

Agenda

September 4, 2014 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Palm Beach County

Commission on Ethics

300 North Dixie Highway
West Palm Beach, FL 33401

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Commissioners

Salesia V. Smith-Gordon, Chair

Michael S. Kridel, Vice Chair

Michael F. Loffredo

Carmine A. Priore

Clevis Headley

Executive Director

Steven P. Cullen

Intake Manager

Gina A. Levesque

Staff Counsel

Christie E. Kelley

Senior Investigator

Mark E. Bannon

Investigator

Anthony C. Bennett

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from August 7, 2014
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 14-022
 - b. RQO 14-023
 - c. RQO 14-024
 - d. RQO 14-025
- VI. Items Pulled from Consent Agenda
 - a.
- VII. Discussion re: Workshop
- VIII. Executive Director Comments
- IX. Commission Comments
- X. Public Comments
- XI. Adjournment

If a person decides to appeal any decision made by this Commission with respect to any matter considered at this meeting or hearing, (s)he will need a record of the proceedings, and that, for such purpose, (s)he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

**OFFICIAL MEETING MINUTES
OF THE
PALM BEACH COUNTY COMMISSION ON ETHICS
PALM BEACH COUNTY, FLORIDA**

AUGUST 7, 2014

**THURSDAY
1:30 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Salesia V. Smith-Gordon, Chair
Michael S. Kridel, Vice Chair
Clevis Headley
Michael F. Loffredo
Carmine A. Priore

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Senior Investigator
Anthony C. Bennett, COE Investigator
Steven P. Cullen, COE Executive Director
Christie E. Kelley, COE Staff Counsel
Gina A. Levesque, COE Intake Manager

ADMINISTRATIVE STAFF:

Andrea Javier, Minutes Clerk, Clerk & Comptroller's Office
Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Chair Salesia Smith-Gordon requested that cell phones be silenced or placed on vibrate, and that comment cards were available.

IV. APPROVAL OF MINUTES FROM JUNE 5, 2014

MOTION to approve the June 5, 2014, minutes. Motion by Michael Kridel, seconded by Clevis Headley, and carried 5-0.

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

V.a. Request for Opinion (RQO) 14-013

V.b. RQO 14-014

V.c. RQO 14-017

V.d. RQO 14-018

V.e. RQO 14-019

V.f. RQO 14-020

V.g. RQO 14-021

MOTION to approve the consent agenda. Motion by Carmine Priore, seconded by Clevis Headley, and carried 5-0.

VI. ITEMS PULLED FROM CONSENT AGENDA – None

VII. PROPOSED ADVISORY OPINIONS

VII.a. RQO 14-015

Steven Cullen, COE Executive Director, said that:

- A Village of Wellington (Wellington) councilwoman asked whether she was prohibited from voting on the selection of a design and the award of a contract to construct a bridle and multipurpose path adjacent to the Palm Beach Point (PBP) community.
- The PBP Property Owner's Association (POA) was her customer or client, and within the previous 24 months, she supplied the POA with goods or services valued over \$10,000.

VII.a. – CONTINUED

- Staff submitted that:
 - Councilwoman Anne Gerwig’s vote would not give any special financial benefit to her customer or client.
 - Under previous COE determinations and State law, any financial benefit must be clear, direct, and immediate rather than remote or speculative.
 - Councilwoman Gerwig could vote on the matter.

Chair Smith-Gordon said that Councilwoman Gerwig and her client could benefit from the project. She asked that the COE consider adding language to the opinion that a hint of impropriety may exist and should be considered.

Mr. Cullen said that under Rule 2.8(f), the COE had discretionary power to add cautionary language.

MOTION to approve amending proposed advisory opinion letter RQO 14-015 to include language that a hint of impropriety may exist. Motion by Salesia Smith-Gordon.

Mr. Cullen clarified that Wellington Assistant Attorney Megan Rogers and her client sought the opinion because a future, similar matter may come before the COE.

