Integrity - Character

Palm Beach County
Commission on Ethics
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Commissioners
Michael S. Kridel, Chair
Clevis Headley, Vice Chair

Bryan Kummerlen
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

November 2, 2017 – 2:30 p.m.
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Meeting will begin at 2:30pm
Executive Session will begin at 3:00pm
Regular Agenda will resume at 4:00pm

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from October 12, 2017
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 17-022
- VI. Items Pulled from Consent Agenda
 - a.
- VII. Proposed Advisory Opinions
 - a. RQO 17-015
- VIII. Executive Session(s)
 - a. C17-018
 - b. C17-019
 - c. C17-028
 - d. C15-023
- IX. Executive Director Comments
- X. Commission Comments
- XI. Public Comments
- XII. Adjournment

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

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

OCTOBER 12, 2017

**THURSDAY
1:31 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

Vice Chair Clevis Headley requested that everyone silence their cell phones.

II. ROLL CALL

MEMBERS:

Michael S. Kridel, Chair – Absent
Clevis Headley, Vice Chair
Bryan Kummerlen
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:

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

III. INTRODUCTORY REMARKS – None

IV. APPROVAL OF MINUTES FROM AUGUST 3, 2017

MOTION to approve the August 3, 2017 minutes. Motion by Judy Pierman, seconded by Sarah Shullman, and carried 4-0. Michael Kridel absent.

V. STATUS CHECK RE: FINAL HEARING C16-011

John Cleary, Voluntary Advocate, said that a negotiated settlement was reached with Representative Al Jacquet and his counsel. He added that the Letter of Reprimand stated that Mr. Jacquet violated 2 sections of the Palm Beach County Code of Ethics (Code) and that a \$150 fine per violation was issued.

J.C. Planas, Representative Jacquet's counsel, said that he and his client agreed to the settlement, and he provided the COE with a signed agreement and a money order for the fines.

Commissioner Sarah Shullman said that a determination should be made whether violating Sections 2-443(a) and 2-443(b) of the Code was intentional or unintentional.

Mr. Planas recommended finding the violations unintentional because there was significant miscommunication among the parties involved in the matter.

Mr. Cleary stated that the violations should be found to be intentional.

Mark Bannon, COE Executive Director, said that the COE's determination should be based on the violations and not on Mr. Jacquet's actions.

Commissioner Bryan Kummerlen stated that Mr. Jacquet's actions were intentional, but the Code violation was unintentional.

Vice Chair Clevis Headley said that if commissioners received prior ethics training, they would have known that the Code applied.

Mr. Planas responded that people were often unaware that their actions violated a particular ethics law. He added that Mr. Jacquet accepted responsibility for his actions and that he should be afforded some leniency.

Commissioner Judy Pierman said that Mr. Jacquet may have reconsidered his actions had he known about the consequences and that she believed that the violations were unintentional.

V. – CONTINUED

Christie Kelley, COE General Counsel, said that for settlement purposes, the COE was required to make a determination of intentional or unintentional.

Mr. Bannon noted that a finding of intentional or unintentional would not change the \$150 fine per violation.

Commissioner Shullman said that Mr. Jacquet's actions were probably intentional, but she did not believe that he intentionally violated the Code.

MOTION to approve finding that Count 1 of C16-011 was unintentional. Motion by Bryan Kummerlen, seconded by Judy Pierman, and carried 3-1. Clevis Headley abstaining and Michael Kridel absent.

MOTION to approve finding that Count 2 of C16-011 was unintentional. Motion by Bryan Kummerlen, seconded by Judy Pierman, and carried 3-1. Clevis Headley abstaining and Michael Kridel absent.

MOTION to accept the negotiated settled as presented and signed. Motion by Judy Pierman, seconded by Bryan Kummerlen, and carried 4-0. Michael Kridel absent.

MOTION to accept the Public Report and Final Order as revised. Motion by Judy Pierman, seconded by Bryan Kummerlen, and carried 4-0. Michael Kridel absent.

