



*HONESTY - INTEGRITY - CHARACTER*

**Palm Beach County**

**Commission on Ethics**

300 North Dixie Highway  
West Palm Beach, FL 33401  
561.355.1915  
FAX: 561.355.1904  
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**E-mail:**

[ethics@palmbeachcountyetics.com](mailto:ethics@palmbeachcountyetics.com)

**Commissioners**

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

**Executive Director**

Mark E. Bannon

**Intake and Compliance Manager**

Gina A. Levesque

**General Counsel**

Christie E. Kelley

**Chief Investigator**

Anthony C. Bennett

**Investigator**

Abigail Irizarry

# *Agenda*

July 7, 2016 – 1:30 pm  
Governmental Center,  
301 North Olive Avenue, 6<sup>th</sup> Floor  
Commissioners Chambers

Meeting will begin at 1:30pm  
Executive Session at 1:35pm  
Regular Agenda will resume at 2:15pm

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- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from June 2, 2016
- V. Executive Session
  - a. C15-026
- VI. Processed Advisory Opinions (Consent Agenda)
  - a. RQO 16-016
  - b. RQO 16-017
  - c. RQO 16-018
- VII. Items Pulled from Consent Agenda
  - a.
- VIII. Proposed Advisory Opinions
  - 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  
PALM BEACH COUNTY, FLORIDA**

**JUNE 2, 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  
Sarah 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, COE General Counsel  
Gina A. Levesque, COE Intake and Compliance Manager

**ADMINISTRATIVE STAFF:**

Barbara Strickland, Deputy Clerk, Clerk & Comptroller's Office

- III. INTRODUCTORY REMARKS**

Chair Michael Kridel reminded commissioners to speak into the microphones.

**IV. APPROVAL OF MINUTES FROM MAY 5, 2016**

**MOTION to approve the May 5, 2016, minutes as presented. Motion by Clevis Headley, seconded by Michael Loffredo, and carried 5-0.**

**RECESS**

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

**RECONVENE**

**At 2:10 p.m., the meeting reconvened with Chair Kridel, Vice Chair Headley, and Commissioners Loffredo, Pierman, and Shullman present.**

**V. EXECUTIVE SESSION**

**a. C15-029**

Vice Chair Headley read the following Public Report Finding No Probable Cause and Order of Dismissal that was discussed during the executive session:

Complainant, Mark Bannon, Executive Director of the Palm Beach County Commission on Ethics, filed the above referenced complaint on December 4, 2015, alleging that Respondent, Gordon Eaton, a City of Delray Beach employee, violated §2-443(d) of the Palm Beach County Code of Ethics by working part-time for an outside employer who has contracts for goods or services with the City of Delray Beach.

Pursuant to §2-258(a)<sup>1</sup> of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On June 2, 2016, the Commission conducted a hearing and reviewed the Memorandum of Inquiry and Probable Cause Recommendation. After oral statements by the Advocate and Respondent, the Commission concluded no probable cause exists to believe any violation occurred.

Therefore it is:

**ORDERED AND ADJUDGED that the complaint against Respondent, Gordon Eaton, is hereby DISMISSED.**

**V.a. – CONTINUED**

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on June 2, 2016.

By: Michael S. Kridel, Chair

(CLERK'S NOTE: The clerk added the language as printed in the Public Report Finding No Probable Cause and Order of Dismissal.)

**VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)**

**VI.a. Request for Opinion (RQO) 16-012**

**VI.b. Request for Opinion (RQO) 16-013**

**VI.c. Request for Opinion (RQO) 16-015**

**MOTION to accept the opinions as published. Motion by Clevis Headley, seconded by Michael Loffredo, and carried 5-0.**

**VII. ITEMS PULLED FROM CONSENT AGENDA – None**

**VIII. PROPOSED ADVISORY OPINIONS**

**VIII.a. Request for Opinion (RQO) 16-011**

Mark E. Bannon, COE Executive Director, stated that:

- This opinion language was revised and highlighted in the agenda packet.
  - Last month, the COE discussed the opinion and requested language changes.
  - The opinion's language revisions incorporated the fact that the COE retained the right to interpret the Code of Ethics (Code).

