

Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

300 North Dixie Highway
West Palm Beach, FL 33401

561.355.1915

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Commissioners

Rodney G. Romano

Michael H. Kugler

Peter L. Cruise

Michael S. Kridel

Danielle A. Sherriff

Executive Director

Christie E. Kelley

General Counsel

Rhonda Giger

Intake and Compliance Manager

Gina A. Levesque

Investigator

Mark A. Higgs

Investigator

Abigail Irizarry

Agenda

September 8, 2022 – 1:30 p.m.
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

- I. Call to Order
- II. Pledge of Allegiance
- III. Introductory Remarks
- IV. Roll Call
- V. Approval of Minutes from June 2, 2022
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 22-017
 - b. RQO 22-018
- VII. Items Pulled from Consent Agenda
 - a.
- 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 (COE)
PALM BEACH COUNTY, FLORIDA**

June 2, 2022

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

**COMMISSION CHAMBERS
WEISMAN GOVERNMENTAL CENTER**

MEMBERS:

Rodney G. Romano, Chair
Michael H. Kugler, Vice Chair
Peter L. Cruise
Carol E. A. DeGraffenreidt
Michael S. Kridel

STAFF:

Rhonda Giger, General Counsel
Mark A. Higgs, COE Investigator II
Abigail Irizarry, COE Investigator II
Christie E. Kelley, COE Director III
Gina A. Levesque, COE Intake and Compliance Manager

CLERK OF THE CIRCUIT AND COMPTROLLER OFFICE STAFF PRESENT:

Danielle Freeman, Deputy Clerk

I. CALL TO ORDER

The chair called the meeting to order at 1:30 p.m.

(CLERK'S NOTE: The clerk called the roll at this time.)

V. ROLL CALL

Present Chair Rodney Romano, Vice Chair Michael Kugler,
Commissioner Peter Cruise, and Commissioner Kridel

Absent Commissioner Carol DeGraffenreidt

II. PLEDGE OF ALLEGIANCE

Chair Romano reordered the agenda without objection for the purpose of swearing in Michael S. Kridel.

IV. SWEARING-IN CEREMONY FOR MICHAEL S. KRIDEL, APPOINTED BY PALM BEACH CHAPTER OF THE ASSOCIATION OF CERTIFIED FRAUD EXAMINERS. SWEARING-IN BY CHIEF JUDGE GLENN D. KELLEY, 15TH JUDICIAL CIRCUIT OF FLORIDA.

III. INTRODUCTORY REMARKS

The commission welcomed Commissioner Kridel back.

(CLERK'S NOTE: The original order of the agenda was restored at this time.)

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

- a. RQO 22-006
- b. RQO 22-008
- c. RQO-22-009
- d. RQO-22-010

MOTION to approve the consent agenda as published. Motion by Commissioner Cruise, seconded by Vice Chair Kugler, and carried 4-0.

VII. ITEMS PULLED FROM CONSENT AGENDA

There were no items pulled from consent.

VIII. EXECUTIVE DIRECTOR COMMENTS

Christie Kelley, Executive Director, provided the following updates:

- Commissioner DeGraffenreidt had resigned as a COE commissioner due to the position she had taken in Jacksonville, Florida.
- Commissioner DeGraffenreidt would attend the August meeting to be recognized for her service on the commission.
- Staff had reached out to The Palm Beach County Association of Chiefs of Police, which had appointed Commissioner DeGraffenreidt, to initiate the search for an appointee who would serve the remainder of her term through February of 2024.

- Ms. Kelley stated that she would be conducting ten trainings for the Town of Palm Beach.
- On July 6, 2022, trainings would be held for COE and County staff on gift reporting.

IX. COMMISSION COMMENTS

The commission again welcomed back Commissioner Kridel.

1.

Vice Chair Kugler gave closing remarks regarding working with Commissioner DeGraffenreidt, and expressed appreciation for her contributions to the commission.

2.

Commissioner Cruise thanked Ms. Kelley for her responsiveness to the commission's inquiries. He added that he would be the auctioneer for the mayor's ball if one was held this year.

3.

Commissioner Kridel expressed his gratitude to Ms. Kelley and Gina Levesque for their efforts regarding his return to the commission.

X. PUBLIC COMMENTS

There were no public comments.

