

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

MAY 7, 2020

**THURSDAY
1:30 P.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 – Arrived later
Rodney G. Romano

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Executive Director
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 (Clerking)
Samantha Fairclough, Deputy Clerk, Clerk & Comptroller's Office,
(Condensing)

(CLERK'S NOTE: Commissioner Michael Kugler joined the meeting.)

III. INTRODUCTORY REMARKS

Chair Peter Cruise commended Mark Bannon, COE Executive Director, and Christie Kelley, COE General Counsel, for the responses to information that they sent him regarding COE ordinance revisions.

IV. APPROVAL OF MINUTES FROM MARCH 5, 2020

MOTION to approve the March 5, 2020 minutes. Motion by Carol DeGraffenreidt.

Commissioner Carol DeGraffenreidt said that on page 6, the record should reflect that she did not agree with the findings.

Gina A. Levesque, COE Intake and Compliance Manager, said that commissioners' remarks made during a hearing were included in the record and the recording but not in the published order.

MOTION SECONDED by Michael Kugler, and carried 5-0.

V. REVIEW OF PROPOSED CHANGES TO COMMISSION ON ETHICS ORDINANCE

Mr. Bannon said that:

- Page 2 of the COE ordinance had a new addition on the commissioner removal process.
 - There was previously no way to remove a commissioner if he or she violated the County's Code of Ethics or the requirements for being a COE member.
 - The removal process was based on a sustained, substantiated violation.
 - If a commissioner did not resign, he or she could be removed by the entity that appointed them, or the COE could vote to remove them.

Regarding Section 2-257, Commissioner DeGraffenreidt asked why the term limits would be reduced from 2 years to 1 year.

Mr. Bannon remarked:

- A new commissioner only serving 1 4-year term would not have an opportunity to be elected to a leadership position as chair because generally the vice chair moved to the chair position.
- The BCC and most municipalities had 1-year terms, which gave everyone an opportunity to hold that position.

Regarding 2-257(a), Commissioner Michael Kugler asked whether both the chair and the vice chair would not be able to serve 2 consecutive terms.

Mr. Bannon responded that:

- The language did not state that it included the vice chair, but staff could revise the language to add the vice chair.
- Individual motions on each revision was not necessary because 1 motion would incorporate all the changes.

Mr. Kugler stated that the change was appropriate given the addition of the vice chair position into subsection (a).

Chair Cruise said that by consensus the revision as discussed would be made.

Mr. Bannon said that:

- Page 3 did not have any major changes.
- Items would be published to the COE website rather than sending them to the BCC.
- Chair Cruise previously suggested changing the words, "in conjunction with" to "in consultation with" for 2-257(d).

Commissioners Kugler and DeGraffenreidt supported changing the words to "in consultation with."

Chair Cruise said that the COE decided to leave that portion out.

Commissioner Kugler asked whether the county administration would be offering only input or have the ability to make changes.

Mr. Bannon said that:

- Only the BCC could make changes because they approved the COE's budget.
- The words, "other public or private entities" were added because it dealt with conducting and developing training and entities did not need to be a government entity for training purposes.
- On page 4, the word, "conjunction," would be changed to the word, "consultation," in 2-259(a) and 2-259(b)
- Sending violations via telephone or electronic communications would be recognized as a secondary means for proof that someone received a written notice.
- The language, "the Commission on Ethics or hearing officer conducting a public hearing may order commission staff to conduct such further investigation," was added because it had taken place before.
- The inspector general language was removed from supervising COE investigations because the inspector general supervised his own investigations.

Commissioner Rodney Romano asked if telephonic or electronic communication would be valid by the courts or whether there should be triggering language.

Mr. Bannon responded that the secondary delivery option would only be used as extra backup.

Commissioner DeGraffenreidt asked why the words, "complainant and," were removed and only the respondent would be notified.

Mr. Bannon explained that:

- A complainant had no legal right to notice but would receive notice when a final hearing was scheduled.
- In most cases, a complainant in a public hearing would be subpoenaed as a witness.
- 2-260(f) stated that the COE would only review what the complaint said.
 - The revision gave the COE authority to add a charge or a count to a complaint or to file a new complaint.
- Initially, counsel to the COE could be a voluntary position.
 - The counsel position was now full-time.
 - The revision included that the COE executive director could also offer advice.

