



Agenda

October 1, 2015 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Meeting will begin at 1:30pm.
Executive Session from 1:45-2:30pm
Regular Agenda will resume at 2:45pm

Palm Beach County

Commission on Ethics

300 North Dixie Highway
West Palm Beach, FL 33401

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Commissioners

Michael S. Kridel, Chair

Clevis Headley, Vice Chair

Michael F. Loffredo

Judy M. Pierman

(Vacant)

Executive Director

Steven P. Cullen

Intake Manager

Gina A. Levesque

Staff Counsel

Christie E. Kelley

Senior Investigator

Mark E. Bannon

Investigator

Anthony C. Bennett

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from September 3, 2015
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 15-042
 - b. RQO 15-043
- VI. Items Pulled from Consent Agenda
 - a.
- VII. Executive Session
 - a. C15-007
 - b. C15-008
- 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**

SEPTEMBER 3, 2015

**THURSDAY
1:29 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

(CLERK'S NOTE: The following agenda items were taken out of order.)

**II. SWEARING AND INTRODUCTION OF NEW COMMISSIONER BY
CHIEF JUDGE JEFFREY COLBATH, 15TH JUDICIAL CIRCUIT**

**II.a. Sarah L. Shullman – appointed by the Palm Beach County Bar
Association, Hispanic Bar Association and the Cunningham Bar
Association**

(CLERK'S NOTE: Chief Judge Jeffrey Colbath administered the oath of office to newly
elected Commissioner Sarah Shullman.)

I. CALL TO ORDER

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

III. ROLL CALL

MEMBERS:

Michael S. Kridel, Chair
Clevis Headley, Vice Chair – Absent
Michael F. Loffredo – Absent
Judy Pierman
Sarah L. Shullman

STAFF:

Anthony C. Bennett, COE Investigator
Steven P. Cullen, COE Executive Director
Gina A. Levesque, COE Intake Manager

ROLL CALL – CONTINUED

ADMINISTRATIVE STAFF:

Solibel Rose, Deputy Clerk, Clerk & Comptroller's Office

IV. INTRODUCTORY REMARKS

Commission on Ethics (COE) Chair Michael Kridel said that all mobile telephones should be silenced.

V. APPROVAL OF MINUTES FROM AUGUST 6, 2015

MOTION to approve the August 6, 2015, minutes. Motion by Judy Pierman, seconded by Sarah Shullman, and carried 3-0. Clevis Headley and Michael Loffredo absent.

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VI.a. RQO 15-037

VI.b. RQO 15-038

VI.c. RQO 15-039

VI.d. RQO 15-040

VI.e. RQO 15-041

MOTION to accept the advisory opinions as published. Motion by Judy Pierman, seconded by Sarah Shullman, and carried 3-0. Clevis Headley and Michael Loffredo absent.

VII. ITEMS PULLED FROM CONSENT AGENDA – None

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VIII. EXECUTIVE DIRECTOR COMMENTS

VIII.a.

DISCUSSED: Expression of Thanks.

Steven P. Cullen, COE Executive Director, thanked the Hispanic Bar Association, the Palm Beach County Bar Association and the F. Malcolm Cunningham Bar Association with their assistance in the appointment of Commissioner Shullman.

VIII.b.

DISCUSSED: Proposed Ordinance Changes.

Mr. Cullen said that the Board of County Commissioners approved a preliminary reading and advertisement on the proposed changes to the COE Ordinance and the Code of Ethics. He added that a final hearing on the changes was scheduled for September 22, 2015.

IX. COMMISSION COMMENTS

IX.a.

DISCUSSED: Expression of Thanks.

Commissioner Shullman thanked Chief Judge Colbath, the bar associations and the COE board members, and said that she would fulfill her position with integrity to achieve the goal of fostering the public's trust in the County.

IX.b.

DISCUSSED: Welcoming Remarks.

Commissioner Pierman welcomed Commissioner Shullman.

