



Palm Beach County Commission on Ethics

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July 8, 2011

Mr. Edward Lowery, Director
PBC Housing and Community Development
100 Australian Ave., 5th Floor
West Palm Beach, FL 33406

Re: RQO 11-030
Conflict of Interest, Misuse of Office

Dear Mr. Lowery,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on July 7, 2011.

YOU ASKED in your email dated May 31, 2011 whether it would be a prohibited conflict of interest under the Palm Beach County Code of Ethics for Wanda Gadson, a temporary employee in the Mortgage and Housing Assistance Section (MHA), within the PBC Division of Housing and Community Development (HCD), to be involved in matters where MHA provides financial assistance to potential homebuyers of foreclosed properties, when those properties are purchased from the Palm Beach County Community Land Trust (PBCCLT). PBCCLT is an independent non-profit community organization. Ms. Gadson serves as an unpaid officer (treasurer) and volunteer member of its Board of Directors. You also asked if a potential conflict of interest could be avoided by prohibiting Ms. Gadson, in her role as a temporary county employee with MHA, from working on any matters involving MHA assistance for purchases of residential property directly from PBCCLT. You provided additional information in two e-mails received by commission staff on June 6, 2011.

IN SUM, Ms. Gadson's county employment requires her to directly assess the eligibility of applicants for county housing assistance funds. These applicants include potential clients of the PBCCLT, on which she serves as an officer (Treasurer) and member of the Board of Directors. Based on the facts submitted, there is an inherent conflict between Ms. Gadson's temporary county employment and her position as a volunteer corporate officer and member of the PBCCLT Board of Directors.

THE FACTS as we understand them are as follows:

You are the Director of the Palm Beach County Division of Housing and Community Development (HCD). You recently hired Wanda Gadson as a temporary paid employee to work in the Mortgage and Housing Assistance Section (MHA) of HCD. MHA receives and assesses applications for housing assistance from applicants for both income verification purposes, and for sufficiency of information on these applications. Once MHA has completed these assessments, if approved by the MHA section Manager and HCD Director, MHA provides financial assistance to qualified first-time homebuyers. While Ms. Gadson has no authority to approve an application, she does have the authority to determine within standard guidelines whether the applicant's income level meets the required criteria, and whether an application contains sufficient information to continue in the approval process.

Ms. Gadson is also an unpaid volunteer officer and member of the Board of Directors of the Palm Beach County Community Land Trust (PBCCLT), a registered Florida non-profit corporation. PBCCLT is a county-wide community housing corporation formed primarily to preserve the quality and affordability of housing for low and moderate

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income families. PBCCLT is sometimes the recipient of federal grant monies by way of Palm Beach County's Neighborhood Stabilization Programs, which are administered by HCD. These funds are used by PBCCLT to purchase foreclosed residential properties, which are either sold or rented to eligible families. When such grant funds are disbursed to PBCCLT, it enters into an agreement with Palm Beach County through another HCD section, the Capital, Real Estate and Inspection Services section (CRE). The MHA section, which employs Ms. Gadson, is not involved in the application review or approval process or otherwise involved in the disbursement of these grant funds to PBCCLT, or to any individual applicants.

While the MHA section has no involvement in the distribution of grant funds to PBCCLT, they do provide home buyer assistance to households who may want to purchase the foreclosed residential properties from PBCCLT. According to information you have provided COE staff, Ms. Gadson's role in this process is to verify income and determine whether all required information on an application being submitted is complete. Her decision making authority in the approval process is limited to these two areas within the process.

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

Sec. 2-442. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. (Emphasis added)

Outside employer or business includes:

Any entity, other than the county, the state, or any other federal regional, local, or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced. For purposes of this definition, "compensation" does not include reimbursement for necessary expenses, including travel expenses. (Emphasis added)

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: (Emphasis added)

(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. (Emphasis added)

(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. (Emphasis added)

THE RATIONALE for scrutinizing the public position of a county employee when that employee sits as an officer or director of a non-profit organization is grounded in the desire to avoid the appearance that in their official capacity, the employee may influence the process to financially benefit the organization in a way not shared by similarly situated members of the general public. The closer the official function is to the beneficial transaction, the greater the appearance becomes that the transaction can be so affected.

As a temporary employee of Palm Beach County, Ms. Gadson falls within the jurisdiction of the Code of Ethics under Section 2-442, for the length of her employment. PBCCLT is not considered her outside employer under the code, because she fills only an unpaid volunteer role as an officer and member of their board of directors. Therefore, PBCCLT clients are not the clients of her outside employer under the Code of Ethics, thus only the prohibitions found within Section 2-443(a)(7) and (b) apply to her in this instance.

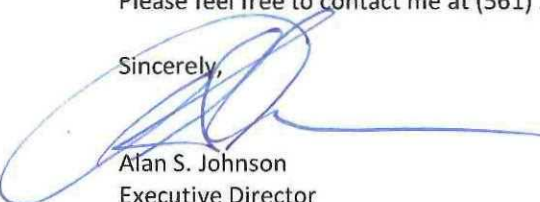
The code of ethics prohibits Ms. Gadson from using her official position to take or fail to take any action, or to influence others to take or fail to take any action that would lead to a financial benefit for PBCCLT due to her position as an officer and/or member of the board of directors of PBCCLT. This includes any preference for the approval of housing assistance for clients of PBCCLT. Regardless of whether she has final authority over approval of applications for housing assistance from MHA, her assignment within MHA is to assess applications for housing assistance funds. This assignment by its very nature gives her a certain level of decision making authority regarding these applications, and is not therefore "ministerial" in nature.

IN SUMMARY, based on the facts submitted, there is an inherent conflict of interest between Ms. Gadson's assigned duties as a county employee with MHA, and her position as an officer and board member of PBCCLT under Section 2-443(a)(7) and (b). We believe that this prohibited conflict of interest cannot be cured while she remains in her current assignment within MHA, and also remains as an officer or member of the board of directors of PBCCLT.

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 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson
Executive Director
Commission on Ethics

ASJ/meb/gal