

Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

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West Palm Beach, FL 33401

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Hotline: 877.766.5920

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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

April 4, 2019 – 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 1:40pm
Regular Agenda will resume at 2:00pm

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from April 4, 2019
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 19-006
 - b. RQO 19-007
- VI. Items Pulled from Consent Agenda
 - a.
- VII. Executive Session – C18-004
- 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**

APRIL 4, 2019

**THURSDAY
1:32 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 – Arrived Later

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:

Marisa Valentin, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS – None

IV. APPROVAL OF MINUTES FROM FEBRUARY 7, 2019

MOTION to approve the February 7, 2019 minutes. Motion by Peter Cruise, seconded by Michael Kridel, and carried 4-0. Rodney Romano absent.

(CLERK'S NOTE: Rodney Romano arrived at this time.)

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

a. RQO 19-005

MOTION to approve the consent agenda. Motion by Bryan Kummerlen, seconded by Peter Cruise, and carried 5-0.

VI. ITEMS PULLED FROM CONSENT AGENDA – None

RECESS

At 1:34 p.m., the chair declared the meeting recessed for an executive session.

VII. EXECUTIVE SESSION - C18-001

RECONVENE

At 2:12 p.m., the meeting reconvened with Chair Shullman, Vice Chair Kummerlen, and Commissioners Peter Cruise, Michael Kridel, and Rodney Romano present.

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

Complainant, Francis Debrowski filed the above referenced complaint on August 31, 2018, alleging that Respondent, Michael Ehora, a Palm Beach County employee, violated §2-443(a) and §2-443(b) of the Palm Beach County Code of Ethics by improperly taking possession of county-owned computers and by improperly using a county-issued vehicle for personal use.

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 April 4, 2019, 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 any violations of §2-443(a) and §2-443(b) occurred.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Michael Ehora, is hereby DISMISSED.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on April 4, 2019.

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

VIII. EXECUTIVE DIRECTOR PAY

Vice Chair Kummerlen said that after reviewing the salaries of similar positions throughout the state, the current salary for the executive director was fair and reasonable.

Commissioner Romano inquired about the last time the executive director's pay had been adjusted.

COE Executive Director Mark Bannon said that the salary was last adjusted when he joined the team approximately 3 years ago. He said that since then only cost of living increases had been applied.

Commissioner Cruise said that he had some concerns that the Palm Beach County COE Executive Director's salary was lower than comparable positions throughout the state. He said that an adjustment should be considered.

Chair Shullman stated that Miami-Dade County Ethics Commission Executive Director position paid \$45,000 more than Palm Beach County's equivalent position. She said that she also compared the Palm Beach County Inspector General's salary and there was a disparity of \$44,000.

Vice Chair Kummerlen said that due to the differences in function of inspectors general and executive directors of Commissions on Ethics, good parallels could not be drawn. He said that he supported a salary increase for the COE executive director position that exceeded the cost of living salary adjustment.

MOTION to recommend the Palm Beach County Board of County Commissioners (BCC) reset the COE Executive Director's base pay to \$175,000 annually. Motion by Rodney Romano.

Chair Shullman clarified that the COE could make the recommendation to raise the salary of the executive director but final approval and implementation of same rested with the BCC.

MOTION seconded by Peter Cruise.

Commissioner Cruise inquired whether the BCC could reject the COE's recommendation.

Mr. Bannon clarified that the ordinance stated that the COE set the executive director's salary, but that the BCC could reject the recommendation if the amount exceeded budget constraints. He said that he was comfortable with his salary and did not want to jeopardize BCC approval of the staff pay increases that he requested. He stated that the amount he requested for staff pay increases totaled \$26,000.

Vice Chair Kummerlen inquired whether the executive director could apply his pay increase toward staff raises.

Mr. Bannon stated that he did not have the discretion to accept an increase in salary and distribute it as staff pay increases. He said that although staff and executive director pay increases fell within the same budget, the recommendations were separate and individual.

