

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

SEPTEMBER 8, 2016

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

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

- I. CALL TO ORDER**
- II. ROLL CALL**

MEMBERS:

Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman
Sara L. Shullman

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Executive Director
Anthony C. Bennett, COE Chief Investigator
Abigail Irizarry, COE Investigator I
Christie E. Kelley, Esq., COE General Counsel
Gina A. Levesque, COE Intake and Compliance Manager

ADMINISTRATIVE STAFF:

Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

- III. INTRODUCTORY REMARKS – None**
- IV. APPROVAL OF MINUTES FROM JULY 7, 2016**

MOTION to approve the July 7, 2016, minutes. Motion by Clevis Headley, seconded by Judy Pierman, and carried 5-0.

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

V.a. Request for Opinion (RQO 16-019)

MOTION to approve the consent agenda. Motion by Judy Pierman, seconded by Clevis Headley, and carried 5-0.

VI. ITEMS PULLED FROM CONSENT AGENDA – None

VII. PROPOSED ADVISORY OPINIONS – None

RECESS

At 1:32 p.m., the chair declared the meeting recessed for an executive session.

VIII. EXECUTIVE SESSION

RECONVENE

At 3:28 p.m., the meeting reconvened, and at Chair Michael Kridel's request for a roll call, Chair Kridel, Vice Chair Clevis Headley, and Commissioners Michael Loffredo, Judy Pierman, and Sarah Shullman were present.

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

VIII.b. C15-028

Vice Chair Headley read the following Public Report Finding Probable Cause and Order of Dismissal as discussed during the executive session:

Complainant, Mark E. Bannon, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on December 4, 2015, alleging that Respondent, Steven Swanson, a City of Delray Beach employee, violated §2-443(d) of the Palm Beach County Code of Ethics by entering into contracts with the City through his outside business when his outside business did not meet any of the exceptions to the contractual relationships provision.

VIII.b. – CONTINUED

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On September 8, 2016, Respondent and Advocate entered into a negotiated settlement wherein Respondent admitted to violating §2-443(d) of the Palm Beach County Code of Ethics and agreed to accept a Letter of Instruction. The negotiated settlement stipulated that probable cause existed to believe that Respondent violated §2-443(d) but that the violation was unintentional. After reviewing the negotiated settlement and all relevant documents associated with the case, the COE approved the negotiated settlement and issued a Letter of Instruction.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Steven Swanson, is hereby **DISMISSED** and a Letter of Instruction is issued.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on September 8, 2016.

By: Michael S. Kridel, Chair

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

Vice Chair Headley read the following Letter of Instruction as discussed during the executive session:

Mark E. Bannon, Executive Director of the Palm Beach County Commission on Ethics (COE) (Complainant) filed the above-captioned complaint against Steven Swanson (Respondent), an employee of the City of Delray Beach, alleging a violation of the Palm Beach County Code of Ethics, specifically Article XIII, §2-443(d)(Contractual relationships). The complaint alleged that Respondent's outside business entered into contracts with his public employer, the City of Delray Beach.

VIII.b. – CONTINUED

Facts:

This Matter came to the attention of COE staff via a letter from Mr. Donald Cooper, City Manager for the City of Delray Beach, stating that an audit revealed that Respondent was an employee of Delray's Finest Signs and Graphics, LLC (DFSG), a vendor of the City of Delray Beach. The investigation by COE staff revealed that Respondent's wife is the sole owner of DFSG and has 100% ownership interest in the company. The Articles of Incorporation for DFSG list Respondent's wife as the Managing Member. No other officers were listed within the Articles of Incorporation documents.

Invoices and statements from Respondent and the City Manager showed that DFSG was a vendor of the City and received \$3,125 in payments from the City for services rendered in 2014. During the investigation, Respondent also stated that he was approached by officials from the City's Police Department who specifically requested services from DFSG. He stated that he would pass the information on to his wife, who would complete an estimate and email it to the Police Department before entering into the contracts.

Holding:

Sec. 2-443(d), Contractual relationships, of the Palm Beach County Code of Ethics (Code) states in relevant part:

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.

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VIII.b. – CONTINUED

Sec. 2-442, Definitions, states in relevant part:

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. (Emphasis added)

Sec. 2-260.3 Dismissal of complaints, of the Palm Beach County Commission on Ethics ordinance states in relevant part:

Notwithstanding any other provisions of this division, the commission on ethics may, at its discretion: (a) dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, or (b) dismiss any complaint or any stage of disposition and issue a letter of instruction to the respondent when it appears that the alleged violation was inadvertent, unintentional or insubstantial. In the event the commission on ethics dismisses a complaint as provided in this subsection, the commission on ethics shall issue a public report stating with particularity its reasons for the dismissal. (Emphasis added)

Because Respondent’s wife is the sole owner of DFSG and owns 100 percent of the total assets in DFSG, under the Code’s definition of outside business, DFSG is Respondent’s outside business. Thus, under §2-443(d) of the Code, Respondent’s outside business (DFSG was prohibited from entering into any contract or transaction for goods or services with the City. Further, the contracts between DFSG and the City did not meet any of the exceptions to the contractual relationships provision.

