



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

Investigator
Abigail Irizarry

Investigator
Mark A. Higgs

Agenda

November 7, 2019 – 1:30 p.m.
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from October 3, 2019
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 19-018
 - b. RQO 19-019
 - c. RQO 19-020
- VI. Proposed Advisory Opinions
 - a. RQO 19-016
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Executive Director Comments
- IX. Commission Comments
- X. Public Comments
- XI. Adjournment

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

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

OCTOBER 3, 2019

**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 - Absent
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:

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

III. INTRODUCTORY REMARKS

DISCUSSED: Introduction of Mark Higgs.

Chair Shullman said that she wished to welcome Mark Higgs as the newest COE investigator.

DISCUSSED: Disclosure

Commissioner Romano said that he exchanged greetings with attorney Glenn Bertisch, who was to be involved in the executive session hearings later today.

IV. APPROVAL OF MINUTES FROM SEPTEMBER 5, 2019

MOTION to approve the September 5, 2019 minutes. Motion by Peter Cruise, seconded by Michael Kridel, and carried 4-0.

RECESS

At 1:33 p.m., the chair declared the meeting recessed for an executive session.

V. EXECUTIVE SESSION

RECONVENE

At 3:29 p.m., the meeting reconvened, and at Chair Shullman's request for a roll call, Commissioners Cruise, Kridel and Romano were present.

V.a C18-005

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

Complainant, Tradrick McCoy, filed the above referenced complaint on December 14, 2018, alleging that Respondent, Lynne Hubbard, who was a city councilperson at the time of the allegations, violated §2-443(b) of the Palm Beach County Code of Ethics by corruptly using her position as an elected official to give herself a special benefit by contacting the police to have them prohibit a process server from serving her with a summons.

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 October 3, 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, the Commission concluded that probable cause does not exist to believe any violation of §2-443(b) occurred because the evidence showed that Respondent did not use her position as a councilperson to contact any police officer directly but instead called the Police Department Administration phone

number, which is available to the general public, and did not instruct any of the officers to prohibit the process server from serving her.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Lynne Hubbard, is hereby DISMISSED.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on October 3, 2019.

By: Sarah L. Shullman, Chair

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

V.b C18-006

Commissioner Kridel read the following Public Report and Final Order of Dismissal:

Complainant, Tradrick McCoy, filed the above referenced complaint on December 14, 2018, alleging that Respondent, Derrick Jackson, a police officer with the City of Riviera Beach police department, violated §2-443(b) of the Palm Beach County Code of Ethics by corruptly using his position to give former Councilperson Lynn Hubbard a special benefit by prohibiting a process server from serving her with a summons.

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 October 3, 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, the Commission concluded that probable cause does not exist to believe any violation of §2-443(b) occurred because the evidence showed that Respondent did not prohibit, or attempt to prohibit, the process server from serving former Councilperson Hubbard.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Derrick Jackson, is hereby DISMISSED.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on October 3, 2019.

By: Sarah L. Shullman, Chair

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

V.c C18-007

Commissioner Romano read the following Public Report and Final Order of Dismissal:

Complainant, Tradrick McCoy, filed the above referenced complaint on December 14, 2018, alleging that Respondent, Stephen Thomas, a major with the City of Riviera Beach police department, violated §2-443(b) of the Palm Beach County Code of Ethics by corruptly using his position to give former Councilperson Lynn Hubbard a special benefit by prohibiting a process server from serving her with a summons.

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 October 3, 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, the Commission concluded that probable cause does not exist to believe any violation of §2-443(b) occurred because the evidence showed that Respondent did not prohibit, or attempt to prohibit, the process server from serving former Councilperson Hubbard.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Stephen Thomas, is hereby DISMISSED.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on October 3, 2019.

By: Sarah L. Shullman, Chair

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

V.d C18-008

Commissioner Romano read the following Public Report and Final Order of Probable Cause:

Complainant, Mark E. Bannon, Executive Director of the Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on December 28, 2018, alleging that Respondent, Lynne Hubbard, who was a city councilperson at the time of the allegations, violated §2-443(b) of the Palm Beach County Code of Ethics by corruptly securing a special benefit for herself or others by actively participating in the SYEP hiring process, handpicking those interviewed for the SYEP positions, personally scheduling the interviews, attending and participating in their interviews, imposing her hiring choices on staff, and actively participating in the daily operation of SYEP, which was inconsistent with the proper performance of her public duties.

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 October 3, 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 determined that probable cause exists to believe that the Respondent may have violated §2-443(b) of the Palm Beach County Code of Ethics.

Therefore it is:

ORDERED AND ADJUDGED that probable cause exists and the complaint against Respondent, Lynne Hubbard, will be set for a final hearing within 120 days to be coordinated between the parties.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on October 3, 2019.

By: Sarah L. Shullman, Chair

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

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

a. RQO 19-017

MOTION to approve the consent agenda. Motion by Peter Cruise, seconded by Michael Kridel, and carried 4-0.

VII. PROPOSED ADVISORY OPINIONS

a. RQO 19-016

Commissioner Kridel said that regardless of whether the funds were paid directly or indirectly, the fees paid by Crocker Partners ultimately went to the same place. He added that the COE was bound by statute and was only permitted to address matters of direct payments.

COE Executive Director Mark Bannon said that because the business association was partially owned by the same company that paid the association fees, the payments should be classified as direct.

Commissioner Romano said that although the COE might not have jurisdiction on this matter, the commission should advise circumspection because there was an appearance of impropriety.

Mr. Bannon said that the opinion needed to be rewritten and that there were 2 options to do so. He said that the opinion could leave out the possible repercussions, given that Cocker Partners payments were below the \$10,000 limit within 24 months, or language could be added to clarify the concern regarding the business relationship.

Chair Shullman said that she was in favor of drafting a new opinion that stated that because the amount paid was under the amount set by statute, the COE was withholding a decision. She said that a warning should also be included stating that if the amount reached or exceeded \$10,000, that could be a violation.

MOTION to table approval of RQO 19-016 to a subsequent COE meeting pending changes to the opinion language. Motion by Michael Kridel, seconded by Peter Cruise, and carried 4-0.

VIII. ITEMS PULLED FROM CONSENT AGENDA – None

IX. EXECUTIVE DIRECTOR COMMENTS

DISCUSSED: Palm Beach County Planning Congress Ethics Seminar.

COE Executive Director Mark Bannon said that the Palm Beach County Planning Congress was having its 13th Annual Ethics Seminar on Friday, November 1, 2019 at the Old School Square in Delray Beach.

DISCUSSED: Ethics Bowl.

Mr. Bannon said that Palm Beach County School District was partnering with Florida Atlantic University (FAU) to host the Regional High School Ethics Bowl at FAU's main campus in January 2020.

X. COMMISSION COMMENTS

DISCUSSED: Hearings

Commissioner Romano requested clarification regarding the standard of proof presented at a hearing following a finding of probable cause, and whether it was permitted to instruct staff regarding evidence that would be of specific interest to the COE.

COE Executive Director Mark Bannon said that following a finding of probable cause, the respondent had the choice to either appear before a magistrate or the COE for the final hearing.

COE General Counsel Christie E. Kelley said that at the final hearing, the evidentiary standard used was "clear and convincing."

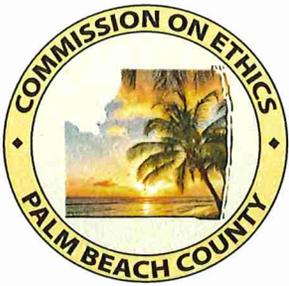
XI. PUBLIC COMMENTS - None

XII. ADJOURNMENT

At 3:53 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

Honesty - Integrity - Character

Commissioners

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

Executive Director

Mark E. Bannon

October 4, 2019

Mr. Arnold Sevell
Sevell Realty Partners, Inc.
2295 Corporate Blvd., N.W., Suite 131
Boca Raton, FL 33431-7328