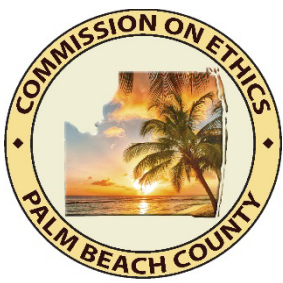
XI. ADJOURNMENT

MOTION to adjourn. Motion by Vice Chair Kugler, seconded by Commissioner Cruise, and carried 4-0.

At 1:39 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



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Palm Beach County Commission on Ethics

Commissioners

Rodney G. Romano, Chair
Michael H. Kugler, Vice Chair
Peter L. Cruise
Michael S. Kridel
Danielle A. Sherriff

Executive Director

Christie E. Kelley

August 19, 2022

Ms. Jennifer Reynolds, Lead Engineer
Infrastructure Operations Manager
City of Delray Beach
150 NW 1st Avenue
Delray Beach, FL 33444

Re: RQO 22-017
Gift law

Dear Ms. Reynolds,

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 (Code) prohibit you from accepting prizes won in a drawing while attending a work conference?

BRIEF ANSWER:

Within the noted parameters of the facts provided, the Code's gift regulations do not preclude the acceptance of gifts from these conference sponsors.

FACTS:

You are an employee of the city of Delray Beach (City). While attending a work-related conference, you entered several drawings by leaving your business card at the booths of some of the conference sponsors. Your business card was randomly selected by two sponsors, and you won two separate raffles. The first raffle item is valued at approximately \$69.99 and came from a drawing hosted by Argent Software. The second item is valued at approximately \$597 and came from a drawing hosted by Avixum. Neither of these companies are vendors, lobbyists, or principals or employers of lobbyists who lobby, sell, or lease to the City.

ANSWER:

The Code prohibits public officials and employees from accepting anything of value in exchange for the past, present and future performance of their legal duties.¹ In addition, they may not accept gifts² with a combined value over \$100 during the calendar year from vendors, lobbyists, or principals or employers of lobbyists who lobby, sell, or lease to their government employer.³ The rationale behind limiting gifts solicited by vendors, lobbyists, or principals or employers of lobbyists of a public entity is grounded in the desire to avoid the appearance that these gifts are made to obtain access or gain the good will of public employees or officials. If the gift is not from a vendor, lobbyist, or principal or employer of a lobbyist, then there is no limit on the value of a gift that can be accepted. However, gifts with a value over \$100 must be reported.⁴

¹ §2-444(e)

² In the context of this opinion, gift and prize are used interchangeably.

³ §2-444(a)(1)

⁴ §2-444(f)

Although state law controls the gift reporting requirements for state reporting individuals, under the Code, a City employee who is a state reporting individual and who files a State of Florida Quarterly Gift Disclosure Form (Form 9) with the state, must also file a copy of the Form 9 with the COE within 10 days of filing with the state. City employees who are not state reporting individuals must report gifts with a value over \$100 to the COE on a county gift report by January 31 of the next year after the gift was received.

Based on the facts submitted, because neither Argent Software nor Avixum are vendors, lobbyists, or principals or employers of a lobbyist who lobby, lease, or sell to the City, the \$100 gift limit does not apply to them. Thus, as long as there is no "quid pro quo" or special treatment or other privilege given to or obtained by these entities in exchange for the prizes, you may accept both gifts, regardless of their value. With regards to gift reporting, the gift from Argent Software does not need to be reported because the value is under \$100. However, because the value of the gift from Avixum is over \$100, it must be reported by January 31, 2023 on a county gift form, which can be found on the COE website.

LEGAL BASIS:

The legal basis for this opinion is found in §2-442, §2-444(a)(1), and §2-444(e) of the Code:

Sec. 2-442. Definitions

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.

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.

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 assumes they are true for purposes of this advisory opinion. This opinion 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.

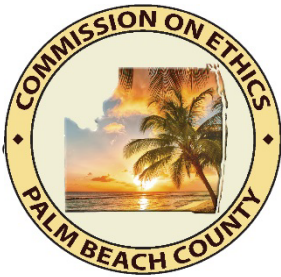
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Christie E. Kelley
Executive Director

RG/gal



Rodney G. Romano, Chair
Michael H. Kugler, Vice Chair
Michael S. Kridel
Peter L. Cruise
Danielle A. Sherriff

Palm Beach County Commission on Ethics

Executive Director
Christie E. Kelley

Honesty - Integrity - Character

August 19, 2022

Mr. Jeffrey M. Garber, Esquire
Nason, Yeager, Gerson, Harris & Fumero, P.A.
3001 PGA Blvd., Suite 305
Palm Beach Gardens, FL 33410

Re: RQO 22-018
Advisory Board Member Conflict

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 Board (the Board), may you represent a client of your law firm in federal court on a discrimination claim when that client has a related complaint that may come before the Board?