Commissioner Kugler asked what defined the process of selecting an advocate and what would be the additional cost to the COE.

Mr. Bannon remarked that:

- Advocates were volunteers, and it was challenging to solicit uncompensated advocates.
- At some point, the COE wanted to consider paying advocates.

Commissioner Kugler questioned how many presentations would take place with recommendations of probable cause or sanctions and how much those presentations would cost.

Mr. Bannon said that:

- An exact number could not be provided, but staff had a list of those who took the COE advocate training to become advocates.

- The cost to pay advocates would probably not be a significant impact.

Commissioner Kugler asked whether a savings provision should be considered if there was no budgetary item to pay advocates, and the executive director or the general counsel would make a presentation.

Mr. Bannon stated that:

- After performing investigations and making recommendations, the executive director or the general counsel should probably not be the entity to prosecute cases.
- The process of requesting volunteer advocates should continue.
- The language stating that counsel may serve on a volunteer basis could be stricken from 2-260(g), and the part that stated that the advocate may serve on a volunteer basis could remain.

Chair Cruise said that by consensus, the revisions as discussed would be made.

Mr. Bannon said that:

- Page 6 contained revised language that the COE should not become involved in a criminal prosecution until the investigation was completed.
- The language emphasized that the 2-year statute of limitation would be tolled at any time the COE could not perform its investigation.
- The revision added that the COE would suspend actions if the prosecutors believed that the COE's actions could be interfering in an investigation.
- The COE required that the prosecutors submit a letter or an email when their investigation was concluded.

Commissioner Kugler suggested adding a requirement that the COE should reach out to the prosecutors on a 60-day basis to verify whether the investigation was still ongoing.

Chair Cruise said that by consensus, language would be added that COE staff would ask the prosecutors at least every 90 days whether an investigation was completed.

Mr. Bannon said that:

- In 2015, the COE changed the ordinance to allow respondents the choice of having the COE or hearing officers hear probable cause or public hearings.
- There was no witness testimony when the COE conducted a probable cause hearing.
 - The COE would need to approve or not approve a finding based on a finding of fact or a finding of law, but the entire hearing would need to be transcribed.
 - The hearing officer could decide whether there was a violation, and then it would come back to the COE for sanctions.

Commissioner Kugler suggested that the language in 2-260(k) be changed to reflect that the hearing officer and not the executive director be given the witness list.

Mr. Bannon suggested changing it to COE staff for dissemination to the hearing officer and all parties.

Commissioner Kugler said that the language should be consistent throughout the ordinance.

Mr. Bannon agreed to change the language as discussed for both subsections (j) and (k).

Commissioner Kugler asked what the discovery rules were regarding a hearing.

Mr. Bannon said that evidence received in a public hearing was not strictly within the evidence code. He added that in the ordinance, a hearing officer could hear testimony if it was relevant.

Commissioner Kugler asked if the rules of civil procedure applied during a public hearing.

Mr. Bannon said that:

- The rules of civil procedure, such as taking depositions and the rights to any evidence, did apply during a public hearing.
- Evidence could be subpoenaed, but it would go through the COE.

Mr. Bannon said that:

- The COE or a hearing officer's decision was always subject to review by a circuit court.
- Enumerating the standard of discovery was unnecessary because the circuit court would apply rules of fairness and discovery with the exception of allowing certain evidence to come in based on deference to the ordinance.

Commissioner Romano asked whether all hearing officers would be members of the Florida Bar who were trained in due process.

Mr. Bannon said that:

- All hearing officers would be members of the Florida Bar and would undergo training.
- County magistrates could be selected as hearing officers.

Commissioner DeGraffenreidt suggesting adding language that "the rules of civil procedure apply." She added that respondents would want to know what the rules were and how they applied to them.