Chair Kridel welcomed Commissioner Shullman and said that she would be a positive asset to the COE.

X. PUBLIC COMMENTS – None

XI. ADJOURNMENT

At 1:37 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

Commissioners

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

Executive Director

Steven P. Cullen

September 21, 2015

Ms. Liliane Finke, Senior Manager
Palm Tran
3201 Electronics Way
West Palm Beach, FL 33407

Re: RQO 15-042
Conflict of Interest

Dear Ms. Finke,

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:

As an employee of Palm Tran, does your husband's employment at Maruti Transit, a vendor of Palm Tran Connection, create a prohibited conflict of interest for you under the Palm Beach County Code of Ethics (Code)?

ANSWER:

The Code prohibits you from using your official position in any way or influencing others to take or fail to take any action which would give a special financial benefit to specified persons or entities.¹ One of the entities specified in §2-443(a) is a spouse's outside employer, in this case Maruti Transit.² A special financial benefit is anything of value that is not shared with similarly situated members of the general public.³ The Code also prohibits you from using your official position to corruptly secure or attempt to secure a special benefit for others.⁴ Under the Code, "corruptly" means an official action is taken with wrongful intent and for the purpose of receiving any benefit, which is inconsistent with the proper performance of your duties.⁵

Based on the facts submitted, you do not oversee the complaint process against the vendors of Palm Tran Connection, and you do not have the authority to change the outcomes or final decisions of any complaints. Therefore, your husband's employment would not create a prohibited conflict of interest for you as long as you do not wrongfully use your official position or influence others to take any action to corruptly secure a special benefit, including a benefit that is not financial in nature, for your husband's outside employer (Maruti Transit).

However, although there may be no per se prohibited conflict of interest under the Code, there may be an appearance of impropriety, especially if any discretionary actions are involved, since the person who oversees the complaint process for Palm Tran Connection reports directly to you. While the Code does not regulate the appearance of impropriety, persons under its jurisdiction may voluntarily hold themselves to such a higher standard.

¹ §2-443(a)(1-7)

² §2-443(a)(4)

³ §2-443(a)

⁴ §2-443(b)

⁵ Id.

FACTS:

You are a Palm Beach County employee, serving as the Senior Manager of Organizational Development and Customer Relations for Palm Tran. In this role, you oversee customer service for both Palm Tran Connection and Palm Tran. Palm Tran Connection uses three vendors: First Transit, MV Transportation, and Maruti Transit. You were not involved in the selection of the vendors. Your husband is the General Manager for Maruti Transit, but he does not have any ownership interest in the company.

The Palm Tran Customer Relations Supervisor, Jeff McGregor, oversees the complaint process for Palm Tran Connection, and he reports to you. You are not involved in the process unless Mr. McGregor brings a priority complaint to your attention which then requires the two of you to work together to notify Palm Tran Connection staff of the complaint in a timely manner. You do not have the authority to change any findings or decisions of complaints.

The Executive Director for Palm Tran Connection handles potential vendor liquidated damages. You do not oversee, review, or perform any role in the liquidated damages process.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-443(a) and §2-443(b) 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:
 - (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;

- (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.

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. 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,



Steven P. Cullen
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

Commissioners

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

Executive Director

Steven P. Cullen

September 25, 2015

Mr. Barry O'Brien
Keller Williams Realty of the Palm Beaches
2901 PGA Boulevard
Palm Beach Gardens, FL 33410

Re: RQO 15-043
Misuse of Office

Dear Mr. O'Brien,

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:

As an appointed official, does your membership on the West Palm Beach Downtown Action Committee (DAC) prohibit you from interviewing persons on your radio show who have previously appeared, who may appear, or who will be appearing before the DAC? Would the Palm Beach County Code of Ethics (Code) restrict who you solicit to be advertisers or sponsors of your show?