BRIEF ANSWER:

Yes. Nothing in the Code prohibits the representation of this client in federal court as long as the representation is limited to the claim that was filed in federal court. Were the complaint to come before the Board for hearing, abstention from any discussion or vote may be required if certain factors are met.

FACTS:

You are a member and the current chairperson of the Palm Beach County Fair Housing/Equal Employment Board. You are also a practicing attorney with the law firm of Nason, Yeager, Gerson, Harris & Fumero, P.A. You have been asked to represent Green Leaf & Crosby Acquisition Corporation (d/b/a Greenleaf & Crosby) in federal court on a discrimination claim related to public accommodation. Greenleaf & Crosby is not a vendor of the county. Greenleaf & Crosby would be the respondent, and you do not have an established attorney/client relationship with Greenleaf & Crosby. The plaintiff has also filed the same claim with the Palm Beach County Office of Equal Opportunity ("OEO"). The scope of your representation would be limited to the federal court claim. While you have not yet received any payment for services from Greenleaf & Crosby, it is likely that they will have paid more than \$10,000 for your services in the federal case, prior to any administrative hearing being held before the Board.

The Board is charged with hearing and adjudicating Fair Housing and Equal Employment Complaints following a determination by the Executive Director of the OEO 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. After a hearing, the board is empowered to award both damages and injunctive relief. You stated that you believe a conflict of interest would exist and would abstain from voting on this matter if it comes before the 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, to your-

self, your outside business, or a customer or client of your outside business.¹ A customer or client is defined as a person or entity to whom you or your outside business has supplied goods or services in excess of \$10,000 over the previous 24 months.² Similarly, you are also prohibited from voting on an issue or participating in a matter that gives a special financial benefit to yourself, your outside employer, or a customer or client of your outside employer.³

Based on the facts presented, the Code does not prohibit your representation of Greenleaf & Crosby in federal court even though a similar complaint may be heard by the Board. However, the Code would prohibit your participation in discussions or vote on the complaint before the Board if Greenleaf & Crosby is determined to be a customer or client of your law firm. You stated that it is likely that your law firm will have supplied over \$10,000 in services to Greenleaf & Crosby prior to the EOE complaint coming before the Board. Once the \$10,000 threshold is met, Greenleaf & Crosby will be considered a customer or client of your law firm and a prohibited conflict of interest would exist for you. When faced with such a voting conflict, the Code requires you 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 (Form 8B), submitting a copy to the Board's clerk and the COE.⁴ In this context, "participate" would mean that you may not take part in any presentation or discussion regarding your client's case with your fellow members of the Board. Thus, voting on the complaint involving Greenleaf & Crosby, participating in discussions on the matter when it comes before the Board, or attempting to influence Board members would 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.

In the event that your law firm has not supplied over \$10,000 in services to Greenleaf & Crosby prior to the EOE complaint coming before the Board, Greenleaf & Crosby would not be considered your law firm's customer or client under the Code. Were the EOE complaint to come before the Board under these circumstances, the Code would not preclude your participation in or vote on this matter. Although there would be no per se conflict of interest, an appearance of impropriety may exist if you were to participate in discussions or vote on the EOE complaint involving Greenleaf & Crosby, especially since the two matters are related. To avoid this appearance of impropriety, the COE recommends that you abstain from voting on or participating in this matter before the Board entirely.

Further, the COE feels it is important to stress that any official action taken by you as a member of the Board will violate the Code if it is based on any unlawful quid pro quo to Greenleaf & Crosby. You must also keep in mind that §2-443(b), Corrupt misuse of official position, prohibits you from using your official position to corruptly secure or attempt to secure a special privilege, benefit, or exemption for yourself or anyone else. The Code defines corruptly as done with a wrongful intent and for the purpose of obtaining a special benefit for any person, resulting from some act, such as voting, which is inconsistent with the proper performance of his or her public duties.

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

¹ §2-443(a)(1-7)

² §2-442

³ §2-443(b)

⁴ Id.

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 or attempt to 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).

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,



Christie E. Kelley,
Executive Director

RG/gal