Re: RQO 19-016
Voting Conflicts

Dear Mr. Sevell,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion was rendered at a public meeting held on October 3, 2019 as follows:

QUESTION:

Would it violate the Palm Beach County Code of Ethics (Code) if you, as a member of the City of Boca Raton Planning and Zoning Board (PZB), were to vote on a future building project submitted by Crocker Partners, LLC (Crocker) when it comes before the PZB for approval, where your outside realty business manages the common areas of a separate office park where Crocker owns a building through a subsidiary, and where Crocker pays an amount equal to \$4,492.40 per year toward the annual fee your realty company receives for managing this complex?

BRIEF ANSWER:

No, you would not be prohibited from voting on this matter as a PZB member under the specific facts submitted.

FACTS:

You are Chairman of the City of Boca Raton Planning and Zoning Board (PZB). You have an outside business, which is wholly owned by you and your wife, Sevell Realty Partners, Inc. (Realty Partners). Realty Partners is paid an annual fee to manage the common areas of a business park where your business is located, Glades Corporate Center. While the common area land is technically owned by the City of Boca Raton, the businesses located within Glades Corporate Center pay a fee for the management and general upkeep of the common areas of this business park through an association formed by the businesses located there, Glades Corporate Property Owners Association (association). Each business pays a portion of this fee based on the property size and percentage of ownership within the park. Crocker Partners, LLC, (Crocker) through a subsidiary, owns a building within Glades Corporate Center, and is thus charged a fee annually for the upkeep and management of this park.

According to the 2019 Glades Corporate Budget Analysis provided by you, Crocker has a 15.14% ownership share in Glades Corporate Center, and is charged an annual fee of \$4,492.40 by the association for the management services provided by Realty Partners. Based on this information, Crocker pays indirectly through the association an amount of \$8,984.40 during a 24-month period to Realty Partners for managing the complex. While you do serve on the board of directors of the association with Crocker's property manager, each of the five people on this board have an equal vote regardless of the percentage of ownership share. Other than association board meetings, which are held two or three times per year, and the occasional question about park business, you have no regular contact with or any other business dealings with Crocker.

Crocker is planning to build a project known as "Restaurant Row," which will be located approximately one mile from Glades Corporate Center. This project will come before PZB for approval.

RATIONALE:

Under the Palm Beach County Code of Ethics, you are considered an official as a member of PZB.¹ The Code prohibits officials and employees from using their official position in any way to give a special financial benefit, not shared with similarly situated members of the general public, to specified persons or entities, including themselves, their outside businesses, and customers or clients of their outside businesses.² You and your wife own 100% of Realty Partners, thus it is considered to be your outside business under the code.³ Customer or client is defined within the code as being any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).⁴

Based on the facts as submitted, while Crocker does indirectly pay Realty Partners through the association for managing Glades Corporate Park, it would not violate the Code for you to vote on this project as a PZB board member because Crocker does not meet the code's definition of "customer or client." The annual amount paid by Crocker to your outside realty business does not meet the requisite \$10,000 monetary threshold to be considered a customer or client. Crocker paid \$8,984.40 in a 24-month period to Realty Partners. Thus, under these circumstances, Crocker would not be considered a customer or client of your outside business.

However, if for any reason the \$10,000 payment threshold is reached during the 24 months prior to the matter coming before your board, it would violate the code for you to vote as a PZB member as you would then be giving a prohibited special financial benefit to Crocker, who would at that time be considered a customer or client of your outside business.⁵ In such an instance, you must publicly disclose the nature of this conflict at the PZB meeting where this matter is before the board, file the required state disclosure form (8B), and refrain from voting on and participating in the matter in any way to influence the outcome of the decision by PZB.⁶

It should be noted that this opinion is narrowly focused on the unique facts involved, and should not be used by others to hold that a "customer or client" relationship always exists when payments of greater than \$10,000 in a preceding 24-month period to a person or business entity are made through a third party. The facts provided here are unique because the association that pays Realty Partners its annual fee is solely made up of the business owners within Glades Corporate Park, including Crocker. Whether any customer or client relationship is formed where payments are made through a third party must be analyzed on a case by case basis.