Commissioner Kugler said that:

- 2-260(b)(2)(j) stated, “A hearing officer may issue appropriate orders to effect the purposes of discovery and to prevent delay,” but it did not require that the hearing officer could allow depositions or a subpoena duces tecum.
- Language could be added after 2-260(b)(2)(i) and before 2-260(b)(2)(j) to include a section that stated, “The Florida Rules of Civil Procedure apply to discovery.”
- The language should give the hearing officer the power to order any additional discovery that was fair and just under the circumstances, and promoted the public integrity.

Mr. Bannon stated that the language as discussed could be added.

Chair Cruise asked what was considered knowledgeable under 2-260.1(a)(2).

Mr. Bannon said that a practicing attorney who handled civil litigation for about 20 years was probably knowledgeable about governmental ethics.

Commissioner Romano suggested substituting the word, “knowledgeable,” with “competent.”

Chair Cruise said that there was consensus to substitute the words, and he asked why the words, “Commission on Ethics” were struck 3 times on page 8 of 2-260.

Mr. Bannon said that the words were stricken because he assumed that the COE would allow a hearing officer to hear the final hearing.

Regarding 2-260(b)(2)(l)(4), Commissioner Kugler asked whether a reply could be filed to memoranda in opposition and whether it should include page limits.

Mr. Bannon said that there were no issues regarding page limits. He suggested the language, “The hearing officer can accept any additional information from either party that they deem is relevant on the motion.”

Commissioner Kugler suggested adding the words, “in post-limitations that they believe are appropriate.”

Chair Cruise said that there was consensus to add the language as discussed.

Mr. Bannon said that:

- Hearing officers would determine when they wanted the proposed orders.
- Once a proposed order was received, the hearing officer would probably not publish it, because the hearing findings and the sanctions could be published together.

Commissioner Kugler said that the section on page 9 was titled, “Public Order Imposing Penalty,” but the hearing officer determined the violation, and the COE imposed the penalty.

Mr. Bannon responded that the language could be revised to comport with Commissioner Kugler’s statement.

Chair Cruise asked about the sentences referring to notifying other entities that were stricken in 2-260.2 on page 9.

Mr. Bannon said that:

- Referring a matter to the State attorney or any other appropriate official or agency having authority to initiate prosecution did not mean that the COE was giving up jurisdiction but that the COE would wait until the investigation was completed.
- Referring the matter back to the COE when the appropriate official or agency did not want to file criminal charges was unnecessary because the COE already had the information.

Commissioner Kugler said that on 2.260.8(b), a tolling of the statute of limitation that was greater than the time period listed in the section should have the suggested language, “unless the tolling of the statute of limitations provides a greater time period,” such as tolling for the purpose of an investigation referred to in 2.260(i).

Mr. Bannon said that the State Attorney's Office requested the language because it could prosecute intentional violations with the same penalty as a first-degree misdemeanor.

Commissioner Romano expressed concern with the implication in 2.260.8(b) that an employee could be prosecuted for willful violation at any time while in public officer or employment.

Mr. Bannon stated that the COE had a 2-year statute of limitation.

Commissioner Kugler asked whether the language in both sections of 2.260.8 applied to the COE, the State Attorney's Office, or both.

Mr. Bannon responded that 2.260.8(a) applied to the COE, and 2.260.8(b) applied to the State to criminally prosecute for an intentional violation.

Commissioner Romano asked why the State's ability to prosecute depended on language in the COE's ordinance.

Mr. Bannon said that it was not a criminal statute violation but a County ordinance violation. He added that in order for the State to extend the statute of limitations within the COE's ordinance, it needed to be listed in the ordinance.

Commissioner Kugler said that if the COE was attempting to change any language in 2.260.8(b), it would need input from the State Attorney's Office.

Mr. Bannon said that staff would further review the matter.

PUBLIC COMMENT: Keith Davis.

Commissioner Romano said that he agreed with the language in 2.260.8(b) if it tracked Florida Statute 775.15.

Commissioner Kugler said that:

- 2.260.8(a) did not refer to a statute of limitations extension based on a prosecuting authority's tolling that the COE stand down because its work could interfere with a prosecutor's investigation.

- The COE would not be entitled to a statute of limitations extension if the language was not included.

Mr. Bannon responded that the language was contained elsewhere in the ordinance, but language would be added to the statute of limitations section.