Christie E. Kelley, COE General Counsel, stated that:

- Last month's discussion concerned an outside employment waiver requiring that the employee or any relative of the employee not work in a county or municipal department, which oversaw, enforced, or administered the subject contract.

### VIII.a. – CONTINUED

- The Code did not define “department.” However, the COE defined an employee’s department as “the lowest departmental unit within which his influence might reasonably be considered to extend.”
- Staff recommended that the COE adopt the definition of department as listed in Section 2-443(e)(5)(a), *Exceptions and waiver* as highlighted, which read, “those persons working directly within the lowest departmental unit (department, section or division) of that public entity that is specifically authorized to enforce, oversee, or administer the subject contract.”
- The highlighted revised language continued as follows: “Personnel assigned to a county or municipal department, section, or division specifically authorized to enforce, oversee, or administer the subject contract would not be able to waive this conflict of interest, and accept the part-time outside employment with a vendor. This prohibition would also extend to all employees, supervisors, managers and administrators within a county or municipal government who have authority to modify or approve the subject contract, even when they are not assigned to this specific department, division or section.”

Commissioner Sarah Shullman stated that:

- She expressed her opposition to the initial proposed language at the last meeting because it seemed to single out the fire rescue department.
- The revised proposed opinion language more accurately defined “department.”
- She recommended adoption of the revised proposed opinion.

**MOTION to accept RQO 16-011 as presented for publication. Motion by Michael Loffredo, seconded by Sarah Shullman, and carried 5-0.**

(CLERK’S NOTE: Chair Kridel inadvertently called a different maker for the motion. Motion was made by Clevis Headley.)

## IX. EXECUTIVE DIRECTOR COMMENTS

Mr. Bannon stated that:

- He and COE staff attended May 2016 municipal council meetings in the City of Lake Worth, the villages of Royal Palm Beach and Wellington, and the towns of Haverhill and Lake Clarke Shores.
- Additional COE staff appearances were scheduled for meetings at the cities of Belle Glade, Pahokee, and West Palm Beach, the Village of Palm Springs, and the City of Lake Worth Community Redevelopment Agency.
- He and COE staff attended an Inspector General (IG) Committee regular meeting on May 12, 2016.
- He attended a Board of County Commissioners regular meeting on May 17, 2016, where another three-year contract was approved for the City of Delray Beach Downtown Development Authority to engage the services of the COE.
- He and staff continued attending municipal council meetings.
- Ms. Kelley wrote about gift reporting for the COE Spring 2016 Newsletter.
  - Commissioner Shullman reported in a previous COE meeting that she received questions about gift reporting.
  - Commissioners were invited to offer input pertaining to gift-reporting issues for future newsletters.

## X. COMMISSION COMMENTS

### X.A.

**DISCUSSED:** Newsletter.

Commissioner Pierman congratulated Ms. Kelley on her newsletter report that went to all the municipalities.

**X.B.**

**DISCUSSED:** IG Meetings.

Commissioner Loffredo queried whether the COE's municipal meetings were coordinated with the IG's office.

Mr. Bannon replied that the IG office's staff scheduled separate meetings for IG John Carey.

**X.C.**

**DISCUSSED:** RQO 16-011

Chair Kridel commented that the RQO 16-011 approved today would avoid future misunderstandings.

**XI. PUBLIC COMMENTS – None**

**XII. ADJOURNMENT**

**At 2:49 p.m., the chair declared the meeting adjourned.**

APPROVED:

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Chair/Vice Chair



# Palm Beach County Commission on Ethics

*Honesty - Integrity - Character*

July 7, 2016  
Page 7 of 9 Commissioners

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

**Executive Director**  
Mark E. Bannon

June 10, 2016

Mr. Jeffrey Garber, Esq.  
Ciklin, Lubitz & O'Connell  
515 North Flagler Drive, 20<sup>th</sup> Floor  
West Palm Beach, Florida 33401

Re: RQO 16-016  
Conflict of Interest

Dear Mr. Garber,

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 a member of the Palm Beach County Fair Housing/Equal Employment Opportunity Board (the Board), may you or a member of your law firm represent a customer or client of your law firm when the client (the Condominium Association) has a matter that may come before your board?

**ANSWER :**

As an appointed official, you are prohibited from using your official position as an advisory board member to give a special financial benefit, not shared with similarly situated members of the general public, for yourself, your outside business, or a customer or client of your outside business.<sup>1</sup> A customer or client is defined as a person or entity to whom your outside business has supplied goods or services in excess of \$10,000 over the previous 24 months. Similarly, you are also prohibited from voting on an issue or participating in a matter that give a special financial benefit to you, your outside employer, or a customer or client of your outside employer.<sup>2</sup> When faced with such a conflict of interest, you are required to 1) disclose the nature of your conflict before your board discusses the issue; 2) abstain from any discussion or vote or otherwise participate in the matter; and 3) file a state voting conflict form (8B), submitting a copy to the Board's clerk and the Palm Beach County COE.<sup>3</sup> Here, in this context, "participate" means that you may not represent the Condominium Association before your Board or take part in any presentation or discussion regarding this client's case with your fellow members of the Board. Thus, voting on a client's case, participating in conversations, or attempting to influence Board members would therefore constitute a misuse of office. The misuse of office and voting conflict prohibitions apply to you personally, or to someone using your official title or position on your behalf.

The Code does not prohibit you from representing the Condominium Association in the complaint prior to the matter coming before the Board, but you are prohibited from using your official position to influence the process. Thus, although you are not prohibited from representing your client in this matter up and until it goes before your Board, you must be acting in your professional capacity as an attorney as opposed to your official capacity as a Board member. Additionally, this provision does not prohibit other members of the law firm (your outside business) from representing the Condominium Association's interest in this matter. Thus, while the Code of Ethics prohibits you from representing a customer or client before your Board, a member of your outside business is not prohibited from representing a customer or client before your Board provided that you publicly disclose the nature of the conflict, file the required state disclosure form, refrain from voting, and do not participate in or influence the process.

**FACTS:**

You are a current board member of the Palm Beach County Fair Housing/Equal Employment Opportunity Board. You are also a practicing attorney and a partner with the law firm of Ciklin, Lubitz & O'Connell.

<sup>1</sup> §2-443(a)(1-7)

<sup>2</sup> §2-443(b)

<sup>3</sup> Id.

One of your law firm's clients is a condominium association located in Palm Beach County (the Condominium Association). Over the past several months, you have been handling a dispute by one of the Condominium Association's residents against the Condominium Association involving a claim of housing discrimination. On May 31, 2016, the resident filed a housing discrimination complaint with the Palm Beach County Office of Equal Opportunity alleging that the Condominium Association committed an unlawful housing practice. The complaint was forwarded to you by the Condominium Association, who has requested that you provide a defense.

The Board is charged with hearing and adjudicating Fair Housing and Equal Employment Complaints following a determination by the Executive Director of the Office of Equal Opportunity that there are reasonable grounds to believe that an unlawful or discriminatory practice has occurred. The Board is also responsible for reviewing and approving conciliation agreements. Assuming the matter comes before the Board, you are aware that you are required to recuse yourself from participating in the hearing and voting on that matter.

**LEGAL BASIS:**

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

**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;

(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).

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,



Mark E. Bannon,  
Executive Director

CEK/gal



# Palm Beach County Commission on Ethics

*Honesty - Integrity - Character*

July 7, 2016

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Michael S. Kridel, *Chair*

Clevis Headley, *Vice Chair*

Michael F. Loffredo

Judy M. Pierman

Sarah L. Shullman

**Executive Director**

Mark E. Bannon

June 30, 2016

Ms. Carol Roggenstein  
Gardens Branch Library Manager  
11303 Camus Dr.  
Palm Beach Gardens, FL 33401

Re: RQO 16-017  
Gift Law

Dear Ms. Roggenstein,

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 prohibit county employees at the Gardens Branch of the Palm Beach County Library System from accepting complimentary chair massages as a general gesture of appreciation for their service as public employees?

