



Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

300 North Dixie Highway
West Palm Beach, FL 33401

561.355.1915

FAX: 561.355.1904

Hotline: 877.766.5920

E-mail: ethics@pbcgov.org

Commissioners

Sarah L. Shullman, Chair

Bryan Kummerlen, Vice Chair

Michael S. Kridel

Rodney G. Romano

Peter L. Cruise

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

July 12, 2018 – 1:30 p.m.
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Meeting will begin at 1:30pm
Executive Session will begin at 1:45pm
Regular Agenda will resume at 2:30pm

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from May 3, 2018
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 18-009
 - b. RQO 18-010
 - c. RQO 18-011
- VI. Items Pulled from Consent Agenda
 - a.
- VII. Executive Sessions
 - a. C17-010
 - b. C17-011
 - c. C17-016
 - d. C17-017
 - e. C17-033
 - f. C17-034
 - g. C17-032
- 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 3, 2018

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

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Sarah L. Shullman, Chair
Bryan Kummerlen, Vice Chair
Peter L. Cruise
Michael S. Kridel
Rodney G. Romano

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Executive Director
Anthony 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 APRIL 5, 2018

MOTION to approve the April 5, 2018 minutes. Motion by Peter Cruise, seconded by Bryan Kummerlen, and carried 4-0. Rodney Romano absent.

V. APPROVAL OF MINUTES FROM APRIL 16, 2018

MOTION to approve the April 16, 2018 minutes. Motion by Peter Cruise, seconded by Bryan Kummerlen, and carried 4-0. Rodney Romano absent.

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VI.a. RQO 18-008

MOTION to approve the consent agenda. Motion by Peter Cruise, seconded by Bryan Kummerlen, and carried 4-0. Rodney Romano absent

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. PROPOSED ADVISORY OPINIONS

VIII.a. RQO 17-021

MOTION to approve previously revised advisory opinion letter RQO 17-021. Motion by Bryan Kummerlen, seconded by Peter Cruise, and carried 4-0. Rodney Romano absent.

RECESS

At 1:31 p.m., the chair declared the meeting recessed for an executive session.

IX. EXECUTIVE SESSIONS

RECONVENE

At 2:38 p.m., the meeting reconvened, and at Chair Sara Shullman's request for a roll call, Vice Chair Kummerlen, and Commissioners Peter Cruise, Michael Kridel, and Rodney Romano were present.

IX. – CONTINUED

(CLERK'S NOTE: Item IX.b. was presented at this time.)

IX.b. C17-037

Vice Chair Kummerlen read the following Public Report and Final Order of Dismissal:

Complainant, Mark E. Bannon, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on August 15, 2017, alleging that Respondent, Robert Weinroth, a City of Boca Raton elected official, violated §2-444(a)(l) of the Palm Beach County Code of Ethics by accepting a gift valued at over \$100 in the aggregate from a business entity that was a principal or employer of a lobbyist who lobbied the City of Boca Raton.

Pursuant to §2-258(a)1 of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On May 3, 2018, 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 concluded no probable cause exists to believe a violation occurred because the gift was not from a prohibited source since the business entity was not a principal or employer of a lobbyist who lobbied the City of Boca Raton.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Robert Weinroth, is hereby **DISMISSED**.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on May 3, 2018.

By: Sara L. Shullman, Chair

IX.b. – CONTINUED

(CLERK'S NOTE: The clerk added the language as printed in the Public Report and Final Order of Dismissal, and the numeric order of the agenda was restored.)

IX.a. C17-029

Vice Chair Kummerlen read the following Public Report and Final Order of Dismissal:

Complainant, Mark E. Bannon, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on July 24, 2017, alleging that Respondent, Robert Weinroth, a City of Boca Raton elected official, violated §2-444(a)(l) of the Palm Beach County Code of Ethics by accepting a gift valued at over \$100 in the aggregate from a business entity that employed a lobbyist who lobbied the City of Boca Raton.