VI. REVIEW OF PROPOSED CHANGES TO CODE OF ETHICS ORDINANCE

Mr. Bannon said that:

- The gift definition was moved to where the rest of the definitions were located.
- The lobbyist language on page 2 was amended for consistency with the COE's and the Florida COE's holding that registration as a lobbying was sufficient to prove that someone was a lobbyist.
- The existing definition of an official or employee in Section 2-442(5) could be an issue because it included whether he or she was paid or unpaid.
- The question became whether a volunteer for an organization fell within the Code of Ethics ordinance.
- Language was amended to distinguish volunteers that exercised discretionary authority versus those that did not.
- The language, "contract personnel and contract administrators performing a government function," was struck because its meaning became difficult to discern, and new language was added to better define what it meant.

Chair Cruise asked whether it would be better for COE purposes to have the State legislature determine who were and were not employees.

Mr. Bannon said that:

- State legislature decisions would generally override County ordinances.

- Listing municipal attorneys essentially as vendors in the ordinance would actually restrict their abilities, because they would be under the vendor guidelines.
- The definition of the word, “principal,” was added to clearly define who it applied to.
- Language was added to the vendor definition to distinguish a vendor who was involved in a transaction that exceeded \$500.

PUBLIC COMMENT: Keith Davis.

Mr. Bannon said that language was added to the bottom of page 4, section 7, stating that the COE would not necessarily have jurisdiction over someone who was elected or appointed to serve on a board because of his or her position, whether it was a nonprofit or governmental board.

Commissioner Kugler suggested adding the word, “required,” because certain officials were required to serve on boards as part of their official positions.

Mr. Bannon said that language could state, “shall not apply to any official or employee who is required to serve on the board of directors.”

Chair Cruise said that there was consensus to add the language as discussed. He asked whether constitutional officers were not covered in other areas of the ordinance and whether it could be constitutionally superseded.

Mr. Bannon said that:

- Palm Beach County Sheriff’s Office differed on the COE’s opinion that it had jurisdiction over a deputy who was appointed to an advisory board having nothing to do with his position.
- Language was added on page 5 to define the word, “participate.”

Vice Chair Michael Kridel said that after page 5, each succeeding page changed the words, “their” or “them” to “his or her,” but most dictionaries now accepted “their” or “them.”

Mr. Bannon said that:

- Language throughout the ordinance would be changed back to “their” or “them.”
- The term, “merit rule,” was replaced with the word, “policy,” because it originally applied to the County, and the 38 municipalities under the COE’s jurisdiction did not use the term.
- The Palm Beach County League of Cities added some language on page 7.
- Language on page 7, section (g), would include that the exception provision applied to police, fire rescue, and paramedic personnel if they worked for a municipality.
- Language on page 8, section (h), was cleaned up to basically say that lying on a job application would be an ethics violation.
- Language was edited on page 8, section 2-444(a)(2), to clarify the standard of reasonable care.
- Most of the revisions to page 9 involved cleaning up language.
- On page 9, using a fiscal year calendar to report gift disclosures was changed to using a standard calendar to alleviate any confusion.
- Language was cleaned up to say that the meaning of gifts to a State reporting individual would always be based on State law.
- Staff wanted to add language that nonreporting of a gift by a State reporting individual was not a violation if the State’s Code of Ethics said it was unnecessary to report the gift.
- On page 10, the word, “contemporaneously,” was removed, and language was added stating that no later than 10 days a copy of each report should be filed with the BCC or the COE after it was filed with the State.

- On page 10, language was revised to state that when a County or municipal employee filed a local report that was due annually, it would be based on a calendar year.
- The definition of gift law was moved to definitions.
- On page 11, the word, “vendor,” was replaced with the word, “lobbyist,” who could not buy tickets to events and give them as gifts.
- 2-444(h)(3) was eliminated because the COE should not interfere with a governmental entity that wanted to employ employees for a nonprofit event that it decided would serve a good public purpose.

Chair Cruise asked whether the decision that it would serve a good public purpose was determined by 1 member of a governing body.

Mr. Bannon said that generally those types of decisions were made by an entire commission.