MOTION to accept the Letter of Reprimand. Motion by Judy Pierman, seconded by Clevis Headley, and carried 4-0. Michael Kridel absent.

MOTION to accept the Order. Motion by Clevis Headley, seconded by Judy Pierman, and carried 4-0. Michael Kridel absent.

Commissioner Pierman read the following Public Report and Final Order:

Complainant, Mark E. Bannon, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on September 12, 2016, alleging possible ethics violations involving Respondent, Alson Jacquet, former Vice Mayor of the City of Delray Beach.

V. – CONTINUED

The complaint alleges two Palm Beach County Code of Ethics violations involving misuse of official position and corrupt misuse of office.

Count 1 alleges that on or about April 5, 2016, Respondent violated Article XIII, Section 2-443(a), *Misuse of public office or employment*, of the Palm Beach County Code of Ethics by using his official position as the Vice Mayor for the City of Delray Beach to give a special financial benefit to himself by having his parking citation voided by the Delray Beach Police Department. Count 2 alleges that on or about April 5, 2016, Respondent attempted to corruptly secure a special privilege, benefit, or exemption for himself with wrongful intent, in a manner inconsistent with a proper performance of his public duties, in violation of Article XIII, Section 2-443(b), *Corrupt misuse of official position*, of the Palm Beach County Code of Ethics.

On September 12, 2016, the complaint was determined by staff to be LEGALLY SUFFICIENT. On June 1, 2017, in executive session, the COE found PROBABLE CAUSE to believe a violation may have occurred, and the matter was to be scheduled for a final public hearing.

On October 12, 2017, RESPONDENT and ADVOCATE submitted a NEGOTIATED SETTLEMENT including a LETTER OF REPRIMAND to the COE for approval. RESPONDENT stipulates to the facts and circumstances as contained in the aforementioned LETTER OF REPRIMAND. According to the NEGOTIATED SETTLEMENT and based on the facts as set forth in the LETTER OF REPRIMAND, RESPONDENT admits to the allegations contained in counts one and two of the COMPLAINT that he violated §2-443(a) and §2-443(b) of the Palm Beach County Code of Ethics. RESPONDENT agrees to accept a LETTER OF REPRIMAND and to pay a total of three hundred (\$300) dollars in fines.

(This space intentionally left blank.)

V. – CONTINUED

Pursuant to Commission on Ethics Ordinance §2-260.1, *Public hearing procedures*, the Commission finds that the violation in Count 1 was unintentional and the violation in Count 2 was unintentional. As to Counts 1 and 2, the Commission assess a total fine of three hundred (\$300) dollars, and the RESPONDENT has been issued a LETTER OF REPRIMAND.

Therefore, it is:

ORDERED AND ADJUDGED THAT this matter is concluded upon the issuance of a LETTER OF REPRIMAND for Count 1: §2-443(a), *Misuse of public office or employment*, and Count 2: §2-443(b), *Corrupt misuse of official position*, and payment of a three hundred (\$300) dollar fine.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on this 12th day of October, 2017.

By: Sarah L. Shullman, Presiding Commissioner

(CLERK'S NOTE: The clerk added the language as printed in the Public Report and Final Order, including the corrections discussed.)

MOTION to accept the Public Report and Final Order as amended to include the corrections to the scrivener's errors. Motion by Clevis Headley.

Mr. Jacquet said that he wanted to ensure that the language referencing wrongful intent was accurate and was agreed to by Mr. Planas, Mr. Cleary, and the COE.

Mr. Planas clarified that the allegation mentioned wrongful intent, but the conclusion stated that the violation was unintentional.

MOTION SECONDED by Judy Pierman, and upon call for a vote, the motion carried 4-0. Michael Kridel absent.

RECESS

At 1:57 p.m., the vice chair declared the meeting recessed for an executive session

VI. EXECUTIVE SESSION(S)

RECONVENE

At 3:29 p.m., the meeting reconvened with Vice Chair Clevis Headley, and Commissioners Michael Kummerlen, Judy Pierman, and Sarah Shullman present.