Pursuant to §2-258(a)1 of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On May 3, 2018, 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 the Respondent, the Commission concluded no probable cause exists to believe a violation occurred. The evidence revealed that the gift was not from a prohibited source because the business entity did not employ a lobbyist as defined by the Code of Ethics since the "lobbyist" was not compensated for his work.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Robert Weinroth, is hereby DISMISSED.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on May 3, 2018.

By: Sara L. Shullman, Chair

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

IX. – CONTINUED

IX.b. – See earlier in the minutes.

IX.c. C17-041

Vice Chair Kummerlen read the following Public Report and Final Order of Dismissal:

Complainant, Mark E. Bannon, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on November 14, 2017, alleging that Respondent, Robert Weinroth, a City of Boca Raton elected official, violated §2-444(a)(l) of the Palm Beach County Code of Ethics by accepting a gift valued at over \$100 in the aggregate from a business entity that was a principal or employer of a lobbyist who lobbied the City of Boca Raton.

Pursuant to §2-258(a)1 of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On May 3, 2018, 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 concluded no probable cause exists to believe a violation occurred because the evidence showed that Respondent incorrectly listed a gift on his State of Florida Gift Disclosure Form that he did not actually receive. His brief attendance at the event in question was to obtain photographs and information on the event for a local newspaper; he did not partake in the event itself.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Robert Weinroth, is hereby **DISMISSED**.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on May 3, 2018.

By: Sara L. Shullman, Chair

IX.c. – CONTINUED

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

IX.d. C17-042

Vice Chair Kummerlen read the following Public Report and Final Order of Dismissal:

Complainant, Mark E. Bannon, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on November 14, 2017, alleging that Respondent, Robert Weinroth, a City of Boca Raton elected official, violated §2-444(a)(l) of the Palm Beach County Code of Ethics by accepting a gift valued at over \$100 in the aggregate from a business entity that was a principal or employer of a lobbyist who lobbied the City of Boca Raton.

Pursuant to §2-258(a)1 of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On May 3, 2018, 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 concluded no probable cause exists to believe a violation occurred. The evidence revealed that the gift was not from a prohibited source because the business entity did not employ a lobbyist as defined by the Code of Ethics since the “lobbyist” was not compensated for his work.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Robert Weinroth, is hereby **DISMISSED**.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on May 3, 2018.

By: Sara L. Shullman, Chair

IX.d. – CONTINUED

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

X. EXECUTIVE DIRECTOR COMMENTS

X.A.

DISCUSSED: COE Training.

Mark Bannon, COE Executive Director, said that Christie Kelley, COE General Counsel, and Anthony Bennett, COE Chief Investigator, completed a 4-week class in government supervision presented by the Florida Institute of Government. He added that Ms. Kelley and Gina Levesque, COE Intake and Compliance Manager, attended a 1-day records management seminar in the City of Orlando.

XI. COMMISSION COMMENTS

XI.A.

DISCUSSED: Public Ethics Academy Endowment.

Commissioner Cruise announced that on May 15, 2018, Florida Atlantic University’s Public Ethics Academy would receive a \$500,000 endowment from the Collins Institute of Miami. He added that the academy would be renamed the LeRoy Collins Public Ethics Academy and that the COE members were invited to attend the ceremony.

XI.B.

DISCUSSED: Ethics Coalition.

Commissioner Cruise said that the Ethics Initiative of Palm Beach County, which helped implement the COE and the Office of Inspector General, was being renamed the Ethics Coalition to handle advocacy issues.

XI. – CONTINUED

XI.C.

DISCUSSED: COE Fines.

Commissioner Cruise requested that an agenda item be brought back to discuss increasing the maximum fine per County ordinance violation.

Mr. Bannon said that:

- Florida law only allowed a maximum \$500 fine per County ordinance violation, but in 2010, it was increased to a maximum of \$1,000 per violation.
- Increasing the fine could be discussed as an agenda item, along with several other amendments to the Palm Beach County Code of Ethics (code).
- The request would go before a newly appointed draft committee, who would make a recommendation to the Board of County Commissioners (BCC).
- The COE previously assessed monetary fines on 3 individuals.
- The majority of those who received monetary fines were County or municipal employees, and he was unsure of their socioeconomic status.