Chair Smith-Gordon said that the COE could not recommend that Councilwoman Gerwig not vote unless clear evidence of a financial benefit existed.

Mr. Cullen said that the opinion letter would state that she could vote; however, it would caution her to ensure that no financial benefit existed in this matter or in future, similar ones.

Commissioner Carmine Priore expressed concern that the offering of subjective recommendations would set a precedent.

VII.a. – CONTINUED

Mr. Cullen recommended that any proposed language be inserted on page 3, somewhere in the second to the last paragraph.

Commissioner Michael Kridel said that based on RQO 14-015's specific facts and circumstances, the additional language was unnecessary.

MOTION SECONDED by Clevis Headley, and carried 3-2. Michael Kridel and Carmine Priore opposed.

Commissioner Headley suggested adding the language, "however, please be advised that there may be the appearance of impropriety, and the applicant should proceed with due caution," at the end of page 3's last sentence in the second to the last paragraph.

Intake Manager Gina Levesque read the proposed language, "Please be advised that the appearance of impropriety..."

Chair Smith-Gordon suggested adding, "may exist," after the word, "impropriety."

Commissioner Headley suggested adding, "and should accordingly proceed with caution," after the words, "may exist."

Chair Smith-Gordon read the proposed language: "however, please be advised that the appearance of impropriety may exist, and voting should be proceeded with caution."

Mr. Cullen recommended amending the end of the sentence to read: "should proceed with caution."

Chair Smith-Gordon said that by consensus, proposed advisory opinion letter RQO 14-015 would be approved as amended to reflect the language discussed.

VII. – CONTINUED

VII.b. RQO 14-016

Mr. Cullen said that:

- The Town of Manalapan (Manalapan) chief of police asked whether giving sworn police officers firearms and bulletproof vests purchased with holiday gift money given to the Manalapan Police Department (department) would violate the Code of Ethics gift law.
- The firearms would become the officers' personal property.
- The vests would be used during work hours for five years, after which time they became valueless and would be given to the officers as personal property.
- Staff submitted that:
 - The firearms would be considered gifts under the gift law and would require completion of a gift report form.
 - The vests would not be considered gifts since they remained the department's property until losing value.

Chair Smith-Gordon said that she would allow comment from Police Chief Carmen Mattox.

Mr. Mattox said that:

- Most holiday gift money was used to purchase department equipment; however, the officers requested that the funds be used to purchase firearms for their personal use.
- The holiday money was given to the department without terms or conditions.
- The officers used Glock 22, 40-caliber firearms when working but were requesting smaller Glock 380 firearms for their personal use.

VII.b. – CONTINUED

- The department did not require that officers carry firearms at all times within their jurisdictions.
- Officers must be State qualified to carry off-duty firearms.

Chair Smith-Gordon stated that the COE's opinion was narrowly construed based on its governing rules. She said that determining whether the gift's type or dissemination was or was not appropriate would be governed by the State and the department, and not by the COE.

MOTION to approve proposed advisory opinion letter RQO 14-016 as amended to include changing the language on page 3, the second to the last paragraph to read: "Our opinion merely narrowly construes the Palm Beach County's Code of Ethics ordinance, and is not applicable to any conflict under State law or regulatory rules governing guns or law enforcement regulations." Motion by Salesia Smith-Gordon, seconded by Clevis Headley, and upon call for a vote, the motion FAILED 2-3. Michael Kridel, Michael Loffredo, and Carmine Priore opposed.

MOTION to approve proposed advisory opinion letter RQO 14-016 as written. Motion by Carmine Priore, seconded by Michael Loffredo, and carried 5-0.

VIII. DISCUSSION RE: WEBSITE TRAFFIC AND SOCIAL MEDIA

Mr. Cullen said that:

- Staff and the County's Information Systems Services Department (ISS) made recent COE Web site modifications.
- Web site tabs were cleaner, content was changed to streamline the main page's appearance, and opinion summaries would be added.
- The agenda package contained Google Analytics' analysis of COE Web site traffic.
 - Approximately 18,000 pages were viewed from January 1, 2014, through July 23, 2014.