VI.a. C15-022

Commissioner Shullman read the following Public Report and Final Order of Dismissal as discussed during the executive session:

Complainant, Steven P. Cullen, former Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on October 2, 2015, alleging that Respondent, Cesar Irizarry, a former City of Delray Beach employee, violated §2-443(b) and §2-443(d) of the Palm Beach County Code of Ethics by improperly using his official position as a city employee to corruptly secure a special benefit for himself and others and by entering into prohibited contracts with the City of Delray Beach through his outside business.

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On October 12, 2017, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the Report of Investigation, and the Probable Cause Recommendation submitted by the COE Advocate. After an oral statement by the Advocate and Respondent, the Commission found that probable cause existed but dismissed the complaint because the public interest would not be served by proceeding further pursuant to Section 2-260.3 of the Commission on Ethics Ordinance.

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VI.a. – CONTINUED

Although probable cause exists, Respondent was arrested and charged with Grand Theft over \$20,000 and Organized Scheme to Defraud (\$20,000 or more) (criminal case number 2016CF001522B02) regarding the same allegations. Pursuant to a negotiated settlement, the Respondent pled guilty/best interest to a lesser-included charge of Grand Theft for Count 1, and the State entered a Nolle Prose for Count 2, Organized Scheme to Defraud. Adjudication was withheld, and Respondent was sentenced to 3 years probation, completion of a theft abatement course, 50 hours community service, and restitution payable to the City for \$44,481.33

Due to the sanctions levied by a criminal court against Respondent regarding the same allegations, Respondent lost his employment with the City, has been ordered to pay restitution to the City, and has had conditions placed on him that exceed any penalty the COE could impose to ensure this action does not occur again, the public interest would not be served by proceeding further.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Cesar Irizarry, is hereby DISMISSED.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on October 12, 2017.

By: Clevis Headley, Vice Chair

(CLERK'S NOTE: The clerk added the language as printed in the Public Report and Final Order of Dismissal.)

(This space intentionally left blank.)

VI. – CONTINUED

VI.b. C16-005

Commissioner Shullman read the following Public Report and Final Order of Dismissal as discussed during the executive session:

Complainant, Mark E. Bannon, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on April 21, 2016, alleging that Respondent, Keith Heasley, a former Village of Palm Springs employee, violated §2-443(a) and §2-443(b) of the Palm Beach Code of Ethics by improperly using his official position as a Village mechanic to give a special financial benefit to himself and corruptly securing a special benefit for himself by purchasing four tires on his Village-issued credit card and falsifying a purchase order to conceal the purchase.

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On October 12, 2017, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the report of Investigation, and the Probable Cause Recommendation submitted by the COE Advocate. After an oral statement by the Advocate, the Commission found that probable cause existed but dismissed the complaint because the public interest would not be served by proceeding further, pursuant to Section 2-260.3 of the Commission on Ethics Ordinance.

Although probable cause exists, Respondent was also arrested and charged with Official Misconduct (criminal case number 2015CF012334AXX) regarding the same allegations. Pursuant to a plea negotiation, Respondent entered into a pre-trial intervention (PTI) program and was terminated from his position as a mechanic with the Village. The plea to enter the PTI program was an agreement between the State Attorney's Office and the Defendant (Respondent), that allowed the Respondent to have the criminal charges dismissed after an agreed upon period of time if the Respondent completed all of the conditions in the agreement. Additionally, the agreement had to be approved by the Judge.

VI.b. – CONTINUED

The special conditions of the PTI included a term of two-years in PTI, with an automatic termination after one year if all conditions are completed and no violations, 50 hours of community service, a theft abatement course, relinquish employment with the Village of Palm Springs, restitution payable to the Village in the amount of \$503.90, and not applying for or seeking employment in the public sector for the term of the PTI. Additionally, Respondent is also required to follow up with a probation officer monthly.