ANSWER:

Under the Code, members of any advisory, quasi judicial, or any other local board who are appointed by members of local municipal governing bodies or by mayors are "officials."¹ As an official, you cannot use your position on the DAC in any way to give specified persons or entities a special financial benefit.² Among those specified persons or entities are yourself, your outside business, and a customer or client of your outside business.³ A customer or client is defined as a person or entity to which the official's business has supplied goods or services during the previous 24 months of an aggregate value in excess of \$10,000.⁴ Additionally, the Code prohibits you from voting on and participating in any matter before your board that would give a special financial benefit to any of the persons specified in Sec. 2-443(a).⁵ You are also prohibited from using your official position to corruptly secure or attempt to secure a special privilege, benefit, or exemption for yourself or others.⁶

Based on the facts submitted, your membership on the DAC does not prohibit you from interviewing persons who have previously appeared, who may appear, or who will be appearing before the DAC as long as you do not use your official position to give a special financial benefit to any of the persons

¹ §2-442

² §2-443(a)

³ Id.

⁴ §2-442

⁵ §2-443(c)

⁶ §2-443(b)

specified in Sec. 2-443(a) or to corruptly secure a special benefit, including a benefit that is not financial in nature, for anyone.

However, with regard to advertising and sponsorships to defray the cost of your show, you are prohibited from soliciting advertising or sponsorships from members of the public in your official capacity as a DAC member.⁷ This prohibition also applies to anyone soliciting indirectly on your behalf. However, you are not prohibited from soliciting advertisers or sponsors for your radio show in your personal capacity, so long as you do not solicit or accept donations in excess of \$100 from any vendor, lobbyist, or any principal or employer of a lobbyist who lobbies the DAC.⁸

Moreover, you must take great care not to use your official position to benefit an advertiser or sponsor appearing before the DAC. You would be prohibited from participating and voting on any matter that would provide a financial benefit or loss to a customer or client. Here, an advertiser or sponsor who has provided over \$10,000 during the previous 24 months would be your customer or client under the Code.

FACTS:

You are a member of the West Palm Beach Downtown Action Committee, having been nominated by West Palm Beach Mayor Jeri Muoio and appointed about a year and a half ago. The DAC reviews all applications for appeals, variances, and special use permits in the downtown master plan area and acts as the Zoning Board of Appeals for the downtown master plan area. Your actions involve only a defined area in downtown West Palm Beach.

In your personal capacity, you are a realtor affiliated with Keller Williams, focusing on downtown West Palm Beach, and you also worked in the radio industry for years in Boston and Washington, DC. Two years ago, you hosted a radio show, which focused on real estate, on the Seaview Radio station. You stopped hosting the show in December of 2014. Recently, WFTL Radio has approached you about hosting a show on their station. You would pay the station for each hour block of on-air time. You plan to cover the cost by selling advertising and sponsorships during the program. Appearances on your show will not be dependent upon sponsorship or advertising. Guests of your show will not be compensated for their appearances.

You want to use your on-air time focusing on the events and projects that are occurring in downtown West Palm Beach and Palm Beach County. You would like to have owners of local restaurants, developers of apartment or condominium buildings, and promoters of local events on your radio show.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-442, §2-443(a), §2-443(b), §2-443(c) and §2-44(b)(1) 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).

⁷ RQO 12-072

⁸ §2-444(b)(1)

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid...The term "official" shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies, and members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.

Vendor means any person or entity who has a pending bid proposal, an offer or request to sell goods or services, sell or lease real or personal property, or who currently sells goods or services, or sells or leases real or personal property, to the county or municipality involved in the subject contract or transaction as applicable. For the purposes of this definition a vendor entity includes an owner, director, manager 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
- (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.
- (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).

Sec. 2-444. Gift law.

- (b) (1) No advisory board member, or any other person on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any vendor, lobbyist, or any principal or employer of a lobbyist, who lobbies the recipient's advisory board, or any county or municipal department as applicable that is subject in any way to the advisory board's authority, influence or advice.

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. 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,


Steven P. Cullen
Executive Director

CEK/gal