VIII. – CONTINUED

- The main page was the most viewed, followed by pages about training, opinions, meetings, ordinances, codes, contact, and complaints.
- Google Analytics also analyzed the “bounce” rate, or the percentage of individuals who visited a Web site, retrieved their requested material, and immediately signed off. A 56 percent “bounce” rate was considered good by ISS.
- A PowerPoint training slide problem was fixed.

Staff Counsel Christie Kelley said that:

- The COE maintained an active Twitter and Facebook presence.
- Each month, COE’s Facebook page saw increased activity.
 - There were 15 Facebook postings in October 2014, and 89 in July 2014.
 - She was an active “friend” of the COE’s Facebook page, which included a staff link.

Chair Smith-Gordon said that she would click “like” on the COE’s Facebook web page, and she requested that other commissioners with Facebook profiles do the same.

IX. DISCUSSION RE: WORKSHOP

Chair Smith-Gordon said that she spoke with Mr. Cullen about scheduling a workshop to discuss the Office of Program Policy Analysis and Government Accountability and other issues.

MOTION to approve scheduling a COE workshop. Motion by Salesia Smith-Gordon.

Commissioner Priore said that he supported holding a workshop after the ethics summit with the legislators was scheduled.

IX. – CONTINUED

Chair Smith-Gordon said that holding a workshop beforehand would allow information to be brought forward to the summit.

Commissioner Kridel said that a summit in 2014 was probably unlikely.

Mr. Cullen stated that a summit planning meeting with State Senator Joseph Abruzzo and statewide COE directors was scheduled for August 8, 2014.

MOTION SECONDED by Clevis Headley, and carried 3-2. Michael Kridel and Carmine Priore opposed.

BOARD DIRECTION:

Chair Smith-Gordon requested that Mr. Cullen discuss possible summit dates and the selection of a potential facilitator with the commissioners.

She added that:

- David Baker, former Palm Beach County Ethics Ordinances Drafting Committee chair, was interested in facilitating the summit.
- A September workshop would provide an idea of what to anticipate from the legislators at the summit.

Ms. Levesque said that since the workshop was a public meeting, it could be held in the Board of County Commissioners chambers for Channel 20 viewing or in another main conference room with recording equipment accommodations.

Commissioner Priore suggested a roundtable seating arrangement.

Ms. Levesque stated that the County's Vista Center conference room could also accommodate viewing and recording equipment. However, she said, the room contained a dais seating arrangement. She added that a former commissioner requested that no COE meetings be held in locations such as the Vista Center, which lacked security metal detectors.

IX. – CONTINUED

MOTION to approve holding the workshop at the Vista Center. Motion by Salesia Smith-Gordon, seconded by Clevis Headley, and carried 5-0.

Chair Smith-Gordon suggested scheduling the workshop for a Friday morning.

Commissioner Headley suggested that the room be reserved for three hours.

Commissioner Priore said that he would be absent until August 31, and that he would attend September's COE meeting but would be absent again until September 30.

Chair Smith-Gordon said that since some commissioners may have conflicting schedules in October, a September workshop should be scheduled.

X. EXECUTIVE DIRECTOR COMMENTS

X.a. Complaint Process Comparison Chart

Mr. Cullen said that the agenda packet contained a chart comparing how the State, Palm Beach/Miami-Dade counties, and the City of Jacksonville COEs handled their complaint process. He added that most of the local COEs utilized a similar trial process, while the State COE used a Division of Administrative Hearings judge.

(CLERK'S NOTE: See page 10 for continuation of item X.a.)

X.b. Ethics Summit Update

Mr. Cullen said that he anticipated the ethics summit process and date would be determined at the August 8 summit planning meeting.