VIII.b. – CONTINUED

The COE is mindful of the fact Respondent was approached by officials from the City's Police Department who specifically requested services from DFSG. In light of the facts and circumstances known to the Commission on Ethics, the matter is disposed of by way of dismissal with this Letter of Instruction. The COE believes that the violation was unintentional and has determined that the public interest would not be served by proceeding further. However, Respondent is advised that the filing of Ethics Complaint C15-028, along with this Letter of Instruction, is to serve as notice that entering into a contract with his public employer is prohibited under the Palm Beach County Code of Ethics unless an exception applies. Respondent is therefore instructed to be more careful in the future to ensure that he follows the requirements of §2-443(d) to avoid any future enforcement action.

This Letter of Instruction is issued by the Palm Beach County Commission on Ethics in public session on September 8, 2016.

Palm Beach County Commission on Ethics,

By: Michael S. Kridel, Chair

(CLERK'S NOTE: The clerk added the language as printed in the Letter of Instruction.)

(CLERK'S NOTE: The numeric order of the agenda was restored.)

VIII.a. C15-013

Vice Chair Headley read the following Public Report Finding Probable Cause and Order of Dismissal as discussed during the executive session:

Complainant, Steven P. Cullen, former Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complain on April 20, 2015, alleging that Respondent, Derrick Daniels, a former City of West Palm Beach employee, violated §2-443(a) and §2-443(b) of the Palm Beach County Code of Ethics by improperly charging and accepting monetary payment directly from members of the public for services he performed as the City Fire Marshall.

VIII.a. – CONTINUED

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On September 8, 2016, 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 determined that there are reasonably trustworthy facts and circumstances to find that probable cause exists to believe that Respondent violated §2-443(a) and §2-443(b) of the Palm Beach County Code of Ethics. However, the Commission has determined by a majority vote that the complaint should be dismissed because the public interest has already been served due to the extensive sanctions levied by a criminal court against Respondent upon his conviction and adjudication of guilt after a jury trial regarding these events.

Therefore it is:

ORDERED AND ADJUDGED that probable cause exists to believe that Respondent, Derrick Daniels, violated the Palm Beach County Code of Ethics, and that the Complaint is dismissed because the public interest would not be served by proceeding further.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on September 8, 2016.

By: Michael S. Kridel, Chair.

VIII.b. Pages 2-6

VIII.c. C15-030 – Postponed

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IX. EXECUTIVE DIRECTOR COMMENTS

IX.a.

DISCUSSED: Municipal Council Meetings and Ethics Program.

Executive Director Mark Bannon said that:

- In July, he and COE staff attended council meetings for the Village of Golf and the towns of Gulfstream, Manalapan, Lantana, and South Palm Beach.
- In August, staff attended meetings for the Town of Briny Breezes; the cities of South Bay, Boca Raton, Atlantis, and Delray; and the Delray Beach Community Redevelopment Agency.
- COE staff attended the September 7, 2016, meeting for the Town of Lake Park and would be attending meetings tonight for the City of Riviera Beach and the Town of Cloud Lake.
- COE staff would be attending upcoming meetings for the towns of Mangonia Park and Highland Beach.
- Attendance of meetings for all 38 municipalities would be completed with the October 3, 2016, meeting for the Town of Ocean Ridge.
- On August 8, 2016, he, COE staff, and Commissioner Loffredo attended the presentation of an Ethics and the Media program by the Ethics Partnership Council and Palm Beach State College.

IX.b.

DISCUSSED: Ethics Training.

Mr. Bannon said that:

- He assisted the Palm Beach County League of Cities (League) with training elected officials on the Code of Ethics for the State and the County.

IX.b. – CONTINUED

- An ethics overview session for the Palm Beach County Community Action Program Advisory Board was scheduled for September 17, 2016.
- A training program for new volunteer COE advocates was scheduled for September 29, 2016, at the Vista Center in West Palm Beach.

IX.c.

DISCUSSED: Ethics Handbook.

Mr. Bannon said that:

- The Practical Guide to the Code of Ethics handbook was being printed.
- The handbook included new examples and explanations about conflicts of interest and special financial benefits.
- A quick reference guide for advisory board members would cover conflicts, disclosures, and waivers.
- The guide included the top 10 ethics rules.

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

XI. PUBLIC COMMENTS

XI.a.

DISCUSSED: Expression of Thanks.

Richard Radcliffe, League Executive Director, thanked Mr. Bannon for attending the League's four-hour training for elected officials.

X. COMMISSION COMMENTS

X.a.

DISCUSSED: Item VIII.c.

X.a. – CONTINUED

Mr. Bannon explained that Item VIII.c., C15-030, under the Executive Session was postponed after the agenda was printed.

X.b.

DISCUSSED: Expression of Thanks.

Commissioner Sara Shullman thanked the COE members for their professionalism during the Executive Session.

Chair Kridel said that there was a well-balanced exchange of ideas at the Executive Session.

XIII. ADJOURNMENT

At 3:47 p.m., the chair declared the meeting adjourned.

APPROVED:



Chair/Vice Chair