

Honesty - Integrity - Character

Agenda

September 5, 2024 – 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 immediately
following Executive Session

Palm Beach County

Commission on Ethics

300 North Dixie Highway, Ste 450

West Palm Beach, FL 33401

561.355.1915

Hotline: 877.766.5920

E-mail: ethics@pbcgov.org

Commissioners

Kristin A. Vara-Garcia

Michael S. Kridel

Peter L. Cruise

Michael H. Kugler

Rodney G. Romano

Executive Director

Christie Kelley

General Counsel

Rhonda Giger

Intake & Compliance Manager

Gina A. Levesque

Education & Communications Manager

S. Lizabeth Martin

Investigator

Mark A. Higgs

Investigator

Abigail Irizarry

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Introductory Remarks
- V. Approval of Minutes from August 1, 2024
- VI. Executive Sessions:
 - a. C24-005
 - b. C24-009
- VII. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 24-013
- VIII. Items Pulled from Consent Agenda
 - a.
- IX. Executive Director Comments
- X. Commission Comments
- XI. Public Comments
- XII. Adjournment

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

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

AUGUST 1, 2024

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

**COMMISSION CHAMBERS
WEISMAN GOVERNMENTAL CENTER**

MEMBERS:

Kristin A. Vara-Garcia, Chair
Michael S. Kridel, Vice Chair
Peter L. Cruise
Michael H. Kugler
Rodney G. Romano

COMMISSION ON ETHICS STAFF PRESENT:

Rhonda Giger, General Counsel
Abigail Irizarry, COE Investigator II
Christie E. Kelley, COE Director III
Gina A. Levesque, COE Intake and Compliance Manager
S. Lizabeth Martin, COE Communication and Education Manager

CLERK OF THE CIRCUIT COURT & COMPTROLLER'S OFFICE STAFF PRESENT:

Jillian Zalewska, Deputy Clerk

I. CALL TO ORDER

The chair called the meeting to order at 1:30 p.m.

II. PLEDGE OF ALLEGIANCE

Commissioner Kugler led the Pledge of Allegiance.

III. ROLL CALL

All members were present.

IV. INTRODUCTORY REMARKS

There were no introductory remarks.

V. APPROVAL OF MINUTES FROM JULY 11, 2024

MOTION to approve the July 11, 2024, minutes. Motion by Commissioner Kugler, seconded by Commissioner Cruise, and carried 5-0.

VI. Executive Session for C23-007

RECESS

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

RECONVENE

At 1:53 p.m., the meeting reconvened with all members present.

Vice Chair Kridel read the public report and final order into the record:

In re Todd Bucci, Case C24-001:

Christie Kelley, Executive Director of the Palm Beach County Commission on Ethics (COE), filed the above-referenced complaint alleging Respondent, Todd Bucci, an employee of Palm Beach County, violated Sec. 2-444(e), *Gift law*, of the Palm Beach County Code of Ethics by accepting a cash tip after performing a specific service contemplated by his employment duties.

Pursuant to Sec. 2-258(a)¹ of the Palm Beach County Commission on Ethics Ordinance, the Palm Beach County Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. In lieu of a probable cause hearing, Respondent stipulated to Probable Cause, and a negotiated settlement agreement, including a Letter of Reprimand, was submitted to the Commission for approval. Respondent stipulated to the facts and circumstances as contained in the Letter of Reprimand. According to the negotiated settlement and based on the facts as set forth in the Letter of Reprimand, Respondent admitted to violating Sec. 2-444(e) of the Palm Beach County Code of Ethics and agreed to accept a Letter of Reprimand and to a finding that the violation was intentional. The Commission accepted the conditions of the negotiated settlement.

Pursuant to Commission on Ethics Ordinance Sec. 2-260.1, *Public hearing procedures*, the Commission found that there was clear and convincing evidence contained within the record to support a finding that the violation was intentional and that Respondent has acknowledged that his actions violated the Palm Beach County Code of Ethics.

Therefore it is:

ORDERED AND ADJUDGED that this matter is concluded upon the issuance of a LETTER OF REPRIMAND.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in executive session on this 1st day of August, 2024.

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

- a. RQO-24-011
- b. RQO-24-012

MOTION to approve the consent agenda. Motion by Commissioner Romano, seconded by Commissioner Cruise, and carried 5-0.

VIII. ITEMS PULLED FROM CONSENT AGENDA

No items were pulled from the consent agenda.

IX. EXECUTIVE DIRECTOR COMMENTS

Ms. Kelley stated the following:

1.

During the month of July, staff provided in-person ethics trainings for employees of the City of Boynton Beach and the Town of Juno Beach and for the City of Boynton Beach commissioners.

2.

Staff attended municipal meetings in Boynton Beach and Ocean Ridge and would be attending that evening's municipal meeting in Palm Beach Gardens.

3.

COE staff was in the process of updating the office's publications and promotional materials.

X. COMMISSION COMMENTS

Commissioner Romano discussed a new statute that granted immunity to wrongdoers unless a complaint was filed by a member of the public. He inquired if, in the event that additional instances of wrongdoing were uncovered during the investigation, but the original complaint was determined to be unfounded, the complaint would be considered self-initiated or would still be categorized as a citizen complaint.

Ms. Giger stated that staff had not yet established a procedure in response to the statute but had determined that no self-initiated complaints would be filed.

Ms. Kelley explained that the author of the bill had said that the COE would be authorized to file complaints if additional violations were identified during an investigation of a sworn complaint. She also stated that a procedure had not been established.

XI. PUBLIC COMMENTS

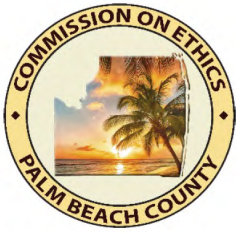
There were no public comments.

XII. ADJOURNMENT

At 1:58 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Honesty - Integrity - Character

Palm Beach County Commission on Ethics

Commissioners

Kristin A. Vara-Garcia, Chair
Michael S. Kridel, Vice Chair
Peter L. Cruise
Michael H. Kugler
Rodney G. Romano

Executive Director

Christie Kelley

August 23, 2024

Anthony Gregory, Compliance Manager
Palm Beach County Department of Airports
846 Palm Beach International Airport
West Palm Beach, FL 33406-1470

Re: RQO 24-013
Contractual Relationships

Dear Mr. Gregory:

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) impose any restrictions upon you as a Palm Beach County (County) employee if you were to start a consulting business?

BRIEF ANSWER:

Generally, the Code would not prohibit you from working as a consultant in your private capacity as long as you do not enter into a contract or transaction, either directly or indirectly, with the County and you follow the rest of the requirements as described in this advisory opinion.

FACTS:

You are employed with the Palm Beach County Department of Airports (Airports) as the Airports Compliance Manager. Airports is a division of the County. In your current role, you are responsible for the development, implementation, and oversight of Airports' federal civil rights programs under Title VI (including Limited English Proficiency), Airport Concessions/Disadvantaged Business Enterprise, Americans with Disabilities Act requirements, and local Equal Business Opportunity requirements.

In the near future, you would like to start a consulting company with a focus on:

- Business Startup Assistance
- Business Government Contracting Consulting
- Disadvantaged-Small-Minority-Women Business Enterprise Consulting
- Business Analytics and Optimization Consulting
- Project Management
- Non-Profit Consulting

You have indicated a preference to accept work outside of the County. However, you are mindful that you may have clients that later engage in business with the County and want to ensure you are staying within the requirements of the Code. Additionally, you may ultimately find a client base that exists within the County borders, and you would like guidance on whether the Code places any restrictions with respect to that issue.

ANSWER:

Section 2-443(d) of the Code prohibits public officials or employees, their outside business, or their outside employer from entering into a contract or other transaction for goods or services, directly or indirectly, with their public employer, unless an exception applies.¹ The Code defines an "outside business" as any entity located in the County, or which does business with or is regulated by the County or a municipality as applicable, in which the official or employee has an ownership interest. Therefore, both you and your outside consulting business would be prohibited from entering into any contract or other transaction with the County unless at least one of the exceptions listed in Section 2-443(e) applies. Additionally, the COE has previously held that Section 2-443(d) also prohibits you or your outside business from entering into any contractual relationships with a vendor of the County if you would be providing goods or services to the County through that contract.² This would create an indirect contract between you and the County and would violate the Code.

Based on the facts provided, you and your outside consulting business do not intend to enter into transactions with the County. However, you are reminded that if an opportunity to enter into a contract with the County were to present itself in the future, you could only do so if an exception applies. Moreover, if you and your outside business were to enter into any contract or other transaction for services with a County vendor, other than where an exception applies, you would need to confirm that you are not indirectly providing a service to the County through that contract. Additionally, you must take great care to ensure that you perform your consulting work outside of your County work hours and do not use County resources, software, or equipment, in furtherance of your outside business. Finally, as long as the above guidance is followed, the Code does not restrict the operation of your outside business within the County and you are free to engage with clients wherever they are located, including other state, federal, local, or municipal government entities (excluding the County, which is your employing agency).

Although the Code does not prohibit this type of work in your private capacity, you would have an ongoing responsibility to refrain from using your official position with the County to give a special financial benefit to yourself or your outside business.³ This would include using your position to influence another person to take some action, which would give a special financial benefit to yourself or your outside business; soliciting business during your County work hours or using your County email; or identifying yourself as a County employee in an attempt to obtain a customer, including providing any written or verbal communication using your title or position with the County.

¹ Sec. 2-443(d), *Contractual relationships*

² RQO 10-038, RQO 16-001, RQO 16-006, RQO 19-019

³ Section 2-443(a), *Misuse of public office or employment*

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

LEGAL BASIS:

The legal basis for this opinion is found in Sec. 2-442, Sec. 2-443(a), Sec. 2-443(d), and Sec. 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, or attempt to do any of these things, 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;
- (d) ***Contractual relationships.*** No official or employee shall enter into any contract or other transaction for goods or services with his or her 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 his or her relative or household member, 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 his or her relative or household member, 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.
- (2) An emergency purchase or contract, which would otherwise violate a provision of subsection (d), must be made in order to protect the health, safety, or welfare of the citizens of the county or municipality as applicable.
- (3) The outside employer or business involved is the only source of supply within the county or municipality under applicable law or county or municipal policy, 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, or with any relevant provision within the rules of The Florida Bar. Inquiries regarding possible conflicts under state law or bar rules should be directed to the State of Florida Commission on Ethics or The Florida Bar.

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

Sincerely,



Christie Kelley
Executive Director

RG/gal