Chair Shullman clarified that the COE had the authority to recommend executive director pay increases, and Mr. Bannon had authority over the request for staff raises.

Vice Chair Kummerlen clarified that the COE had previously offered its support for Mr. Bannon's request that the BCC include in the 2020 budget pay increases for COE staff.

UPON CALL FOR A VOTE, the motion carried 5 – 0

MOTION to approve the memorandums supporting both an increase in salary for the COE executive director and Mr. Bannon's recommendation for staff pay raises. Motion by Bryan Kummerlen, seconded by Peter Cruise, and carried 5-0.

IX. EXECUTIVE DIRECTOR COMMENTS

IX.A.

DISCUSSED: Meet and Greet

Mr. Bannon said that he and COE General Counsel Christie E. Kelley attended a City of Riviera Beach council meeting, during which they introduced themselves to the newly elected city council members and city mayor.

IX.B.

DISCUSSED: County Municipal Ethics Retraining

Mr. Bannon said that compliance reviews were being conducted and live training for several municipal officials and employees was being scheduled. He said that Ms. Kelley updated the training with new examples that were implemented.

X. COMMISSION COMMENTS

X.A.

DISCUSSED: Expression of Gratitude

Commissioner Kridel expressed his appreciation for COE staff and Mr. Bannon.

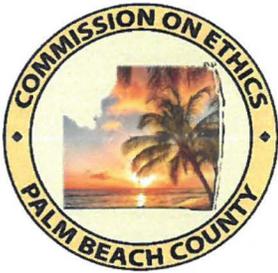
XI. PUBLIC COMMENTS – None

XII. ADJOURNMENT

At 2:47 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



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Palm Beach County Commission on Ethics

Commissioners

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

Executive Director

Mark E. Bannon

April 23, 2019

Captain Patrick Licata,
Palm Beach Gardens Fire Rescue
4425 Burns Rd
Palm Beach Gardens, FL 33410

Re: RQO 19-006
Contractual Relationships

Dear Mr. Licata,

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 it violate the Palm Beach County Code of Ethics (Code) if your outside business enters into a contract or transaction to provide goods to the City of Palm Beach Gardens (City) when you are a City employee?

ANSWER:

The Code prohibits you or your outside business, directly or indirectly, from entering into any contract or other transaction to provide goods or services to your public employer. The Code defines an outside business as any entity in which you or specified relatives have an ownership interest of at least five (5) percent.¹ Here, Medallion Sporting Goods, the business you own with your siblings, is considered your outside business because you and your siblings have a 100% ownership interest. Thus, the Code prohibits you or Medallion Sporting Goods from entering into any contract or other transaction for goods with the City of Palm Beach Gardens. However, there are several exceptions to the contractual relationship prohibition, three of which may apply to your situation.²

Section 2-443(e)(4) provides an exception when the total amount of the contracts or transactions in the aggregate between the public employee's outside business or employer and the public employer does not exceed \$500 per calendar year.³ Therefore, if the total amount of the contracts or transactions between Medallion Sporting Goods and the City does not exceed \$500, in the aggregate, then the contract or transaction between the City and your outside business would not be prohibited.

The Code also provides an exception for contracts awarded under a system of sealed, competitive bidding, where your outside business is the lowest bidder.⁴ The sealed bid exception applies so long as you 1) do not participate in the determination of bid specifications, 2) do not use your official position as a City Fire Rescue Captain to influence or persuade the City other than by the mere submission of the bid, and 3) file a statement with the Supervisor of Elections and the COE disclosing your interest in your outside business prior to submitting the bid. As long as your

¹ §2-442

² §2-443(e)

³ §2-443(e)(4)

⁴ §2-443(e)(1)

bid submission comports with these requirements, your outside business is not prohibited from applying and accepting bids awarded under this exception to the contractual relationship prohibition.

Additionally, the Code provides a sole source exception where the outside business is the sole source of the supply within the municipality.⁵ The sole source exception applies here if Medallion Sporting Goods is the only source of supply of the printed apparel and awards within Palm Beach Gardens, and you fully disclose your interest to your public employer and the COE prior to the transaction.

