



# Palm Beach County Commission on Ethics

**Commissioners**

Edward Rodgers, *Chair*  
Manuel Farach, *Vice Chair*  
Robin N. Fiore  
Ronald E. Harbison  
Bruce E. Reinhart

**Executive Director**

Alan S. Johnson

January 26, 2011

William R. Merkle, Esquire  
Woolbright Corporate Center  
1901 South Congress Ave., Suite 120  
Boynton Beach, FL 33426-6549

RE: RQO 10-038 OE  
Prohibited contractual relationship

Dear Mr. Merkle,

The Palm Beach County Commission on Ethics has considered your request for an advisory opinion, and rendered its opinion at a public meeting on January 6, 2010.

YOU ASKED in your letters dated November 10, 2010, and November 16, 2010, whether your client, who is employed by the City of Boynton Beach as a Chief Electrician working for the Utilities Department, may work as an electrical sub-contractor for private companies that provide contracted electrical work on various projects for the City of Boynton Beach Building Department.

IN SUM, based on the facts you have submitted, the commission has determined that even working as a sub-contractor for a company with contracts for electrical services with the City of Boynton Beach creates enough "privity" of contract to establish an indirect contractual relationship with the City. Therefore, such a relationship violates the ethics rules under §2-443(c) *Prohibited contractual relationships*. Based on the facts presented, Mr. Ellis cannot sub-contract for electrical work for the City while he is a Chief Electrician for the City of Boynton Beach.

THE FACTS as we understand them are as follows:

You advised that your client, Keith L. Ellis, is employed by the City of Boynton Beach as a Chief Electrician, working in the Utilities Department. Mr. Ellis is also the sole owner of KE Control and Electrical Service, Inc. (KE). KE will sometimes act as a sub-contractor for other private electrical contractors who you refer to in your letter as "customers." On occasion, these private contractors will enter into contracts to provide services for the City of Boynton Beach through the Building Department. When KE sub-contracts on these projects, payment for this work is made by the private contractor and not by the city. You further advise that the contracts between the City and your client's "customers" are entered into following a competitive bidding process, and that your client has no influence over the persons who award these bids, no enforcement, oversight or administrative responsibilities pertaining to these contracts, and no connection to these projects within his employment with the city.

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2633 Vista Parkway, West Palm Beach, FL 33411 561.233.0724 FAX: 561.233.0735

**Hotline: 877.766.5920 E-mail: [ethics@palmbeachcountyethics.com](mailto:ethics@palmbeachcountyethics.com)**

**Website: [palmbeachcountyethics.com](http://palmbeachcountyethics.com)**



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THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics:

The Palm Beach County Code of Ethics Section 2-442, *Definitions* states in relevant part:

*Outside employer or business* includes:

- (1) Any entity, other than the county, the state, or any other regional, local, or municipal government entity, of which the official or employee is a member, official, director, or employee, and from which he or she receives compensation for services rendered or goods sold or produced, or
- (2) Any entity located in the county or which does business with or is regulated by the county *in which the official or employee has an ownership interest.* (emphasis added)

According to the information you have provided, KE is by definition an outside business owned by your client, Keith L. Ellis, an employee of the City of Boynton Beach. You advised that KE is not the electrical firm entering into the contractual relationship with the City of Boynton Beach, but acts as a sub-contractor on city projects.

Section 2-443, *Prohibited conduct*, states as follows in relevant part:

- (c) *Prohibited contractual relationships.* No official or employee shall enter into any contract with or other transaction for goods or services with the [city]. *This prohibition extends to all contracts or transactions between the [city] or any person or agency acting for the [city], and the official or employee, directly or indirectly, or the official or employee's outside employer or business.* (emphasis added)

The Commission has determined that Mr. Ellis would be in violation of Section 2-443(c) of the code of ethics under the facts you have submitted, as KE has an indirect contractual relationship with the City of Boynton Beach, and that this indirect contractual relationship creates an issue of "privity of contract" with the City of Boynton Beach, thus violating §2-443 of the Code of Ethics. The commission further views the public position of Chief Electrician in the context of the nature of work performed by KE, that is, electrical work, to present an inherent conflict, notwithstanding the fact that the actual contract flows through a third party contractor. The concerns voiced by commissioners include the inevitable fact that his work will be subject to inspection and approval by his counterpart employees at Boynton Beach. In addition, should there be a problem with the work completed; your client is subject to



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lawsuits wherein his public employer may be in the position of suing its own public employee for private work done for the public entity. This not only presents an appearance of potential impropriety, but actual conflicts of interest.

IN SUMMARY, based on the facts and circumstances you submitted, the Commission on Ethics has determined that your client, Keith L. Ellis, is prohibited from using his outside business to sub-contract electrical work on city projects, where he enters into a sub-contractual relationship with a contractor to provide goods and services to the City of Boynton Beach, specifically electrical work. This indirect contractual relationship is prohibited by the code despite your assertion that Mr. Ellis has no enforcement, oversight or administrative responsibilities as a city employee under these contracts, and does not use his position as a city employee to gain any financial benefit for himself, a relative, household member, outside employer or business, customer or client, or non-profit organization of which he is an officer or director.

This opinion construes the Palm Beach County Code of Ethics ordinance, but 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 561-233-0724 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson  
Executive Director

ASJ/meb