



Palm Beach County Commission on Ethics

Commissioners
Manuel Farach, Chair
Robin N. Fiore, Vice Chair
Ronald E. Harbison
Daniel T. Galo
Patricia L. Archer

Executive Director
Alan S. Johnson

In Re: Frederick Pinto
Village of Royal Palm Beach

C12-009

PUBLIC REPORT AND FINAL ORDER OF DISMISSAL

COMPLAINANT, Martha Webster, filed a COMPLAINT on September 4, 2012, alleging a possible ethics violation involving RESPONDENT, Frederick Pinto, Village of Royal Palm Beach Councilman.

The COMPLAINT alleges RESPONDENT misused his official position by participating and voting on two issues before the village council that specially financially benefited Palm Beach County Commissioner Jess Santamaria, RESPONDENT'S outside employer. Respondent is employed by the Palm Beach County Board of County Commissioners as an Administrative Assistant to Commissioner Santamaria.

Pursuant to Chapter 2, Article V, Division 8, §2-258(a)¹ of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. An official may not use his official position in a manner which he knows or should know with the exercise of reasonable care will result in a special financial benefit to him, not shared with similarly situated members of the general public or otherwise corruptly secure a special privilege, benefit, or exemption for himself or others.²

On September 25, 2012, after reviewing the COMPLAINT, supporting affidavit and memorandum of inquiry, the COMPLAINT was determined by staff to be LEGALLY INSUFFICIENT, and presented to the Commission on Ethics on October 4, 2012 with a recommendation of dismissal as LEGALLY INSUFFICIENT.

The Commission on Ethics reviewed the COMPLAINT and memorandum of inquiry and requested that staff review and reconsider its finding and the matter was tabled. Upon further review, Alan S. Johnson, Executive Director made the following LEGAL SUFFICIENCY findings:

1. Allegations that RESPONDENT violated Art. XIII, §2-443(a)(4) Misuse of public office or employment/outside employer conflict, are LEGALLY INSUFFICIENT insofar as the Code of Ethics definition of outside employer specifically excludes another governmental entity.

¹ Article V, Division 8, section 2-258. Powers and duties. (a) 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) County Code of Ethics;
- (2) County Post-Employment Ordinance, and
- (3) County Lobbyist Registration Ordinance.

² Article XIII, §2-443(a) and (c)

2. Allegations that RESPONDENT violated Art. XIII, §2-443(b) Corrupt misuse of official position, were determined to be LEGALLY SUFFICIENT on October 17, 2012.
3. Allegations that RESPONDENT violated Art. XIII, §2-443(a)(1) Misuse of public office or employment/personal benefit and §2-443(c) Disclosure of Voting Conflicts, were determined to be LEGALLY SUFFICIENT on October 17, 2012.

The Memorandum of Probable Cause and Memoranda of Inquiry and Investigation, adopted by reference, were presented to the Commission on Ethics on January 10, 2013 with a recommendation that NO PROBABLE CAUSE exists to believe there was a code of ethics violation, and the facts and circumstances warrant a DISMISSAL with a LETTER OF INSTRUCTION to the RESPONDENT. At that time, the Commission conducted a hearing. The Commission reviewed and considered the Memoranda of Inquiry, Investigation and Probable Cause, recommendation of staff, as well as oral statements of the RESPONDENT and ADVOCATE. The Commission also reviewed Article V, Section 2-260.3 of the Commission on Ethics Ordinance.³ At the conclusion of the hearing the Commission on Ethics determined that there was NO PROBABLE CAUSE to believe that a violation of Art. XIII, §§2-443(a), *Misuse of public office or employment*, (b), *Corrupt misuse of official position*, and (c), *Disclosure of voting conflicts*, had occurred; however, a LETTER OF INSTRUCTION would be appropriate under the circumstances presented. Based on the facts and circumstances surrounding the alleged violations, the Commission finds that the public interest would not be served by proceeding further.

Therefore it is:

ORDERED AND ADJUDGED THAT NO PROBABLE CAUSE exists, and the **COMPLAINT (C12-009)** against **RESPONDENT**, Frederick Pinto, is hereby **DISMISSED** and a **LETTER OF INSTRUCTION** is to be issued in this case.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on January 10, 2013.

Palm Beach County Commission on Ethics,

By: _____
Manuel Farach, Chair

³ Sec. 2-260.3. Dismissal of Complaints

Notwithstanding any other provisions of this division, the commission on ethics may, at its discretion: (a) dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, or (b) dismiss any complaint at any stage of disposition and issue a letter of instruction to the respondent when it appears that the alleged violation was inadvertent, unintentional or insubstantial. In the event the commission on ethics dismisses a complaint as provided in this subsection, the commission on ethics shall issue a public report stating with particularity its reasons for the dismissal.



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C12-009

LETTER OF INSTRUCTION

Martha Webster (Complainant) filed the above-captioned complaint against Frederick Pinto, Village of Royal Palm Beach Councilman (Respondent) alleging violations of the Palm Beach County Code of Ethics, Article XIII, §2-443(a)(Misuse of public office) and §2-443(b)(Corrupt misuse of official position) and §2-443(c)(Disclosure of voting conflicts). The complaint alleges, in part, that Respondent, while a Town Councilman, misused his official position by participating and voting on land use applications before the Village of Royal Palm Beach (the Village) Council, thereby benefiting his at-will supervisor, a Palm Beach County Commissioner.