Commissioner Kugler asked whether language should be crafted to state that, “Nothing that’s either stated in here or not stated in here prohibits a separate government entity from doing anything on their own.” He added that the language would apply to the Code of Ethics in general.

Mr. Bannon said that:

- The COE also could not write an advisory opinion that gave an employee permission to do something that violated municipal policies.
- Language that municipal policies still applied in municipal ordinances would probably not be necessary.

Commissioner Kugler said that he agreed that it was probably more appropriate to remain silent on the issue.

Mr. Bannon said that:

- No changes were made to the anti-nepotism language.

- On page 14, the word, “shall,” was replaced with the word, “may,” because the COE could not tell the State that it shall do something.

Chair Cruise asked about the sanctions that could be imposed by the COE.

Mr. Bannon said that State statutes limited a COE violation to \$500 per violation.

Chair Cruise asked whether the fine could be doubled.

Mr. Bannon responded that the COE did not have the authority to double fines because it would violate State law. He added that the COE could fine more than \$500, but there would need to be two separate counts.

VII. REVIEW OF PROPOSED CHANGES TO LOBBYIST REGISTRATION ORDINANCE

Mr. Bannon said that:

- Most of the changes involved clarifying the language, such as replacing the word, “database,” with the word, “registry,” on page 1.
- Lobbyists were required to file disclosures on how much they may have spent, even if no lobbying took place.
 - There were no sanctions for violating the reporting requirement.
 - Language was amended to include that lobbyists or the principals that they represented could withdraw their names from the lobbyist registration.

Commissioner Kugler said that the definitions on pages 1 and 2 should be consistent with the Code of Ethics definitions.

Mr. Bannon said that the definitions would be changed for consistency purposes.

Commissioner DeGraffenreidt said that the words, “shall mean,” and “will mean,” were used throughout the ordinance, and she asked whether there should be consistency.

Chair Cruise asked which of the two words had more force.

Mr. Bannon said that the words came from the original definitions.

Commissioner Kugler suggested using the word, "shall."

Mr. Bannon said that:

- The language would be changed to reflect Commissioner Kugler's suggestion.
- On page 3, the word, "fiscal," was replaced with the word, "calendar."
- Language was amended to state that a lobbyist was not required to file a statement if expenditures were no more than \$25.
- The language on page 6 basically stated that:
 - Lobbyists were required to report activities if there were any.
 - Failure to report lobbying activities would result in suspension until a required expenditure report was filed.
 - A first-time violation would include a suspension for an additional 90 days beyond the point that the expenditure report was filed.
 - A second violation would result in suspension of an additional 180 days.
 - Three violations would result in suspension of an additional 365 days.

Commissioner Kugler asked what would happen if someone lobbied while in violation of a suspension.

Mr. Bannon clarified that lobbying under a suspension was also a violation of the ordinance.

Chair Cruise asked what other action could be taken if someone lobbied while under a violation.

Mr. Bannon said that the sanction would be a \$250 fine per day not to exceed \$2,500 for an unregistered lobbyist who engaged in lobbying activity.

Chair Cruise asked whether the COE, under the circumstances, could prevent someone from continuing to lobby.

Mr. Bannon said that:

- Every municipal and county agency required that a log be signed stating whether someone was a lobbyist when visiting elected officials.
- Someone could lobby as a nonpaid volunteer for a nonprofit organization because that did not fall within the ordinance.

Commissioner Kugler asked if the COE should require that a lobbyist petition the COE to reregister after a 365-suspension or require that reregistering was no longer permitted.

Mr. Bannon said that a similar situation has never occurred, but the COE could authorize that requirement.

Commissioner Kugler suggested language that a suspension would be permanent after 3 violations, but after a period of time, the lobbyist could petition the COE to reregister.

Mr. Bannon said that staff would review the legality of adding the language, and bring back revised language during the June meeting.

VIII. EXECUTIVE DIRECTOR COMMENTS – None

IX. COMMISSION COMMENTS – None

X. PUBLIC COMMENTS – None

XI. ADJOURNMENT

**Motion by Commissioner Romano, seconded by Commissioner DeGraffenreidt,
and carried 5-0.**

At 3:38 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair