



Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

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West Palm Beach, FL 33401

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Commissioners

Peter L. Cruise

Carol E. A. DeGraffenreidt

Michael S. Kridel

Michael H. Kugler

Rodney G. Romano

Executive Director

Christie E. Kelley

Intake and Compliance Manager

Gina A. Levesque

General Counsel

Vacant

Investigator

Abigail Irizarry

Investigator

Mark A. Higgs

Agenda

March 10, 2022 – 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 2:00pm
Regular Agenda will resume at 2:45pm

- I. Call to Order by Executive Director
- II. Introductory Remarks
- III. Swearing-in ceremony by Judge Sarah L. Shullman
 - a. Rodney G. Romano-Appointed by the Palm Beach County League of Cities
 - b. Peter L. Cruise-Appointed by the president of FAU
- IV. Roll Call
- V. Nomination and election of new Chairperson (to begin presiding over meeting immediately upon election)
- VI. Nomination and election of new Vice Chairperson
- VII. Approval of Minutes from special meeting held on October 18, 2021.
- VIII. Executive Session
 - a. C22-002
- IX. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 22-003
- X. Items Pulled from Consent Agenda
 - a.
- XI. Discussion re: Commission on Ethics Ordinance change
- XII. Executive Director Comments
- XIII. Commission Comments
- XIV. Public Comments
- XV. 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 18, 2021

**THURSDAY
11:30 A.M.**

**COMMISSION CHAMBERS
WEISMAN GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Peter L. Cruise, Chair
Michael S. Kridel, Vice Chair
Carol E. A. DeGraffenreidt
Michael H. Kugler
Rodney G. Romano- Absent

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Executive Director
Christie E. Kelley, Esq., COE General Counsel
Gina A. Levesque, COE Intake and Compliance Manager

ADMINISTRATIVE STAFF:

Julie Burns, Deputy Clerk, Clerk of the Circuit Court & Comptroller's Office (clerking)
Danielle Freeman, Deputy Clerk, Clerk's Office (condensing)

III. INTRODUCTORY REMARKS – None

IV. EXECUTIVE DIRECTOR JOB SEARCH UPDATE

Leilani Yan, Manager of Recruitment and Selection, said that:

- The COE was asked to submit a list of their top candidates, which could include up to six names.
- The results were summarized into a frequency table, and a color-coding method was used to indicate scoring.

- Today's discussion would involve which applicants the COE would like to move forward in the interview process.

Responding to COE questions, Ms. Yan said that:

- The COE could decide how many candidates from the list they wanted to interview.
- The ordinance did not restrict how many candidates to choose, the only requirement was that the process be competitive, which included:
 - soliciting open applications; and
 - having a review period to access the applications and select a group of applicants to interview.

Discussion ensued regarding interviewing the top four candidates who scored the highest.

MOTION to interview the first four candidates. Motion made by Michael Kugler, seconded by Michael Kridel, and carried 4-0. Rodney Romano absent.

Responding to COE questions, Ms. Yan said that interviews would be on November 4, 2021:

- Each candidate would have 45 minutes to answer questions.
 - Time would be set aside to evaluate written assessment and for public comment;
 - the process would take around five hours.
- If the candidates were local, the written assessments could be performed in Human Resources Department, and they could be reviewed during the public portion of the meeting.
- Draft procedures for the interview process would be sent to the COE for feedback. Once the comments were incorporated, a final draft of the protocols would be distributed.
- Previously used interview questions would be confidentially released to the COE for review.
- Any changes to the interview protocols and questions need to be submitted by Friday, October 22, 2021.

- Candidates would be contacted to submit consent for a background check, and the results should be back within a week.
- The interviews were scheduled at 1:30 p.m.

COE Intake and Compliance Manager, Gina Levesque, clarified that the COE meeting would be prior to the interviews, and the agenda only included minutes approval.

Responding to a COE question, Ms. Yan said that:

- In addition to the background checks, the Palm Beach County Bar Association would be consulted regarding the candidates.
- The final evaluation and rank order would be discussed during the public portion of the meeting.
- The top four names would be public record, and only their demographic information would be redacted.
- The interviews would be held publicly and televised on Channel 20.

V. ADJOURNMENT

At 11:41 a.m., the chair declared the meeting adjourned.

Chair/Vice Chair



Palm Beach County Commission on Ethics

Commissioners

Peter L. Cruise, Chair
Michael S. Kridel, Vice Chair
Carol E.A. DeGraffenreidt
Michael H. Kugler
Rodney G. Romano

Executive Director

Mark E. Bannon

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February 7, 2022

Officer Ronald Brown
Delray Beach Police Department
300 W. Atlantic Ave
Delray Beach, FL 33444

Re: RQO 22-003
Outside employment

Dear Officer Brown,

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

QUESTION:

Does the Palm Beach County Code of Ethics (Code) prohibit you from working as an independent contractor for a company that is a vendor of your public employer?

FACTS:

You are an employee of the Delray Beach Police Department. You have the opportunity to work as a consultant with Axon Enterprise (Axon). Axon is a vendor of the city of Delray Beach. You would be hired as an independent contractor. The Device Services Consultant position with Axon for which you would be hired would not involve sales of products or services. Your responsibilities would include Axon product testing as well as training at public safety and law enforcement agencies throughout the country following the sale of Axon products to that agency. The consultant work would not involve any work with the city of Delray Beach. Your current position as a Training Officer with the Delray Beach Police Department involves no purchasing power with regard to this vendor, but you can recommend products in your training capacity. You want to ensure that this employment is allowed and that you do not violate the Code.

ANSWER:

Section 2-443(d), *Contractual relationships*, prohibits you from entering into a contract or other transaction for goods or services, directly or indirectly, with your public employer, the city of Delray Beach, unless an exception applies. As long as your consulting business does not enter into any contract or other transaction for goods or services with the city, the Code does not prohibit you from operating this business outside of your municipal work hours.

Although you stated that your work with Axon would not involve any work for the city of Delray Beach, you are reminded that the COE has previously held that Section 2-443(d) of the Code also prohibits you from entering into any contractual relationships with a vendor of your public employer if you would be providing good or services to your public employer through that contract.¹ This would create an indirect contract between you and your public employer and, thus, violate Section 2-443(d) of the Code.

Further, while Section 2-443(e)(5), *Exceptions and waiver*, provides a process by which such a contractual relationship prohibition may be waived for public employees, this exception cannot be used in your situation. The outside employment waiver process applies when a public employee's outside employer has a contract

¹ RQO 10-038, RQO 16-001, RQO 16-006, RQO 19-019

for goods or services with his or her public employer. The Code defines an "outside employer" as any entity of which the public employee is an employee.² However, persons employed on a contractual basis are classified as independent contractors and are not considered "employees" under the Code.³ Based on the facts provided, you would be working as an independent contractor, not as an employee, of Axon. Since an independent contractor is not considered an employee, Axon would not be considered your outside employer. Because the vendor is not your outside employer, the part-time outside employment waiver provision cannot be used in your situation. Therefore, the contractual relationship prohibition would preclude you from working as an independent contractor for Axon if you would be providing any goods or services to the city of Delray Beach through that contract.

Further, you have an ongoing responsibility to refrain from using your official position as a Delray Beach Police Department employee in any way to give a special financial benefit for yourself or your outside consulting business. Thus, you are prohibited from soliciting business during your municipal work hours and from identifying yourself as a city employee, including providing any written or verbal communication using your municipal title or position, to attempt to obtain a customer. You are also prohibited from using your official position with the city in any way, including influencing others to take some action, to give a special financial benefit to a customer or client of your outside business. The Code defines a customer or client as any entity to which your consulting business has provided over \$10,000 in goods or services during the previous 24 months. As such, once you have met the \$10,000 threshold over the previous 24 months for your work with Axon, then Axon would be considered your customer or client, and you would be prohibited from using your official position with the city in any way to give a special financial benefit to Axon, including recommending Axon's products to the city.

Finally, you are reminded that you must ensure that you comply with the city's rules regarding outside employment.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-442, §2-443(a), §2-443(d), and §2-443(e)(5) 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 includes:

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

Sec. 2-443. Prohibited conduct.

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

² §2-442, Definitions.

³ RQO 11-020

- (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. 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:
- (5) Notwithstanding any provision to the contrary, subsection (d) shall not be construed to prevent an employee from seeking part-time employment with an outside employer who has entered into a contract for goods or services with the county or municipality as applicable provided that:
 - a. The employee or relative of the employee does not work in the county or municipal department as applicable which will enforce, oversee or administer the subject contract; and
 - b. The outside employment would not interfere with or otherwise impair his or her independence of judgment or otherwise interfere with the full and faithful performance of his or her public duties to the county or municipality as applicable; and
 - c. The employee or relative of the employee has not participated in determining the subject contract requirements or awarding the contract; and
 - d. The employee's job responsibilities and job description will not require him or her to be involved in the outside employer's contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance; and
 - e. The employee demonstrates compliance with applicable merit rules regarding outside employment and obtains written permission from his or her supervisor; and
 - f. The employee has obtained a conflict of interest waiver from the chief administrative officer and the employee's department head of the county or municipality based on a finding that no conflict exists. The employee shall submit the request for waiver in writing and under oath. The request for the waiver shall be signed by the employee under oath or affirmation on an approved form provided by the commission on ethics. The document shall contain written acknowledgment of compliance with the provisions of subsection (5)a. through (5)e. of this subsection, together with such pertinent facts and relevant documents that support such waiver. A waiver under this subsection must be approved by both the employee's supervisor and chief administrative officer of the county or municipality. The county or municipality shall record such waiver in the employee's personnel file and shall submit a copy of the waiver and all related documents to the commission on ethics. The commission on ethics in its discretion may elect to review, comment on, or investigate any waiver. The commission on ethics review or investigation shall not delay an employee's ability to take the part time employment.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The Palm Beach County Commission on Ethics 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,



Christie E. Kelley
Executive Director

CEK/gal

(4) The president of the Palm Beach Chapter of Association of Certified Fraud Examiners or the president of the Palm Beach Chapter of the Florida Government Finance Officers Association shall be requested, on a rotating basis for each term of the four-year appointments, to appoint a single member who possesses at least five (5) years of experience as a certified public accountant or as an executive level, financial officer with forensic auditing, government accounting, or government auditing experience. The president of the Palm Beach Chapter of the Association of Certified Fraud Examiners shall make the initial appointment. If the scheduled appointing entity declines such appointment or fails to make such appointment within 60 days of the COE request, the appointment will default to the other appointing entity, who shall make an appointment within 60 days of this default. If there is a vacancy during the term of appointment, the original appointing entity shall be requested to make another appointment to fulfill the term of the original appointment.