Due to the pre-trial intervention sanctions levied by a criminal court against the Respondent regarding the same allegations, Respondent lost his employment with the Village of Palm Springs, has been ordered to pay restitution to the Village, and has had conditions placed on him that exceed any penalty the COE could impose to ensure this action does not occur again, and the COE finds that the public interest would not be served by proceeding further.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Keith Heasley, is hereby **DISMISSED**.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on October 12, 2017.

By: Clevis Headley, Vice Chair

(CLERK'S NOTE: The clerk added the language as printed in the Public Report and Final Order of Dismissal.)

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VII.a. RQO 17-017

VII.b. RQO 17-018

VII.c. RQO 17-019

VII.d. RQO 17-020

VIII. ITEMS PULLED FROM CONSENT AGENDA – None

MOTION to approve the consent agenda. Motion by Judy Pierman, seconded by Bryan Kummerlen, and carried 4-0. Michael Kridel absent.

IX. PROPOSED ADVISORY OPINIONS

IX.a. RQO 17-015 (Discussion only)

Mary Beth Hague, commissioner for the Town of Jupiter (Jupiter) Planning and Zoning Commission (P&Z Commission), said that:

- The August 8, 2017 P&Z Commission agenda contained amendments to the 1116 Love Street project.
- The amendments were not considered part of a quasi-judicial proceeding, and she and Ms. Schneider were not acting as judges during the meeting
- She and P&Z Commissioner Cheryl Schneider requested tabling the agenda item because they had not yet received the COE advisory opinion regarding a potential conflict of interest.
- The P&Z Commission approved the amendments, and she and Ms. Schneider recused themselves from voting.
- She and Ms. Schneider did not serve on the P&Z Commission during fundraising efforts through the GoFundMe Web page to proceed with their lawsuit.

Ms. Schneider said that the request for an advisory opinion dealt with whether an applicant, who was negatively impacted by the opinions of Jupiter P&Z commissioners, could allege that those commissioners had a conflict of interest.

Darren Leiser, representing the applicant, said that:

- Ms. Hague, Ms. Schneider, and the other petitioners' lawsuit against Jupiter was still pending.
- Approval of the project could be overturned, and the applicant could return to the Jupiter P&Z with a new project for the same property.

IX.a. – CONTINUED

- On August 9, 2017, the petitioner's Motion for a Rehearing on the Petition for Writ of Certiorari was denied.
- On August 27, 2017, one of the petitioners, Theresa Grooms, started a GoFundMe Web page to fund appeal efforts.
- On September 15, 2017, the Petition for Writ of Certiorari was filed in the Fourth District Court of Appeal.
- He believed that the members of Citizen Owners of Love Street Inc. as well as Ms. Hague and Ms. Schneider were receiving a special financial benefit by advocating against the project and participating in a lawsuit without paying for legal representation.
- An opinion issuing the finding that a conflict of interest existed was requested.

Commissioners Pierman and Kummerlen said that it was difficult to determine the special benefit Ms. Hague and Ms. Schneider would gain by pursuing their lawsuit.

Commissioner Shullman said that:

- The State of Florida (State) COE broadly interpreted a special benefit as any type of benefit while the COE's interpretation stated that it must be a financial benefit.
- The financial benefit related to the misuse of public office would trigger the disclosure of a voting conflict on the applicant's amendments and a recusal from voting.
- The COE should consider whether a financial benefit existed and whether there was any special benefit due to corrupt misuse of an official position, which would not trigger the disclosure of a voting conflict.

Mr. Bannon clarified that corrupt misuse of an official position would not invoke the voting conflict section of the Code, but the action of voting could be considered a corrupt misuse.

IX.a. – CONTINUED

Commissioner Shullman said that the following should also be considered:

- Whether voting on the amendments could trigger disclosure of a voting conflict or a violation.
- Whether tabling the vote to seek an opinion or tabling a vote in the future could create any issues.
- The advisory opinion should focus on Ms. Hague's and Ms. Schneider's future actions and not on what happened in the past.
- It was probably remote and speculative to assume that voting on the amendments would generate money for their lawsuit or any other financial benefit.