**ANSWER:**

Section 2-444(a)(1) of the Code prohibits public employees from soliciting or accepting any gifts with a value of greater than \$100, in the aggregate for the calendar year, from a vendor, lobbyist, or any principal or employer of a lobbyist who lobbies, sells or leases to their government employer. The Code also prohibits public employees from accepting a gift of any value as quid pro quo for any official action, duty performed, or duty violated.<sup>1</sup> In addition, public employees are prohibited from accepting any gift as a thank you gift or otherwise in appreciation for the performance of a specific official act by a public employee.<sup>2</sup>

In previous advisory opinions, the COE has identified several key factors in determining whether a gift may be accepted. Those key factors include whether the gift was general in nature and given to recognize a large class of public employees, whether the gift was meant as a tip, thank-you, or compensation for a specific act by one or more employees, and whether the gift was given by a vendor, lobbyist, principal or employer of a lobbyist who lobbies the employee's public employer. For example, the COE has previously opined that lunch and complimentary use of golf and tennis facilities as an expression of appreciation for the work of municipal public safety employees did not violate §2-444(e) where the donor country club was not a municipal vendor, lobbyist or principal of a lobbyist.<sup>3</sup>

Based on the information provided, HealthSource Chiropractic is not a vendor, lobbyist, or an employer or principal of a lobbyist that lobbies the county, and the complimentary chair massages are being offered to the county employees as a general gesture of appreciation for their service as public employees. Therefore, county employees of the Gardens Branch of the Palm Beach County Library System are not prohibited from accepting complimentary chair massages because the gift is general in nature and not being provided because of the performance or non-performance of an official act or legal duty or as a quid pro quo given to the donor in

<sup>1</sup> §2-444(e); RQO 11-103

<sup>2</sup> RQO 10-031; RQO 11-008

<sup>3</sup> RQO 11-007

exchange for the gift, and the donor is not a vendor, lobbyist, or principal or employer of a lobbyist of the county. If the value of the chair massage exceeds \$100, the gift must be reported as required by the Code.<sup>4</sup>

**FACTS:**

You are the manager of the Gardens Branch of the Palm Beach County Library System. You have been contacted by HealthSource Chiropractic Center's outreach program, "STRESS BREAK!" The program would like to provide free seated chair massages to the employees of the Gardens Branch Library for their work as public servants. The participating chiropractic clinics in the "STRESS BREAK!" community outreach program have partnered with the American Cancer Society and the United Way and are also working partners with 9 other major national charities. The massage therapists who will be providing the free chair massages are not allowed to accept any form of compensation. HealthSource Chiropractic Center is not a vendor, lobbyist, or principal or employer of a lobbyist who lobbies, leases, or sells to Palm Beach County.

**LEGAL BASIS:**

The legal basis for this opinion is found in the §2-444(a)(1), §2-444(e), and §2-444(f)(1),(2)b. of the Code:

**Sec. 2-444. Gift law.**

- (a) (1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity 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 person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.
  
- (e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:
  - (1) An official public action taken or to be taken, or which could be taken;
  - (2) A legal duty performed or to be performed or which could be performed; or
  - (3) A legal duty violated or to be violated, or which could be violated by any official or employee.
  
- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
  - (1) *Gift reports for officials and employees indentified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. When a state reporting individual files a gift report with the state, a copy of each report shall also be filed contemporaneously with the county commission on ethics.
  - (2) *All other officials and employees who are not reporting individuals under state law.*
    - b. *All other gifts.* All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics no later than November 1 of each year beginning November 1, 2011, for the period ending September 30 of each year. All officials or employees who are not reporting individuals under state law and who do not receive a gift in excess of one hundred dollars (\$100) during a given reporting period shall not file an annual gift disclosure report. The annual gift disclosure report shall be created by the county commission on ethics and shall be in a form substantially similar in content as that required by state law.

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<sup>4</sup> §2-444(f)(1),(2)

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,

A handwritten signature in blue ink, appearing to read 'MEB', enclosed within a light blue oval.