LEGAL BASIS:

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

Sec. 2-442. Definitions.

Customer or client means any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).

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.

¹ §2-442

² §2-443(a), §2-443(c)

³ §2-442

⁴ §2-442

⁵ §2-442, §2-443(a), §2-443(c)

⁶ §2-443(c)

Sec. 2-443. Prohibited conduct.

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

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

(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. 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

Commissioners

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

Executive Director

Mark E. Bannon

October 30, 2019

Mr. Keith Davis, Esq.
701 Northpoint Parkway, Suite 205
West Palm Beach, FL 33407

Re: RQO 19-018
Misuse of Office

Dear Mr. Davis,

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

QUESTION:

Are any of the Palm Beach County Code of Ethics (Code) provisions implicated if elected officials of the Village of Tequesta (Village) serve on the college scholarship selection committee for a non-profit organization where scholarships are awarded to children of Village employees and where one or more of the non-profit organization's board members own commercial property within the Village and may appear before the Village Council?

BRIEF ANSWER:

The Code would not prohibit a local business owner from establishing a non-profit organization for the purpose of awarding college scholarship funds to the children of Village employees even where he may appear before the Village Council on occasion as discussed. It would also not prohibit elected officials of the Village from serving on the selection committee for award of these funds, so long as neither the officials or employees of the Village use their official positions improperly as outlined in the "Answer" section of this advisory opinion.

FACTS:

You are the General Counsel for the Village of Tequesta and are requesting this opinion on behalf of the Village.

The Village contains several commercial zoning districts with shopping centers. From time to time, the owners of such shopping centers will apply for land development approvals or other approvals related to their property. The requests are typical of any such commercial use and may include requests to expand square footage, improve parking or landscaping, change façade features, change specific tenant uses or hold special events. The approval process requires that the Village Council take final action on the approval, denial, or conditioning of any of these application requests.

The owner of one such shopping center desires to establish a non-profit organization for the purpose of funding college level scholarships for students who are also children of Village employees. It is contemplated that one or two scholarships would be awarded annually on a competitive basis through an application process. The details of the application process have yet to be worked out. Scholarships would be funded through the non-profit organization with no financial assistance from the Village of Tequesta. An additional request is for one or more Village elected officials to serve on the non-profit organization's scholarship committee and be involved with the review and ranking of the applications and the award of the scholarships. No Village elected officials or employees would serve as officers or directors of the non-profit organization or be involved in fundraising on behalf of the non-profit organization.

RATIONALE:

Section 2-443(a), *Misuse of public office or employment*, prohibits officials and employees from using their official positions in any manner to give a special financial benefit to specified persons or entities. Among these specified persons or entities are themselves, their spouses or domestic partners, their children or step-children, nieces or nephews, siblings or step-siblings, or uncles or aunts. Section 2-443(b), *Corrupt misuse of official position*, also prohibits officials and employees from using their official positions to corruptly secure a special benefit for themselves or others.

Based on the facts provided here, although Village employees will not be on the selection committee, Village employees are prohibited from using their position with the Village to corruptly secure a special benefit for anyone or to give a special financial benefit to any of the persons specified in Section 2-443(a). This includes influencing others to select their children or step-children or any of the other persons listed in Section 2-443(a) as recipients of a college scholarship from this non-profit organization. As scholarship selection committee members, Village officials are also prohibited from using their official positions with the Village to corruptly secure a special benefit for anyone or to give a special financial benefit to any of the persons specified in Section 2-443(a).