Mr. Bannon said that:

- Tabling an item or requesting to table it was not an attempt to influence a decision on the item but to postpone deciding on the item.
- How a developer was affected by tabling an item was immaterial to whether someone financially or corruptly benefitted by voting to table.
- Under certain circumstances, a vote to table an item could be considered a corrupt misuse of an official position if someone received a special benefit, with or without a financial component, that they were not entitled to.
- The corrupt misuse would be an action that was inconsistent with the proper performance of his or her public duties.

Commissioner Shullman said that she did not want to eliminate the possibility that a vote to table an item could result in a direct financial benefit.

Mr. Bannon stated that the commissioners could send comments to him directly, but they could not discuss the matter among themselves.

X. EXECUTIVE DIRECTOR COMMENTS

X.a.

DISCUSSED: Hurricane Irma.

Mr. Bannon said that during Hurricane Irma, staff worked at various hurricane shelters and at the Emergency Operations Center. He added that Ms. Levesque was deployed to the Florida Keys to work with the Southeast Florida All Hazard Incident Management team and would be working in the City of Miami to help with evacuees from Puerto Rico.

X.b.

DISCUSSED: COE Training.

Mr. Bannon said that he and Ms. Kelley continued to provide COE training to County and municipal officials and employees. He added that on October 18, 2017 he and the City of West Palm Beach ethics officer for the League of Cities would hold a State and County ethics training session.

X.c.

DISCUSSED: Palm Beach County Ethics Partnership Council (PBCEPC).

Mr. Bannon stated that the PBCEPC would lose its funding in January, and that a meeting was held on September 28, 2017 to discuss potential funding options. He added that a meet-and-greet session was scheduled with Dr. Peter Cruz, executive director of the Public Ethics Academy for Florida Atlantic University, to discuss ethics issues.

XI. COMMISSIONER COMMENTS – None

XII. PUBLIC COMMENTS – None

(This space intentionally left blank.)

XIII. ADJOURNMENT

At 4:18 p.m., the vice chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

Honesty - Integrity - Character

Commissioners

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

Executive Director

Mark E. Bannon

October 27, 2017

Ms. Amanda Skeberis, Administrator
Community Involvement Dept., Clean & Safe Division
City of Delray Beach
100 NW 1st Ave
Delray Beach, FL 33444

Re: RQO 17-022
Gift law

Dear Ms. Skeberis,

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 City of Delray Beach (City) from accepting a donation of streetlights and other light components from a company located in Delray Beach?

ANSWER:

Based on the facts submitted, the Code does not prohibit the City from accepting a donation of streetlights identical to the ones used throughout the City from the company as long as the donation is determined to have a public purpose and the general contractor providing the streetlights does not receive any unlawful benefit for providing such goods.¹

The Code defines a gift as the transfer of anything of economic value without adequate and lawful consideration.² 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.³ In addition, public officials and employees are prohibited from accepting gifts valued in excess of \$100, annually in the aggregate, from vendors, lobbyists, or principals or employers of lobbyists who lobby, sell or lease to their public employer.⁴

In a situation like the one here, where a "gift" passes through the official or employee to another person or entity, it is termed a "pass through gift." When a pass through gift is involved, the general prohibitions against accepting gifts valued at greater than \$100 annually in the aggregate from vendors, lobbyists, or principals or employers of lobbyists would still be prohibited. However, there are two exceptions to this prohibition. The one relevant to this situation is where 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.⁵ Whether these streetlights meet the definition of a public purpose must be determined by the administration or by the governing body of the municipality.⁶

¹ RQO 15-040

² §2-444(g)

³ §2-444(e)(1, 2 & 3)

⁴ §2-444(a)(1)

⁵ §2-444(g)(1)e.

⁶ RQO 15-009; RQO 12-062; RQO 12-044; RQO 11-084

Under the facts, since the donation of the lights is being offered to the City itself, and the company is offering to do so without any expectation of action by the City in return, the Code does not prohibit the City from accepting a donation of streetlights as long as they are determined to have a public purpose.

FACTS:

You are the Administrator for the Clean and Safe Division of the City's Community Involvement Department. Recently, a representative from New Urban Development, LLC, a company located in Delray Beach, contacted your department regarding a donation of streetlights. New Urban Development is a principal or employer of a lobbyist who lobbies the City.

New Urban Development stated that they had several streetlights that are the same as the ones used by the City along downtown Atlantic Avenue. Specifically, they have 14 Lumec streetlight heads, nine luminaires, and six lamps with brackets that they would like to donate.

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,



Mark E. Bannon
Executive Director

CEK/gal

November 2, 2017

Commissioner Cheryl Schneider and Commissioner MB Hague
Town of Jupiter Planning and Zoning Commission
210 Military Trail
Jupiter, FL 33458

Re: RQO 17-015
Misuse of public office or employment, Corrupt misuse of official position, Disclosure of voting conflicts

Dear Commissioners Schneider and Hague,

Your request for advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. Additional information considered for this advisory opinion was provided by attorneys representing 1116 Love Street, LLC (Love Street PUD's limited liability corporate entity), the Jupiter Town Attorney, the Jupiter Town Clerk, and the Florida Division of Corporations, and the Executive Director of the COE. The opinion rendered is as follows:

QUESTION #1:

Under the Palm Beach County Code of Ethics (the Code), would it be a violation of the misuse of office for financial gain prohibitions or the voting conflicts prohibitions for you as members of the Town of Jupiter Planning and Zoning Commission (PZC) to participate in discussions or vote on proposed amendments to the previously approved Planned Unit Development of property located at 116 Love Street (Love Street PUD) when you are named parties in a circuit court action filed against the Town of Jupiter by a not-for-profit citizen's group, Citizen Owners of Love Street (COOLS), challenging the procedural correctness of the 2016 project approval by Jupiter Town Council, and you are both also listed as officers or directors of COOLS?

ANSWER #1:

No. Under the Code, as members of the Town of Jupiter PZC, any discussion or vote by you on the proposed amendments to the Love Street PUD being considered by PZC would not be a violation of either §2-443(a)(1-7), *Misuse of public office or employment*, or §2-443(c), *Disclosure of voting conflicts*, as such actions will not result in a prohibited "special financial benefit" to yourselves or to any other person or entity set forth in §2-443(1-7) of the Code, including COOLS.

Code section 2-443(a)(1-7), *Misuse of public office or employment*, prohibits a public official from participating in or voting on any matter that will result in a special financial benefit, not shared with similarly situated members of the general public, being given to yourselves, or to any persons or entities specified in §2-443(a)(1-7). Sub-section 2-443(a)(7) includes "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. Taking such actions would also violate §2-443(c), *Disclosure of voting conflicts*, for the same reason.

In order to find that a vote taken by either of you as PCZ members would result in a prohibited special financial benefit being given to either you or to COOLS, the COE has held that any such financial benefit must be direct and immediate, rather than remote and speculative.¹ Similarly, the Florida Commission on Ethics (Florida COE) has also determined that where there is uncertainty at the time of a vote as to whether a measure will directly affect an official or entity connected to him, any private gain or loss based on voting will be remote and speculative, and thus

¹ RQO 17-006 (March 31, 2017), holding that in evaluating a potential conflict of interest under the Code, the degree to which there is uncertainty at the time of the vote as to whether there would be any economic gain or loss to the prohibited person or entity must be considered. This opinion bases that determination on the requirements found in the Florida Code of Ethics under §112.3142(1)(d), *Voting conflicts*, Florida Statutes, as well as several Florida COE opinions.

the official will not be precluded from casting such vote.² Further, this determination cannot depend on the position taken for or against a measure, but rather on whether the interest held is such that he would gain or lose as a direct outcome of the decision.³

It is clear that COOLS currently has a "Go-Fund-Me" page that will directly finance the court proceedings in their lawsuit against the City concerning the Love Street PUD.⁴ However, what is not clear is whether a vote by either or both of you as PZB members on the Love Street PUD amendments would have any direct effect on the funding of this lawsuit as is required to find that the vote would be prohibited. If there were such a direct causal relationship, the vote would be prohibited as it would give a "special financial benefit" to both of you as named parties in the lawsuit, violating §2-443(a)(1), and to COOLS, violating §2-443(a)(7) of the Code of Ethics. However, whether donations to the Go-Fund-Me page will increase, decrease or remain the same based on your vote at the PZB is at best remote and speculative. Since no direct casual relationship between such a vote and an increase in contributions to the Go-Fund-Me page can be established, a vote cast at a PZB meeting by either of you concerning the Love Street PUD or any amendment would not be in violation of these code sections.

QUESTION #2:

Would such a vote under these conditions violate the corrupt misuse of official positions prohibitions under the Code of Ethics?

ANSWER #2:

No. Code section 2-443(b), *Corrupt misuse of official position*, prohibits any action which would "corruptly" secure a special privilege, benefit or exemption for one's self or for others. The term "corruptly" is defined within this Code section and states in relevant portion; "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."⁵

Although your strongly held opinions concerning the Love Street PUD are known to be in opposition to the project, actions taken as PZC Commissioners by participating in discussions and/or voting at a public meeting against the proposed amendments to the Love Street PUD project cannot be considered "corrupt" unless these actions are taken with wrongful intent and are inconsistent with the proper performance of your public duties. It should be noted that both of you were placed on the PZC by elected officials who voted in opposition to the Love Street PUD at the June 7, 2016, public hearing where the project was approved by majority vote, 3-2. At this same public hearing, both of you spoke in opposition to the Love Street PUD. However, there is no evidence that your participation in or voting on the Love Street PUD or its proposed amendments would "secure a special privilege, benefit, or exemption for yourselves or others." Although you are officers or directors of COOLS, and COOLS supports your position of rejecting the proposed amendment changes to the Love Street PUD, COOLS receives no special privilege, benefit or exception by these actions. All residents of the Town of Jupiter are affected in the same manner by such a vote, regardless of their position concerning the correctness of the decision. The fact that an official holds a well-known position on a controversial issue, and takes that position in discussions or votes concerning that issue, does not make those actions a "corrupt misuse" of their official position by being "inconsistent with the proper performance of their public duties," even where that position is in the minority among voting members, so long as they receive no prohibited

² See CEO 05-15, holding that a city council member may vote on a change to the City's affordable housing ordinance even where his client appears more likely to develop affordable housing based on this change, because there is uncertainty as to any potential gain or loss to the client and whether the client would actually develop such housing units.

³ See CEO 85-5, holding that the prohibition against voting on an issue that would inure to the private gain or loss of an official does not turn on whether an official's vote is for or against a measure, but rather whether the interest held is such that he would gain or lose as a direct outcome of the decision.

⁴ Although the original Go-Fund-Me page was closed after reaching the goal amount of funding, there is currently an active Go-Fund-Me page to finance a current appeal of the Circuit Court's decision to the 4th DCA.

⁵ Code of Ethics §2-443(b), *Corrupt misuse of official position*.

special benefit by these actions.

QUESTION #3:

Did your motion, participation in discussions, and vote at the July 11, 2017 PZB meeting concerning tabling the issue of the Love Street PUD amendments until you were able to obtain an advisory opinion from the COE as to whether or not you were precluded from participating in discussions or voting on the Love Street PUD amendments, constitute a violation of the voting conflicts section of the Code of Ethics?