Mark E. Bannon,  
Executive Director

CEK/gal



# Palm Beach County Commission on Ethics

*Honesty - Integrity - Character*

## **Commissioners**

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

## **Executive Director**

Mark E. Bannon

July 5, 2016

Mr. Aaron Taylor, Economic Development Specialist  
Department of Economic Sustainability  
100 Australian Ave, 5th Floor  
West Palm Beach, Florida 33406

Re: RQO 16-018  
Conflict of Interest

Dear Mr. Taylor,

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 your outside business which offers planning, zoning, and real estate services create a prohibited conflict of interest where you are a Palm Beach County employee working in the Department of Economic Sustainability?

### **ANSWER:**

As a public employee, the Palm Beach County Code of Ethics prohibits you from using your official position for personal gain, not shared with similarly situated members of the general public, for yourself, your outside business, or a customer or client of your outside business.<sup>1</sup> You are also prohibited from using your official position to corruptly secure a special benefit for anyone.<sup>2</sup> Based on the facts submitted, you have not, and will not, represent a company or individual receiving financing from any funding program offered by Palm Beach County which your department administers or oversees.

In addition, your position with the Department of Economic Sustainability does not give you any additional information, insight, or influence which would benefit your outside business or the clients of your outside business. Therefore, under these facts, your outside business does not create a prohibited conflict of interest for you, but you must take great care to not use your official position as a county employee in any way to give a special financial benefit to yourself, your outside business, or a client of your outside business. This would include identifying yourself as a county employee or wearing any patch, badge, or item of clothing that identifies you as a county employee when you are conducting your outside business or engaging with new or existing clients.

Additionally, if you represent a client at any municipal or county advisory board, council, or commission meeting, you must register as a lobbyist prior to attempting to influence the board, council, or commission.<sup>3</sup> Section 2-353 of the Palm Beach County Lobbyist Registration Ordinance requires all lobbyists to register as a lobbyist prior to any lobbying. A lobbyist is "any person who is employed and receives payment, or who

<sup>1</sup> §2-443(a)

<sup>2</sup> §2-443(b)

<sup>3</sup> §2-353(a)

contracts for economic consideration, for the purpose of lobbying on behalf of a principal.”<sup>4</sup> Lobbying is defined as “seeking to influence a decision through oral or written communication or an attempt to obtain the goodwill of any [official or employee] with respect to the passage, defeat or modification of any item which may foreseeably be presented for consideration to the advisory board, the board of county commissioners, or the local municipal governing body lobbied.”<sup>5</sup> Under the Lobbyist Registration Ordinance, there are several exceptions to the definition of a lobbyist, but none of those exceptions apply to your circumstance. You advised that the specific exception you believe applies to your circumstance concerns: “A person who is retained or employed to represent an employer, principal, or client *only during a publicly noticed quasi-judicial hearing or comprehensive plan hearing*, as long as the person identifies the employer, principal, or client at the hearing.”<sup>6</sup> (Emphasis added).

However, in general, this exception only applies to legal counsel retained to represent the employer, principal, or client because it involves representation at a quasi-judicial hearing or comprehensive plan hearing. Thus, if the representation of the client occurs at a regular municipal or county advisory board, council, or commission meeting (and not at a quasi-judicial hearing or comprehensive plan hearing), it would constitute lobbying under the Lobbyist Registration Ordinance and require registration as a lobbyist. Another exception is an expert witness who is retained or employed to provide only scientific, technical or other specialized information provided in agenda materials or testimony only in public hearings, so long as the expert identifies the employer, principal or client at the hearing. Based on the information submitted, you are hired to represent clients at the municipal or county advisory board, council, or commission meetings; you would not be hired as an expert witness to only provide scientific, technical, or other specialized information.

