



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

In Re: Kimberly Mitchell

C12-001

Public Report and Finding of No Probable Cause

COMPLAINANT, Alan S Johnson, Executive Director of the Commission on Ethics, filed the above-referenced COMPLAINT on January 4, 2012, alleging a possible ethics violation involving RESPONDENT Kimberly Mitchell, a West Palm Beach City Commissioner.

Count 1 of the COMPLAINT alleges that on November 25, 2011, RESPONDENT misused her official position by using resources of an on-duty City employee and City telephone equipment to resolve an issue concerning her personal, residential Comcast service, and knew or should have known through the exercise of reasonable care that these resources provided a financial benefit to herself, her spouse, or household members that was not available to the general public.

Count 2 of the COMPLAINT further alleges that her acts or omissions were done with wrongful intent and for the purpose of obtaining a benefit in a manner that was inconsistent with the proper performance of her public duties. Count 2 alleges Kimberly Mitchell encouraged the improper use of City personnel and resources in her telephone discussions with the on-duty employee, and in particular by the accolades she expressed to this employee when the repair appointment was changed to an earlier date through the efforts of the employee.

Pursuant to Chapter 8, Article XIII, Section 2-443(a), *Misuse of public office of employment* prohibits a public official or employee from using their official position to take any

action, or to influence others to take any action, in a manner which he or she knows or should know, will result in a special financial benefit, not shared by members of the general public, for any person or entity listed in §2-443(a)(1-7), which includes the official or employee and their spouse, domestic partner, or household member. Article XIII, Section 2-443(b), *Corrupt misuse of official position* prohibits any official or employee from using 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.

Pursuant to Chapter 2, Article V, Division 8, Section 2-258(a)¹ of the Palm Beach County Code of Ethics, the Commission on Ethics is empowered to enforce the county code of ethics.

On December 30, 2011, the COMPLAINT was determined by staff to be LEGALLY SUFFICIENT. The matter had been brought to the attention of COE staff by an anonymous complainant and pursuant to COE Rule of Procedure 4.1.3 a preliminary inquiry was commenced. After obtaining sworn statements from material witnesses and documentary evidence sufficient to warrant a legally sufficient finding a MEMORANDUM OF LEGAL SUFFICIENCY was filed and an investigation commenced pursuant to Article V, Division 8,

¹ Article V, Division 8, section 2-258(a). *Powers and Duties*. The commission on ethics shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The commission on ethics shall be empowered to review, interpret, render advisory opinions and enforce the:

- (1) Countywide Code of Ethics;
- (2) County Post-employment Ordinance; and
- (3) County Lobbyist Registration Ordinance

Section 2-260(d). Information obtained during the inquiry was adopted into the investigation and presented to the Commission on Ethics on February 2, 2012 with a staff recommendation that probable cause exists that a code of ethics violation occurred. Thereafter, the Commission conducted a Probable Cause hearing. The Commission reviewed and considered the investigative report, documentary submissions, recommendation of staff, written response of the RESPONDENT as well as oral statements of the RESPONDENT and ADVOCATE. At the conclusion of the hearing the Commission on Ethics determined that NO PROBABLE CAUSE exists in this matter.

We find that there are insufficient reasonably trustworthy facts and circumstances for the COMMISSION ON ETHICS to believe that the RESPONDENT violated section 2-443(a) or (b) of the Palm Beach County Code of Ethics.

Therefore it is:

ORDERED AND ADJUDGED THAT NO PROBABLE CAUSE exists and the COMPLAINT against RESPONDENT, Kimberly Mitchell, is hereby **DISMISSED**.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on February 2, 2012.

Palm Beach County Commission on Ethics,

By:


Edward Rodgers, Chair