ANSWER #3:

No. Your motion, discussion and vote to "table" the proposed amendment issue until you had the opportunity to obtain this advisory opinion is not a violation of the voting conflicts rule. It was not a discussion or vote on the relevant matter of the Love Street PUD amendment itself, and it also did not provide an improper benefit to you or to COOLS. Further, the COE has determined within this advisory opinion that had you voted on the proposed amendments, it would not have been in violation of the Code of Ethics. Despite the argument made that this action delays and thus harms the Love Street PUD project overall, that is not the standard used to determine whether an action is prohibited under the Code. The standard to be considered is whether any improper special privilege, benefit or exemption was provided by such actions. Here, it was not.

Finally, we take no position regarding whether your participation in discussions and/or voting on the proposed amendments to the Love Street PUD will violate state ethics laws or certain "due process" protections as we are without jurisdiction to comment on such matters. Violations of state ethics laws are matters for the State Commission on Ethics to consider, and issues concerning due process are for a court to determine.

FACTS:

This advisory opinion is jointly requested by Cheryl Schneider and M.B. Hague, who serve as appointed Commissioners on the Town of Jupiter Planning and Zoning Commission (PZC). On June 7, 2017, the Jupiter Town Council gave final approval to an application to build a commercial development on an area known as the Love Street Planned Unit Development (Love Street PUD), which lies within the Town of Jupiter at 1116 Love Street. This approval was completed by the adoption of Town Resolution 52-16, which was passed by a majority vote 3-2. At the Town Council Meeting on June 7, 2016, which included a public hearing on the Love Street PUD, both Cheryl Schneider and M.B. Hague spoke against approval of the Love Street PUD. Ms. Hague was already a member of the PZC, having been appointed by Town Council Member Jim Kuretski on June 19, 2016, and then re-appointed by him on June 4, 2017. Cheryl Schneider was appointed to PZC on June 4, 2017 by Council Member Ron Delany. It should be noted that Council Members Kuretski and Delany are the two Council Members who voted against the Love Street PUD application at the Town Council meeting on June 7, 2016.⁶ It should also be noted that both H.B. Hague and Cheryl Schneider are officers or directors of a registered non-for-profit entity, Citizen Owners of Love Street, Inc. (COOLS), which was established on August 8, 2016.⁷ The establishment of COOLS was just one month after the approval of the Love Street PUD.

Sometime after the approval of the Love Street PUD, the owner of the development property (1116 Love Street, LLC), filed an application for certain "amendments" to Town Resolution 52-16 and the Love Street PUD, which brought this issue back before the PZC. The proposed amendments were scheduled to be discussed at the PZC meeting on July 11, 2017. However, prior to this meeting Commissioners Schneider and Hague received a memorandum from Town Attorney Thomas Baird, informing them they had potential "conflicts of interest" concerning the Love Street PUD amendments. The main "conflict of interest" issues raised by Mr. Baird concern a challenge to your ability to remain "independent and impartial" concerning a vote on the Love Street PUD proposed

⁶ As recorded in the Minutes of the June 7, 2016 Jupiter Town Council Meeting.

⁷ From the Florida Division of Corporations website (www.sunbiz.com).

amendments, and your affiliation Cools and the court action filed by Writ of Certiorari in Palm Beach County Circuit Court (15th Florida Judicial Circuit) against the Town of Jupiter, which challenged the procedural validity of the initial passing of Town Resolution 52-16 at the June 7, 2016 Town Meeting. While this action has since been dismissed in circuit court, it is currently on appeal to Florida's 4th District Court of Appeal.

At the PZC meeting held on July 11, 2017, you both participated and voted on a motion to table the vote on the proposed amendments to the Love Street PUD until you had the opportunity to obtain an advisory opinion on the issues raised by Town Attorney Baird. On July 12, 2017, you sent a request for this advisory opinion via email to COE staff. Staff also received additional information from attorneys representing the development property owner.

LEGAL BASIS:

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

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;
 - (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.
- a. **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.
- b. **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.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted, as well as information obtained from additional sources by COE staff. 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