



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
Hotline: 877.766.5920
E-mail: ethics@pbcgov.org

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

February 2, 2017 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

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

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Executive Session
 - a. C16-008
 - b. C16-010
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 17-001
 - b. RQO 17-003
- VI. Items Pulled from Consent Agenda
 - a.
- VII. Evidentiary standards review
- VIII. 2016 Annual Report
- 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.



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

January 20, 2017

Kathleen Scarlett, Director
Palm Beach County Purchasing Department
50 S Military Trail
West Palm Beach, FL 33415

Re: RQO 17-001
Gift Law

Dear Ms. Scarlett

Your request for advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows:

QUESTION:

May the County redeem its Snack Reward credits from Betty Mills, a vendor of Palm Beach County, and donate the redeemed snacks to the Senator Philip D. Lewis Center, a Palm Beach Homeless Center?

ANSWER:

Based on the facts submitted, the Palm Beach County Code of Ethics (Code) does not prohibit the county from accepting the Snack Rewards from the county vendor and donating the snacks to the Lewis Center.

Under the Code, public employees and officials are prohibited from using their official positions to give specified persons or entities a special financial benefit not shared with similarly situated members of the general public.¹ In addition, the Code prohibits public employees and officials from using their official positions to corruptly secure a special benefit for anyone.² However, these sections of the Code are not applicable to these facts and circumstances. According to the facts provided, the Snack Rewards are available to any purchasers of the Betty Mills products. Because the County is receiving these Snack Rewards just as another purchaser would, there is no prohibited special financial benefit involved here.

Further, the Code defines a gift as anything of economic value, without adequate and lawful consideration.³ Based on the facts provided, the Snack Rewards are automatically provided with each purchase made through Betty Mills. Essentially, these rewards are given in consideration for choosing to purchase goods from Betty Mills. Accordingly, the Snack Rewards are accepted as part of a purchase agreement given in consideration for using Betty Mills and are not considered a gift under the Code of Ethics. In addition, the Code provides that publicly advertised offers for goods or services available to an employee under the same terms and conditions as offered or made available to the general public are not gifts.⁴ These Snack Rewards are available to all members of the general public. Therefore, the Code does not prohibit the County from accepting these generally offered Snack Rewards accrued in conjunction with purchasing products from Betty Mills. The Code also has no prohibition regarding the donation of these Snack Rewards to the Senator Philip D. Lewis Center, a Palm Beach Homeless

¹ §2-443(a)

² §2-443(b)

³ §2-444(g)

⁴ §2-444(g)(1)f.

Center, because the Code of Ethics is not implicated in such an instance. Once received, the Snack Rewards become county property, and thus can be disposed of in any manner allowed by county policy.

FACTS:

You are a Palm Beach County employee in the Purchasing Department. The County purchases cleaning and sanitary supplies and small dollar foods from this company on an as needed basis via the county's Decentralized Purchase Order Process. This is an informal procurement process where a number of vendors are contacted and asked to quote prices on goods that the county needs to purchase. Awards are made to the vendor meeting the county's specifications and offering the lowest price.

Betty Mills includes a "Snack Rewards" program with their purchases. Through the Snack Rewards program, customers of Betty Mills earn credits when they place orders with the company. Customers can redeem these rewards to purchase over 2,000 different kinds of snacks. The Snack Rewards program is available to anyone who purchases Betty Mills products. Although it is customary when soliciting certain goods to request a discount off an MSRP, you stated that a vendor "reward program" has never been included in your specifications or scopes of work and has never been an evaluation criterion for award of a contract. The Snack Rewards Program provided by Betty Mills does not affect the number of products you order from them. The county's Purchasing Department was recently notified that it has earned \$261.56 in Snack Rewards. In lieu of obtaining snacks for consumption by county employees, the county would like to give the free snacks to the Senator Philip D. Lewis Center, a Palm Beach Homeless Center.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-443(a), §2-444(g), and §2-444(g)(1)f. 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:
- (1) Himself or herself;
 - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
 - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
 - (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;
 - (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner— "substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
 - (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.
- (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. 2-443. Gift law.