Based on the facts you provided, your activities constitute lobbying within the meaning of the Lobbyist Registration Ordinance. When you engage in the process of influencing a public decision by participating in a negotiation or some other exchange, you are lobbying on behalf of your client and must therefore be registered as required by the code.<sup>7</sup> Any attempt to seek to influence a decision or to engage in negotiation is considered lobbying and will require registration unless it occurs during a publicly noticed *quasi-judicial hearing or comprehensive plan hearing*. As a paid representative of a client seeking to influence the decision of an advisory board, council, or commission with respect to the passage, defeat, or modification of any item, you are required to register as a lobbyist.<sup>8</sup>

Therefore, while there is no per se prohibited conflict of interest provided you do not represent a company or individual receiving financing from any funding program offered by Palm Beach County which your department administers or oversees, you must be registered as a lobbyist to represent a client before an advisory board, council, or commission.

**FACTS:**

You are an economic development specialist for the Palm Beach County Department of Economic Sustainability. The Department of Economic Sustainability administers programs for business development, housing, and community initiatives. In your roles as an economic development specialist, you perform corporate financial analysis, business loan underwriting, loan servicing, loan program monitoring, and review job growth incentive applications and contracts for new companies coming to Palm Beach County. You also work with federal government lending programs to help facilitate corporate expansion, process invoices, and

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<sup>4</sup> §2-352

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> RQO 12-025

<sup>8</sup> RQO 12-054

build relationships with private banks and other lending institutions to assist in building capital stack financing.

You are also the owner and President of Arc Development Global, LLC. Arc Development Global is a handles land development feasibility, research, and planning, zoning research, municipal development review applications, variance applications, land use changes, rezoning applications, site plan design, master planning, and real estate services. As the owner of Arc Development Global, LLC, you represent clients from Orlando to Miami. You do not represent any company or individual receiving financing from any funding program offered by Palm Beach County which your department administers or oversees. On occasion, you may represent clients at municipal public meetings, zoning commission meetings, and Palm Beach County Board of County Commissioner meetings. Pursuant to Palm Beach County Merit Rule 10, you have submitted a Notification of Outside Employment form with your supervisor.

You believe that you do not need to register as a lobbyist because the exception to the definition of a lobbyist concerning a "person who is retained or employed to represent an employer, principal, or client *only during a publicly noticed quasi-judicial hearing or comprehensive plan hearing*, as long as the person identifies the employer, principal, or client at the hearing" applies to your circumstance.

**LEGAL BASIS:**

The legal basis for this opinion is found in the §2-443(a) and §2-443(b) of the Code of Ethics and §2-353 of the Lobbyist Registration Ordinance:

**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.

**Sec. 2-352. Definitions**

**Lobbying** shall mean seeking to influence a decision through oral or written communication or an attempt to obtain the goodwill of any county commissioner, any member of a local municipal governing body, any mayor or chief executive officer that is not a member of a local municipal governing body, any advisory board member, or any employee with respect to the passage, defeat or modification of any item which may foreseeably be presented for consideration to the advisory board, the board of county commissioners, or the local municipal governing body lobbied as applicable.

**Lobbyist** shall mean any person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying on behalf of a principal, and shall include an employee whose

principal responsibility to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government.

"Lobbyist" shall not include:

- (2) Any person who is retained or employed for the purpose of representing an employer, principal or client only during a publicly noticed quasi-judicial hearing or comprehensive plan hearing, provided the person identifies the employer, principal or client at the hearing.
- (3) Any expert witness who is retained or employed by an employer, principal or client to provide only scientific, technical or other specialized information provided in agenda materials or testimony only in public hearings, so long as the expert identifies the employer, principal or client at the hearing.

**Sec. 2-353. Registration and expenditures.**

(a) **Registration required.** Prior to lobbying, all lobbyists shall submit an original, fully executed registration form to county administration, which shall serve as the official location for countywide lobbyist registration and which shall be known as the "Central Lobbyist Registration Site." The registration may be submitted in paper or electronic form pursuant to countywide policies and procedures. Each lobbyist is required to submit a separate registration for each principal represented. A registration fee of twenty-five dollars (\$25) must be included with each registration form submitted. A registrant shall promptly send a written statement to county administration canceling the registration for a principal upon termination of the lobbyist's representation of that principal. This statement shall be signed by the lobbyist. Lobbying prior to registration is prohibited. It is the responsibility of the lobbyist to keep all information contained in the registration form current and up to date.

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,



Mark E. Bannon,  
Executive Director

CEK/gal