Commissioner Kridel said that a \$500 fine assessed to a County employee could be the equivalent of a larger fine assessed to someone with a higher income.

Chair Shullman said that there was board consensus to discuss the matter, and she requested that Mr. Bannon add the item to the next agenda.

Mr. Bannon stated that staff needed several months to prepare a list of all the requested code changes for presentation to the draft committee and final approval by the BCC.

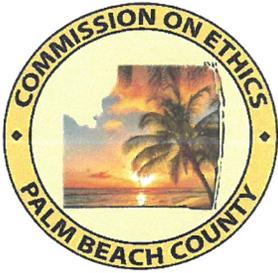
XII. PUBLIC COMMENTS – None

XIII. ADJOURNMENT

At 2:59 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Honesty - Integrity - Character

Palm Beach County Commission on Ethics

July 12, 2018

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Sarah L. Shullman, Chair
Bryan Kummerlen, Vice Chair
Michael S. Kridel
Rodney G. Romano
Peter L. Cruise

Executive Director
Mark E. Bannon

May 11, 2018

Mr. Scott Marting, Director – Risk Management
Palm Beach County
100 Australian Ave, Suite 200
West Palm Beach, FL 33406

Re: RQO 18-009
Conflict of Interest

Dear Mr. Marting,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows:

QUESTION:

Would a conflict of interest exist for you as a Palm Beach County (County) employee where Arthur J. Gallagher, which is a County vendor, becomes your son's employer if he accepts a summer internship with that company, and if you participate on the selection committee that will chose the provider of property and liability claims handling services for the County, where Arthur J. Gallagher or one of its subsidiaries will most likely bid for that contract?

ANSWER:

The Palm Beach County Code of Ethics (the Code) prohibits you from using your official position, or influencing others to take or fail to take any action, to give a special financial benefit to specified persons or entities, which include your son and his outside employer.¹ The Code also prohibits you from using your official position to corruptly secure a special benefit for anyone. Corruptly is defined as an act that is done with a wrongful intent and inconsistent with the proper performance of your public duties.² Based on the facts provided, where you have had no involvement with the internship, your son's application, or how the internship recipients were selected, there is no prohibited conflict of interest per se under the Code based solely on the father-son relationship when a County vendor selects your son for a paid internship position, so long as you do not use your official position as the Director of Risk Management to give a special financial benefit to your son or his outside employer (Arthur J. Gallagher).

Further, the Code prohibits you, directly or indirectly, or your outside business or employer from entering into any contract with the County.³ This section of the Code is inapplicable to your situation because you are not entering into a contract, directly or indirectly, with Arthur J. Gallagher, and the Code does not prohibit your son from entering into a contract for summer employment with an employer that has a contract with the County.

While there may be no per se prohibited conflict of interest, the Code does prohibit you from accepting anything of value in exchange for the past, present, or future performance of your job or as quid pro quo, which includes any direct or indirect special financial benefit to you.⁴ As such, an appearance of impropriety may be created if you serve

¹ §2-443(a)

² §2-443(b)

³ §2-443(d)

⁴ §2-443(e)

on the selection committee and Arthur J. Gallagher or one of its subsidiaries is selected to provide the property and liability claims handling services for the County. If you are concerned about this appearance of impropriety, you may choose to not participate on the selection committee

FACTS:

You are the Director of Risk Management for Palm Beach County. Your son is a rising college senior at Florida Atlantic University in Boca Raton and has been selected for a nine-week paid summer internship at Arthur J. Gallagher, a worldwide insurance, risk management, and consulting agency in Boca Raton. Approximately 400 internships were awarded nationwide. You have had no direct involvement with this internship, your son's application, or how he was chosen.