- (g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single setting or a meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift may consult, among other sources, Florida Statutes, §112.3148, and the Florida Administrative Code as may be amended.
- (1) Exceptions. The provisions of subsection (g) shall not apply to:
- f. Publicly advertised offers for goods or services from a vendor under the same terms and conditions as offered or made available to the general public;

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,



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

January 25, 2017

Mr. Leonard Rubin, Esq.
701 Northpoint Parkway, Suite 209
West Palm Beach, FL 33407

Re: RQO 17-003
Voting Conflict

Dear Mr. Rubin:

Your request for an expedited advisory opinion pursuant to Commission on Ethics rule of procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

QUESTION:

Does the Palm Beach County Code of Ethics (Code) prohibit Councilman Frank Fahy from participating in discussions and voting on the future use of a vacant property owned by the Town of Juno Beach when he owns a unit in the condominium complex which is located across the street from the vacant property?

ANSWER:

The Code prohibits public employees and officials from using their official positions to give themselves a special financial benefit not shared with similarly situated members of the general public.¹ Additionally, officials must abstain from voting and not participate in any matter which would result in a special financial benefit to themselves.² Financial benefit, in the context of the Code, constitutes economic gain or loss.³ For a financial benefit to be "special", the benefit must inure uniquely to the councilman, rather than affecting everyone in the surrounding area in the same way.⁴

Further, in evaluating conflict of interest under the Code, the degree to which there is uncertainty at the time of the vote as to whether there would be any economic gain or loss to the prohibited person or entity must be considered.⁵ To constitute a prohibited voting conflict, the possibility of a financial gain must be direct and immediate, rather than remote and speculative.⁶ Where an official's gain or loss would require many steps and be subject to many contingencies, any gain or loss is remote and speculative and cannot be said to inure to one's special financial benefit.⁷ In addition, the Florida Commission on Ethics has previously held that if a gain or loss to an official resulting from a particular measure is too remote and speculative, it does not constitute a special financial benefit.⁸

¹ §2-443(a)

² §2-443(c)

³ RQO 10-013

⁴ RQO 12-063

⁵ 112.3143(1)(d), Florida Statutes

⁶ George v. City of Cocoa, Florida, 78 F.3d 494 (1996).

⁷ RQO 12-063, CEO 05-15, CEO 91-61, CEO 12-19

⁸ CEO 85-77 (school board member who owned business near the site of a proposed school district building was not prohibited from voting on the matter); CEO 85-87 (city council member was not prohibited from voting on a site plan for a shopping center which was to be located adjacent to the florist store which he owned)

Based on the facts provided, there is uncertainty as to whether there would be any economic gain or loss to the value of Councilman Fahy's property from this vote, and, thus, any financial benefit that Councilman Fahy may receive is remote and speculative. Here, the Town Council will be discussing and voting on whether to leave the vacant property "as is," convert the vacant property into a park, or declare the vacant property as surplus real property and offer it for sale. The matter before the Town Council does not involve any specific development application; it only involves a preliminary determination of future use. Therefore, although Councilmember Fahy lives in a condominium complex across the street from the vacant property, whether any of the proposed uses of the vacant property would result in a special financial benefit to him is remote and speculative. Because the vote has no direct and immediate financial benefit to Councilmember Fahy, he is not prohibited from participating in and voting on the future use of the vacant property under the circumstances listed.

FACTS:

You are the Town of Juno Beach Town Attorney. The Town of Juno Beach owns a .32-acre parcel of vacant property located at 841 Venus Drive. Last year, a developer who owns an adjacent parcel requested that the town declare the property as "surplus" so it could be offered for sale. The Town Council conducted a public hearing on the request and took no action. However, the Town Council requested that the town's Planning and Zoning Board formulate a recommendation for the future use of the vacant property. The Town Council will subsequently consider this recommendation and make a decision as to its future use, which may include: (1) leaving the vacant property "as is"; (2) converting the vacant property into a park; or (3) declaring the vacant property as surplus real property and offering it for sale in accordance with the town's established procedures.

The vacant property is located at the corner of Venus Drive and Ocean Drive and is within the town's Residential, Transient, and Multiple-Family Moderate Density (RMT) Zoning District. The adjacent uses of the vacant property are as follows:

- A. To the west is a privately-owned vacant parcel within the RMT Zoning District;
- B. To the east across Ocean Drive is the Tower Condominium located within the town's Residential Multiple-Family High Density (RH) Zoning District
- C. To the north is a parking lot for the Tower Condominium and a private residence located within the RMT Zoning District; and
- D. To the south is a vacant parcel owned by a homeowner's association and a private residence located within the RMT Zoning District

Councilmember Frank Fahy owns a residential unit within the Tower Condominium, which is located across the street from the vacant property.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-443(a) and §2-443(c) 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:
 - (1) Himself or herself;
 - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
- (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. 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,



Mark E. Bannon
Executive Director

CEK/gal