Further, as long as the non-profit organization is not a vendor, lobbyist, or principal or employer of a lobbyist who lobbies the Village, Village employees are not prohibited from accepting college scholarships for their children over \$100 from the non-profit organization.¹ Because Section 2-444(g) defines a gift as "the transfer of anything of economic value," a college scholarship would be considered a gift under the Code. Section 2-444(f) requires employees to complete gift disclosure forms for any gifts received in excess of \$100. In addressing the gift law requirements, the COE has previously held where scholarship eligibility is contingent upon a parent's public employment, scholarship funds provided to a child are considered an indirect gift to the parent.² As is the case here, the non-profit organization would award scholarships to the children based on their parent's employment with the Village. Therefore, these college scholarships would be indirect gifts to the Village employees and must be included on the parent's gift report form if the value of the scholarship exceeds \$100.

Lastly, no Village employee or official may take or fail to take any official act or legal duty as quid pro quo in exchange for scholarship funding.³

LEGAL BASIS:

The legal basis for this opinion is found in the following sections 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

¹ §2-444(a)(1)

² RQO 11-080

³ §2-444(e)

indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;

(7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

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

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.

(f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.

(1) *Gift reports for officials and employees identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. When a state reporting individual files a gift report with the state, a copy of each report shall also be filed contemporaneously with the county commission on ethics.

(2) *All other officials and employees who are not reporting individuals under state law.*

b. *All other gifts.* All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics no later than November 1 of each year beginning November 1, 2011, for the period ending September 30 of each year. All officials or employees who are not reporting individuals under state law and who do not receive a gift in excess of one hundred dollars (\$100) during a given reporting period shall not file an annual gift disclosure report. The annual gift disclosure report shall be created by the county commission on ethics and shall be in a form substantially similar in content as that required by state law.

(g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration.

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. 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.

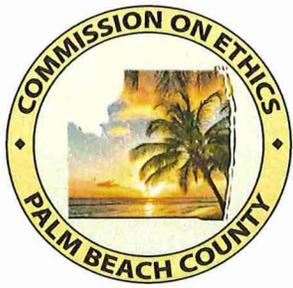
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon,
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

Honesty - Integrity - Character

Commissioners

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

Executive Director

Mark E. Bannon

November 4, 2019

Ms. Barbara Pinkston
Palm Beach County Planning and Zoning
2300 N. Jog Road
West Palm Beach, FL 33411

Re: RQO 19-019
Misuse of Office/Outside Employment

Dear Ms. Pinkston,

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

QUESTION:

Does the Palm Beach County Code of Ethics (Code) prohibit you as a Palm Beach County (county) employee from working as a consultant in your private capacity during non-work hours?

BRIEF ANSWER:

The Code does not prohibit you from working as a consultant in your private capacity during non-work hours as long as you follow the requirements of the Code as described in this advisory opinion.

FACTS:

You are a county employee, serving as a supervisor in the Zoning Division. You would like to be able to work part-time as a consultant. Your consulting services would not be provided to the county, and you would not work on projects that would constitute a conflict of interest. The work would consist of preparing zoning and land use related applications on behalf of a client and attending meetings related to the applications. All activities would occur outside your work hours with the county. None of your consulting work would involve applications that would need approval from the county, and in particular from the county Zoning Commission.

RATIONALE:

The Code prohibits you from entering into any contract or other transaction for goods or services with your public employer.¹ This prohibition extends not only to you, directly or indirectly, but to your outside business as well. The Code defines an outside business as any entity in which you or specified relatives have an ownership interest of at least five percent.² Thus, the consulting business would be your outside business under the Code. Based on the facts provided, as long as you or your outside business do not enter into any contract or other transaction for goods or services with the county, directly or indirectly, and you operate your business outside of your county work hours, you will not be in violation of the prohibited contractual relationships provision of the Code. Further, you are prohibited from entering into any contractual relationships with a vendor of the county if you would be providing services to the county through that contract because this would create an indirect contract with the county and would violate Sec. 2-443(d) of the Code.