Palm Beach County currently has three contracts with Arthur J. Gallagher or its subsidiaries, which are handled out of the Risk Management Office. The day-to-day management of the contracts is handled by the County's Group Insurance Manager and the Property and Liability Manager, but you are their direct supervisor. The three contracts are as follows:

- Arthur J. Gallagher (property and liability insurance broker/consultant) – contracted through 2020
- Gallagher Benefits (group insurance benefits) – contracted through 2020
- Gallagher Bassett (property and liability claims handling) – contracted through 9/30/2018

The County is currently on pace to have a Request For Proposals out for bids for Property and Liability Claims Handling services sometime in May, with a selection committee date in mid-July. You are not the chairperson for the committee, but you are scheduled to sit on the selection committee.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-443(a), §2-443(b), §2-443(d), §2-444(e), or §2-444(g) of the Code:

Sec. 2-443. Prohibited conduct.

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
 - (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;
- (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.
- (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.

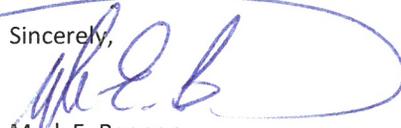
Sec. 2-444. Gift law.

- (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.

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. This opinion 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.

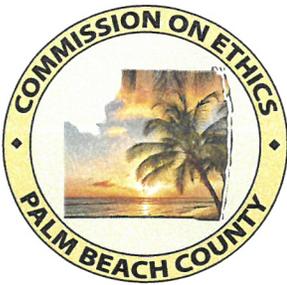
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon,
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

Honesty - Integrity - Character

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Commissioners
Sarah L. Shullman, Chair
Bryan Kummerlen, Vice Chair
Rodney G. Romano
Michael S. Kridel
Peter L. Cruise
Executive Director
Mark E. Bannon

June 1, 2018

Ms. Rochelle Wolberg
Director-Curator, Mounts Botanical Garden
531 N Military Trail
West Palm Beach, FL 33415

Re: RQO 18-010
Conflict of Interest

Dear Ms. Wolberg,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows:

QUESTION:

Would a conflict of interest exist for you as the Director-Curator of Mounts Botanical Garden of Palm Beach County (MBG) if you receive compensation from Friends of MBG, a non-profit organization, for oversight of MBG's Ambassadors of the Wetlands education program when the program is funded by a grant that the Friends of MBG received from the Community Foundation for Palm Beach and Martin Counties?

ANSWER:

The Palm Beach County Code of Ethics prohibits public employees from using their official position to give a special financial benefit to specified persons and entities, including to himself or herself.¹ As such, you are prohibited from using your position as the Director of Mounts Botanical Garden to give yourself a special financial benefit. In addition, the Code also specifically prohibits an employee from accepting a "gift" because of "an official action taken" or "duty performed."²

Based on the facts provided, a conflict of interest would exist for you if you receive compensation from Friends of MBG for providing administrative oversight of the Ambassadors of the Wetland program. Although you determined that oversight of the program should be provided by MBG staff and this role become an additional responsibility for you as Director-Curator of MBG, you are prohibited from accepting compensation from a source other than your public employer for performing your public duties, unless your employment contract states otherwise.³ Because the assistance you have provided since July 2017 was in your official capacity as a Palm Beach County employee, you are prohibited from accepting the compensation from the Friends of MBG for oversight of the Ambassadors of the Wetlands program.

FACTS:

You are a Palm Beach County employee, serving as the Curator and Director of MBG which is a part of the county's Cooperative Extension Service Department. MBG is the oldest and largest public botanical garden in the county.

Beginning in Fall 2016, while working as an employee of the Friends of MBG, a non-profit organization created to support MBG, you were involved with preparing an application for a grant from the Community Foundation for Palm

¹ §2-443(a)(1)

² §2-444(e)

³ RQO 11-028

Beach and Martin Counties to support youth programs. The program for which Friends of MBG was requesting funding was titled Ambassadors of the Wetlands. The application was submitted in December 2016.