If none of these exceptions apply, then any contract or transaction between the City and your outside employer would violate §2-443(d), *Contractual relationships*. However, even if one of these exceptions apply, you must still not use your position as a City employee in any way to give a special financial benefit to you or your outside business or to influence the awarding of such a contract or agreement to sell goods to the City.⁶ You must follow the normal guidelines for obtaining such a contract or agreement as would be done by any other business seeking to sell goods or services to the City.

FACTS:

You are a City employee, serving as a Fire Rescue Captain for the City of Palm Beach Gardens. You are not involved with any purchasing decisions for the department. In your private capacity, you own an 18 percent stock in Medallion Sporting Goods, a family run business. Your siblings own the rest of the stock. Your business would like to sell printed apparel and awards to the City.

LEGAL BASIS:

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

Sec. 2-442. Definitions.

Outside employer or business includes:

- (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;

⁵ 2-443(e)(3)

⁶ §2-443(a)

- (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.
- (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.
 - (3) The outside employer or business involved is the only source of supply within the county or municipality as applicable and there is full disclosure by the official or employee of his or her interest in the outside employer or business to the county or municipality as applicable and the ethics commission prior to the purchase, rental, sale, leasing, or other business being transacted.
 - (4) The total amount of the contracts or transactions in the aggregate between the outside employer or business and the county or municipality as applicable does not exceed five hundred dollars (\$500) per calendar year.

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

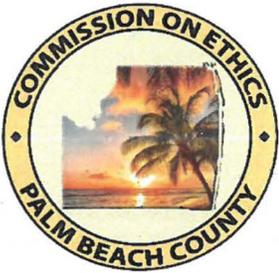
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon,
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

Commissioners

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

Executive Director

Mark E. Bannon

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April 23, 2019

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

Re: RQO 19-007
Conflict of Interest

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:

Does the Palm Beach County Code of Ethics (Code) prohibit you from continuing to serve as a member of the City of Riviera Beach's Planning & Zoning Board if you accept a position as a legislative aide for a City councilperson?

ANSWER:

While serving as a member of the City's Planning & Zoning Board, your actions as an official are under the jurisdiction of the COE and the Code. In addition, while working as a legislative aide for a City councilperson, your actions as a municipal employee are under the jurisdiction of the COE and the Code.

Under Section 2-443(a)(1-7) of the Code, public employees and advisory board members are prohibited from using their official position in any manner to give a special financial benefit to specified persons or entities. Advisory board members are also prohibited from participating in or voting on any issues that would give a special financial benefit to those same specified persons or entities.¹ Based on the facts provided, as long as you do not use your official position as a municipal advisory board member and as a City employee in any way, including participating in or voting on a matter, to give a special financial benefit to any of the prohibited persons or entities listed in §2-443(a), the Code would not prohibit you from continuing to serving as a member of the City's Planning & Zoning Board while also working as a legislative aide.

While there may be no per se conflict of interest, an appearance of impropriety may be created by your membership on the Planning & Zoning Board, where you are tasked with voting on whether to recommend matters to the City Council, and your City employment as the legislative aide to a City councilperson who may vote on matters that you as a Planning & Zoning Board member recommended. If you are concerned about this appearance of impropriety, you may choose to no longer serve as a Planning & Zoning Board member while you work as a legislative aide for a City councilperson.

FACTS:

You are a county employee, serving as a secretary for the Office of Equal Opportunity (OEO). You also serve as a member of the City of Riviera Beach Planning & Zoning Board. The Planning & Zoning Board functions as an advisory board to the City Council on land use and site plan issues. The members of the board are appointed by the City Council.

¹ §2-443(c)

You were recently offered a position as a legislative aide to a City of Riviera Beach councilperson, and you would like to continue your service on the Planning & Zone Board, if allowed. You confirmed with the City Attorney that the City does not have any policies that prohibit City employees from serving on City boards.

LEGAL BASIS:

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