- **Facts and analysis**

Respondent is an elected councilman for the Village. As an elected municipal official in Palm Beach County, Respondent is subject to the Palm Beach County Code of Ethics.

Respondent is also employed by the Palm Beach County Board of County Commissioners as an Administrative Assistant to a County Commissioner. His employment status is at-will. As an at-will employee Respondent is not subject to Merit Service. Therefore, his employment may be terminated at any time and without cause. Merit Rules of conduct, disciplinary guidelines, adverse actions and employee recourse only apply to permanent status employees. In short, Respondent's County position is dependent upon his ongoing relationship with the Commissioner.

There is no documentary or testimonial evidence that Respondent actively participated in obtaining a benefit for his county supervisor or his business holdings prior to the matter coming before the Village Council. The record reflects, on two separate occasions, Respondent participated and voted on land use applications benefiting the business interests of his county supervisor. Both involved land use applications for prospective tenants of a Shopping Plaza owned in part by the Commissioner. As a sitting municipal official, when he initially considered becoming a County Administrative Assistant, Respondent had asked one of the Village's Attorneys whether a conflict of interest would prevent his accepting that position. According to the Attorney for the Village, she informed him only that there was no inherent conflict regarding his position; however, she did not opine as to conflicts regarding any specific issues that may come before his council. Respondent did not ask the COE for an advisory opinion on this matter.

Potentially, giving a financial benefit to his at-will supervisor may also inure to Respondent's own financial interest in maintaining his employment as Administrative Assistant. Under the facts and circumstances discovered during a COE Inquiry and Investigation there is no evidence that Respondent's actions involved a quid pro quo or that Respondent otherwise actively participated in steering or otherwise facilitating a financial benefit to the Commissioner or his business interests to obtain the good will of his supervisor. However, there is an appearance of impropriety when Respondent's official acts as Village Councilman may benefit the supervisor of his outside government employer. This is especially true when the government employment is at-will and reliant on the good will of his supervisor.

- **Holding**

Sec. 2-443 Prohibited conduct, states in relevant part:

(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)

(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;

(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.

(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).

Sec. 2-442. Definitions, states in part as follows:

Outside employer or business includes:

(1) 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.

Sec. 2-260.3. Dismissal of complaints, states as follows:

Notwithstanding any other provisions of this division, the commission on ethics may, at its discretion: (a) dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, or (b) dismiss any complaint at any stage of disposition and issue a letter of instruction to the respondent when it appears that the alleged violation was inadvertent, unintentional or insubstantial. In the event the commission on ethics dismisses a complaint as provided in this subsection, the commission on ethics shall issue a public report stating with particularity its reasons for the dismissal. The commission on ethics may, at the request of the state attorney or any other law enforcement agency, stay an ongoing proceeding. The commission on ethics shall not interfere with any ongoing criminal investigation of the state attorney or the U.S. Attorney for the Southern District of Florida.

Respondent did participate and vote on two issues involving land use applications submitted by prospective tenants of the Shopping Center. These applications benefitted the Shopping Center, a business interest of the Respondent's county government supervisor. Respondent's public job as an at-will employee is contingent on the relationship between himself and the Commissioner and may be terminated without cause at any time. The fact that the language of the Code excludes this relationship as a violation of the code by definition does not change the appearance of impropriety when a subordinate employee uses his or her official position to benefit their government supervisor.

The Commission is mindful that the facts and circumstances indicate Respondent was not personally involved in promoting or facilitating the transactions that benefitted the Commissioner nor did he attempt to influence Village staff in their recommendation to Council. The Commission is also mindful of the fact that Respondent did ask a Village attorney whether taking the County position would require him to resign his position as council member. However, he did not inquire as to conflicts of interest inherent in matters pertaining to his county government supervisor's

personal business holdings in the Village, nor did he request an advisory opinion from this Commission.

In light of the facts and circumstances known to the Commission on Ethics, the complaint was dismissed by Order of the Commission with this Letter of Instruction. The COE believes that the alleged violation was inadvertent and unintentional and has determined that the public interest would not be served by proceeding further. However, Respondent is now advised that the filing of Ethics Complaint C12-009, along with this Letter of Instruction, is to serve as notice that actions taken by Respondent in participating and voting on issues benefiting his at-will supervisor, to the extent that the benefit is not available to members of the general public, creates an appearance that the vote is to engender good will or otherwise enhance his position with that government supervisor. Respondent is instructed to be more careful to ensure that he avoids such potential conflicts in the future when presented with issues specially benefitting him or his government supervisor's outside business interests and to conform his activities to this Letter of Instruction and to the requirements of §2-443(a), (b) and (c).

This letter of instruction is issued by the Palm Beach County Commission on Ethics in public session on January 10, 2013.

Palm Beach County Commission on Ethics,

By:



Manuel Farach, Chair