In March 2017, your team was invited to meet with the Community Foundation to discuss the program and potential funding. At the time, the Director of Development for MBG took a leadership role in overseeing the application process, and you worked very closely with her throughout it. Subsequently, the Community Foundation approved the application proposal and awarded Friends of MBG a grant for \$160,000. The grant is divided between two fiscal years: 2018 and 2019. The program officially commenced in early Summer 2017.

In July 2017, you formally accepted the offer to become the county's Curator-Director of MBG. During this transition period, you were still involved with the Ambassadors program. In August 2017, the Director of Development position was terminated. You stated that by September 2017 it became apparent that someone on MBG staff needed to serve as a liaison and administratively oversee the program to ensure it progressed as planned. You also stated that there needed to be a main contact staff person to provide general oversight and field questions from various contractors hired to facilitate the program. You stated that this role could not be delegated to someone else on staff because it was specific to Education and required the oversight of one who had previous involvement and knowledge of the program from its inception. Therefore, you continued to serve as the main liaison and contact.

You recently submitted a request for reimbursement to the Friends of MBG for the time you spent from October 2017 to April 2018 overseeing the program, which funding was included under General Administration and Personnel Expenses within the budget schedule. You are seeking clarification as to whether this reimbursement would violate the Palm Beach County Code of Ethics. Neither your employment contract with the county nor any of the contracts between Friends of MBG and the county state that you may receive additional compensation for overseeing a grant-funded program.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-443(a) and §2-444(e) of the Code:

Sec. 2-443. Prohibited conduct.

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;

Sec. 2-444. Gift law.

- (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.

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. This opinion 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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July 12, 2018
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Commissioners
Sarah L. Shullman, Chair
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Michael S. Kridel
Peter L. Cruise
Executive Director
Mark E. Bannon

June 20, 2018

Mr. George Webb
8803 Thousand Pines Circle
West Palm Beach, FL 33411

Re: RQO 18-011
Post-Employment Ordinance

Dear Mr. Webb,

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 Post Employment Ordinance (Post Employment Ordinance) prohibit you, as a former Palm Beach County (County) employee, from accepting payment from a telecommunications company to work with the municipalities within Palm Beach County and the County itself on the development of one or more standard permit forms?

ANSWER:

You are the former County Engineer for Palm Beach County, and retired from that position on August 31, 2017. The Post Employment Ordinance prohibits individuals who work in County administration and in management-level positions, specifically County Commissioners, Level 1 employees, and Level 2 employees, from representing anyone other than the county or another public entity for certain time periods.¹ The Post Employment Ordinance defines "Representation" to mean appearing on behalf of an individual or entity, for compensation, before the Palm Beach County Board of County Commissioners (BCC) in any of their official capacities or before an advisory body of the BCC or personal communications made with any officials, employees, or advisory board members of the County in their official capacity, on behalf of an individual or entity.² The Post Employment Ordinance is not applicable to any representation of an individual or entity before any of the municipalities within Palm Beach County. Further, the Post Employment Ordinance defines Level 1 employees as those employed as the County Administrator, the County Attorney, the Internal Auditor, the Fire Rescue Administrator, the **County Engineer**, the Deputy County Administrator, the Chief Deputy County Attorney, the Deputy County Engineer, and the Director of Planning, Zoning, and Development (Emphasis added). Under the Post Employment Ordinance, former Level 1 employees are prohibited from representing anyone besides the County or another public entity for six months after leaving County employment. An additional 18-month restriction applies for "any particular matter involving common issues of law and fact in which the county is a party or has an interest and in which the former employee participated personally, substantially and directly for the county for an additional period of eighteen months."³

Based on the facts provided, you are not prohibited from working for a telecommunications company, where you would interact with municipalities within Palm Beach County and the County itself on the development of one or

¹ §2-143

² Id.

³ §2-143(b)

more standard permit forms. Your employment with the County ended on August 31, 2017. Your six-month prohibition, under the Post-Employment Ordinance, ended on February 28, 2018. In addition, the work you have described would not involve a matter of which the County is a party, and indicated in your request for an advisory opinion that you did not substantially participate in the development of this form as County Engineer, which may arguably have triggered the additional 18-month prohibition within the Post Employment Ordinance. Therefore, you are not prohibited by the Palm Beach County Post-Employment Ordinance from accepting this employment.

