

PALM BEACH COUNTY COMMISSION ON ETHICS
LEGAL SUFFICIENCY DETERMINATION

To: Palm Beach County Commission on Ethics
From: Steven P. Cullen, Executive Director
Re: C15-014 – Keith James – Commissioner, City of West Palm Beach

- **Background**

This matter came to the attention of the Palm Beach County Commission on Ethics (COE) through a sworn complaint filed by Michael McCloskey (complainant) on May 11, 2015. Attached to the complaint was a two page supporting "Statement of Fact." West Palm Beach City Commissioner Keith James is named as respondent. On May 12, the complainant filed an additional two page "Statement of Fact." The factual allegations contained in the second document are identical except for the last paragraph. The first statement maintains that James violated F.S. §112.313 while the second statement alleges that he violated §2-443 of the Palm Beach County Code of Ethics (Code).

Factually, the complainant alleges that on July 7, 2014 and October 14, 2014 the West Palm Beach City Commission, sitting as the CRA, held public hearings on a development project proposed by him. Subsequently, Commissioner James was re-elected to the Commission. The complainant alleges that several citizens aligned with local hospitals endorsed and raised considerable funds for James' re-election.

On May 4, 2015, complainant met with James "...to give him an update on the progress of the negotiations of the Development Agreement for the Tent Site." Allegedly, James treated McCloskey rudely, used expletives, and indicated that he would not vote for his project. James allegedly linked his lack of support for the project to the fact that McCloskey supported his campaign opponent. These actions and statements form the basis for the contention that James violated the Code.

- **Finding**

There is no cognizable violation of the Code established with regard to the alleged violation of F.S. §112.313. Any alleged violation of Florida law is outside of the Jurisdiction of the COE.

Although complainant does not specify an applicable subsection of the Code, the following sections are relevant for purposes of determining legal sufficiency of the complaint:

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.

There is no allegation made that the respondent used his official position to give a special financial benefit to any of the persons or entities listed in Sec. 2-443 (a) (1-7). Therefore, the complaint is legally insufficient as to stating a cause of action under this Section.

As to Sec. 2-443(b), corrupt misuse of official position, there is no allegation that, with wrongful intent, respondent used his official position to secure a special financial benefit for himself or others. Rather, complainant generally alleges that respondent did not support his project because of his support for James' campaign opponent. Therefore, the complaint is legally insufficient as to stating a cause of action under this Section.

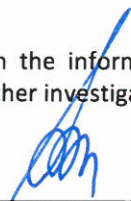
Even if the allegations as stated in the Complaint are true, they do not constitute a violation of any Section of the Code.

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based substantially on the personal knowledge of the Complainant, relating to an alleged violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

• **Conclusion**

Therefore, based on the information listed in the Complaint and supporting statements, there is **NO LEGAL SUFFICIENCY** for further investigation.

BY:



Steven P. Cullen, Executive Director
Florida Bar No. 362204
PBC Commission on Ethics

5/14/2015
Date



PALM BEACH COUNTY COMMISSION ON ETHICS
 300 North Dixie Highway, Suite 450, West Palm Beach, Florida 33401
 Hotline: 877-766-5920 or 561-355-1915

COMPLAINT FORM

1. Complainant (Person bringing Complaint) Add pages, if necessary.

Please list all information where you would like to be contacted. Our preference is email.

Name: Michael P. McCloskey E-Mail mpm@frinv.com
 Address: 2090 Palm Beach Lakes Boulevard, Suite 700
 City: West Palm Beach Zip: 33409
 Home #: 561.366.8957 Work #: 561.615.3903 Cell #: 561.307.1437

2. Respondent (Person against whom complaint is made) Add pages, if necessary.

Please provide as much information as possible.

Name: Keith A. James E-Mail kjames@wpb.org
 Address: 401 Clematis Street
 City: West Palm Beach Zip: 33401
 Home #: _____ Work #: 561.822.1390 Cell #: _____
 Title/Office Held or Sought: _____

3. IF KNOWN, CHECK THE BOX OR BOXES THAT APPLY

- Allegation is against person in County/Municipal Government
 Allegation is about County/Municipal/Whistleblower Retaliation

4. STATEMENT OF FACTS BASED ON YOUR PERSONAL KNOWLEDGE

In a separate attachment, please describe in detail the facts and actions that are the basis of your complaint, including the dates when the actions occurred. Also attach any relevant documents as well as names and contact information of persons who may be witnesses to the actions. If known, indicate the section of the ordinance you believe is being violated. For further instructions, see page 2 of this form.

5. OATH

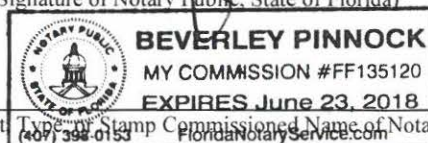
I, the person bringing this complaint, do depose on oath or affirmation and say that the facts set forth in the foregoing complaint and attachments are true and correct, to the best of my knowledge and belief.

[Signature]
 Signature of Person Making Complaint



STATE OF FLORIDA
 COUNTY OF Palm Beach
 Sworn to (or affirmed) and subscribed before me this 11 day of May, 2015, by Michael P. McCloskey,
 (Name of Person Making Statement)
 who is personally known to me or produced identification _____. Type of identification produced:
Beverley Pinnock

Beverley Pinnock
 (Signature of Notary Public, State of Florida)



(Print Type and Stamp Commissioned Name of Notary Public)

Palm Beach County Ethics Complaint against Keith A. James

STATEMENT OF FACT

On July 7, 2014 and again on October 14, 2014 the West Palm Beach City Commission sitting as the Community Redevelopment Agency (“CRA”) Board held public hearings regarding moving forward with a development project known as the Health & Wealth Campus located within the West Palm Beach CRA on property known as the Tent Site.

On March 10, 2015 Commissioner James was re-elected to the City Commission. I had supported his opponent.

As a candidate for reelection to the city commission, Keith James was endorsed by the Chamber of Commerce whose executive director, Dennis Grady, serves or served on the Board of Directors for Good Samaritan Hospital. During 2014, while the Health & Wellness project was being negotiated and vetted by city staff, the President of the Chamber of Commerce, Mark Nosacka (CEO of St. Mary’s Hospital) served as Chairman of the Chamber Board. Mr. Nosacka and other Good Samaritan executives as well as the lobbyist for Good Samaritan, Tom Barlow, all raised considerable amount of funds for the Keith James reelection.

At my request I met with Commissioner James in his office at City Hall at 2:30 PM on May 4, 2015. Commissioner James took a seat and offered no pleasantries. I explained that I was there to give him an update on the progress of the negotiations of the Development Agreement for the Tent Site. After I finished the update the following is verbatim from Commissioner James:

“Are you through? (Answer: Yes.) What fucking universe do you live in? Really? What fucking universe do you live in that you think that after how you behaved during the election, raising as much money as you did for my opponent, running around with Kimberly (Mitchell) and Jessica (Pinsky) that you could come in my office and ask for my support of your project?”

If you had a golden goose that was laying golden eggs up-and-down Okeechobee Boulevard I wouldn't vote for this project. Now get the fuck out of my office. And you can quote me on that."

Commissioner James repeated this conversation verbatim to another City employee shortly after my meeting corroborating my statement.

I believe this violates Title X, Chapter 112, Sections 313 of the Florida Statutes.

Palm Beach County Ethics Complaint against Keith A. James

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Based upon his actions and statements, I believe Commissioner Keith A. James violated Palm Beach County Code of Ethics, ARTICLE XIII Section 2-443.