In addition, the Code prohibits you, as a public employee, from using your official position with the county to give a special financial benefit to specified persons or entities, including yourself, your outside business, or a customer or client of your outside business.³ The Code defines a customer or client as a person or entity to which your outside business has

¹ §2-443(d)

² §2-442

³ §2-443(a)

supplied goods or services during the previous 24 months in excess of \$10,000.⁴ Therefore, you must also take great care not to misuse your governmental employment in any way to give a special financial benefit to yourself, your outside business, or the customers or clients of your outside business. This would include using your position with the county to influence another person to take some action which would give a special financial benefit to your customers or clients, soliciting business during your county work hours, and identifying yourself as a county employee on any written or verbal communication to attempt to obtain a customer.

It should also be noted that an appearance of impropriety might exist for you if you were to assist a client on an application that would need approval from the county Zoning Commission because of your employment with the county's Zoning Division. We would normally recommend that you refrain from working for any such clients, but you stated that none of your consulting work would involve applications that would need approval from the county.

Finally, you are reminded that you must also comply with the county's merit rules regarding outside employment.

LEGAL BASIS:

The legal basis for this opinion is found in the following sections of the Code:

Sec. 2-443. Prohibited conduct.

Customer or client means any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).

Outside employer or business includes:

- (2) Any entity located in the county ... 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....

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;
- (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;

(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.

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. This opinion is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the 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

⁴ §2-442



Palm Beach County Commission on Ethics

Honesty - Integrity - Character

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Michael S. Kridel
Peter L. Cruise

Executive Director

Mark E. Bannon

October 30, 2019

Captain Thomas Fucci
Palm Beach County Fire Rescue
405 Pike Road
West Palm Beach, FL 33411

Re: RQO 19-020
Misuse of Office

Dear Captain Fucci,

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

QUESTION:

Does the Palm Beach County Code of Ethics (Code) prohibit you, a captain with Palm Beach County Fire Rescue (PBCFR), from serving as an unpaid technical advisor for a nationally syndicated television program?

BRIEF ANSWER:

Your participation as an unpaid technical advisor for the television program would not violate the Code.

FACTS:

You are a captain with PBCFR, working in the Palm Beach County Bomb/Arson Task Force, and you are also a board certified fire investigator. You were recently contacted by a producer who works for the Nancy Grace nationally syndicated television program. They requested to have you act as a technical advisor for the show, offering technical aspects of fire investigation, specifically arson investigation. The producers reached out to you because you are a known expert in this field and have published and taught classes regarding the subject matter.

The position would not offer opinions on any ongoing criminal investigations or trials. You would simply offer scientific or technical advice on procedures and policies and explain why a fire would burn a certain way. You would not also not receive compensation for your services. Your work would occur via email and telephone calls only and not during your county work hours. You checked with your supervisors, and they wanted you to get an advisory opinion from the COE before entering into any agreement with the television program. It is your understanding that travel will not be involved.

RATIONALE:

Section 2-443(a), *Misuse of public office or employment*, prohibits you from using your official position in any manner to give a special financial benefit to specified persons or entities, including to yourself. Based on the facts provided here, you would not be using your position as a captain with Palm Beach County Fire Rescue to give yourself a special financial benefit. Because you are volunteering your services as a technical advisor and you are not receiving any compensation for your services, you would not be in violation of Section 2-443(a). It should also be noted that you did not use your official position to solicit or otherwise approach anyone about retaining you as a technical advisor. You were approached by producers because of your reputation as an expert in the subject matter.

Section 2-443(d) also prohibits you or your outside employer from entering into any contract or transaction for goods or services with the county. The Code defines an outside employer as "any entity ... of which the ... employee is a

member, official, director, or employee, and from which he or she receives compensation for services rendered or for goods sold or produced.”¹ Based on the facts provided, the television program would not be your outside employer because you will not receive compensation for your services. Even if the television show was a vendor of the county, because it would not be your outside employer, the contract would not be prohibited because the contractual relationship prohibition provision would not apply to your situation.

LEGAL BASIS:

The legal basis for this opinion is found in the following sections of the Code:

Sec. 2-443. Prohibited conduct.

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
- (d) *Contractual relationships.* No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business.

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. 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

¹ §2-442. Definitions.