FACTS:

You are a former County employee, having served as the County Engineer for 26 years. You retired from County employment on August 31, 2017. You are requesting an opinion regarding a post-County employment potential job opportunity. As the County Engineer, under the Palm Beach County Post-Employment Ordinance, you are a Level 1 employee.

You have been contacted by a major wireless telecommunication company and have been asked to assist them in trying to develop a standard permit application form that most local governments statewide would accept. The wireless telecommunication industry will be investing hundreds of millions of dollars in deploying new technology (5G) that they will be making available to their customers. Unlike past deployment that used tall stand-alone cell towers to handle the wireless traffic, the new technology requires a much more dense network of "small cell" wireless repeaters. Fortunately, the equipment is fairly compact-- with many of the installations no bigger than 2'x3'. A news story recently on CBS stated that the industry will be installing over 300,000 new devices nationwide--an amount equal to all the cell towers installed in the last 30+ years.

Florida state law was changed last year requiring local governments to allow telecommunication companies access to local government rights of way and the government owned infrastructure within the rights of way (traffic signal poles, street lights, sign posts, etc.). It also limited the amount of money the governments could charge for access to the facilities. Thus, it is expected that the telecommunication companies will, where available, be installing the new equipment on government-owned facilities instead of paying utility companies rental or lease fees to attach to the utility company facilities. Smaller stand-alone poles may also have to be installed in the rights of way where government infrastructure is not available.

During your career with the County, you were very active at the state level, dealing with public works directors from many counties and cities around the state. Those contacts will be invaluable in trying to develop a standard permit form that will be acceptable to multiple local governments. You understand that there is most likely no conflict in dealing with those other governments in this process-- including the municipalities within the county. The primary point of this request is to determine if you can communicate and work with Palm Beach County in developing one or more standard forms while you are being paid by the telecommunication company. You have indicated in your request for this advisory opinion that you did not previously participate in the development of the proposed form.

The Palm Beach County Board of County Commissioners (BCC) has historically delegated the right-of-way permitting process to staff, specifically the Engineering and Public Works Department. Right-of-way permits are reviewed and approved within the Engineering Department's Land Development Division, in conjunction with the County Attorney's Office, and that division's staff also develops the specific forms and determines what documents are required for submission. You expect to be working with them and potentially the Deputy and County Engineers in the process. At no time do you expect to appear before the BCC or to discuss with individual commissioners the permitting process.

You will not be assisting with obtaining any specific individual or group permits with Palm Beach County, just the development of the form.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-142 and §2-143 of the Post-Employment Ordinance:

Sec. 2-142. Definitions.

- (2) *Level 1 employee* means all individuals employed by the board of county commissioners in the position of:
- a. County administrator;
 - b. County attorney;
 - c. Internal auditor;
 - d. Fire rescue administrator;
 - e. County engineer;
 - f. Deputy county administrator;
 - g. Chief deputy county attorney;
 - h. Deputy county engineer; and
 - i. Director of planning, building and zoning.
- (4) *Represent or representation* means actual physical attendance on behalf of an individual or entity, for compensation, at a proceeding before the board of county commissioners in any of their official capacities or before an advisory body of the board of county commissioners or personal communications made with any officials, employees, or advisory board members of the county in their official capacity, on behalf of an individual or entity, including the filing of documents or the writing of letters on behalf of said individual or entity.

Sec. 2-143. Prohibited conduct after termination of employment or office with the county.

- (b) No former level 1 employee shall knowingly represent anyone other than the county or another public entity in connection with any matter for a period of six (6) months after the cessation of his or her employment with the county; additionally no level 1 employee shall knowingly represent anyone other than the county or another public entity in connection with any particular matter involving common issues of law and fact in which the county is a party or has an interest and in which the former employee participated personally, substantially and directly for the county for an additional period of eighteen (18) months (for a total of two (2) years) after the cessation of his or her employment with the county.

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