X.c. Case Statistics

Mr. Cullen said that the agenda packet included some work product statistics from January 2014 to July 2014. He stated that the statistics involved staff's workload regarding the number of opinions, inquiries, complaints, referrals, public records requests, training and community outreach.

X.a. – CONTINUED

Mr. Cullen said that he believed that the local COE executive directors were satisfied with their complaint process; however, they may propose changes at the summit planning meeting.

XI. COMMISSION COMMENTS – None

XII. PUBLIC COMMENTS – None

XIII. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Michael Kridel, seconded by Clevis Headley, and carried 5-0.

At 2:25 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

V Processed Advisory Opinions

RQO 14-022 Noel Pfeffer (Re: Commissioner Al Jacquet)

The City Attorney for the City of Delray Beach (City) asked if Commissioner Al Jacquet, in his personal capacity, could provide legal services to an individual, who previously had an ownership interest in a well-known restaurant/inn located in the City but does not have an ownership interest in any business in the City or any contracts, agreements, or applications pending with the City.

Staff submits the following for COE review: Commissioner Jacquet is not prohibited from providing legal services to the individual in his personal capacity. The Code of Ethics prohibits an elected official from using his official position as a commissioner to give a special financial benefit, not shared with similarly situated members of the general public, to a customer or client of his outside business or to corruptly secure a special benefit for any person. Therefore, if a matter before the City Commission would result in a special financial benefit to a customer or client of his outside business, the official must disclose the nature of the conflict, abstain from voting and participating in the matter, and complete the Conflict Form 8B. Here, for this individual to be considered a customer or client of the commissioner, Commissioner Jacquet's outside business must have supplied goods or services to him in excess of \$10,000 over the previous 24 months. However, since the COE cannot speculate about potential conflicts of interest that may come before Commissioner Jacquet and the City Commission in the future, any additional questions regarding voting conflicts would need to be resubmitted to the COE with specific facts and circumstances relative to a potential conflict.

RQO 14-023 Noel Pfeffer (Re: Deputy Vice Mayor Jordana Jarjura)

The City Attorney for the City of Delray Beach (City) asked if Deputy Vice Mayor Jordana Jarjura could participate in a City Commission workshop involving the All Aboard Florida (AAF) project, scheduled for September 4, 2014, when her client, Lauderdale Marine Center (LMC), would be financially impacted by the AAF project, and if she could vote on a formal resolution regarding the AAF project.

Staff submits the following for COE review: Deputy Vice Mayor Jarjura may not vote on the formal resolution or participate in the workshop. In order to comply with the Code of Ethics, she will need to publicly disclose the nature of the conflict before the City Commission discusses the matter, abstain from participating and voting on the matter, and file a state voting conflict form (8B). The Code prohibits an elected official from using her official position as a commissioner to give a special financial benefit, not shared with similarly situated members of the general public, to a customer or client of her outside business or employer or to corruptly secure a special benefit for any person. Here, since she has supplied services in excess of \$10,000 over the previous 24 months to LMC, LMC is a customer or client of the Deputy Vice Mayor's outside employer or business. Additionally, based on the information provided, the AAF project will have a financial impact on LMC. LMC's location near the drawbridge on the New River will cause a disruption to its operation and deny access to the marina and shipyard each time the drawbridge is lowered. As such, voting on the matter would constitute giving a special financial benefit to a customer or client of the Deputy Vice Mayor's outside business or employer.

RQO 14-024 Julie Oldbury

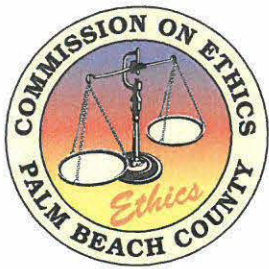
The Director of Human Resources and Risk Management for the City of Boynton Beach asked if volunteers of the Links at Boynton Beach Golf Course (Golf Course) could receive special privileges or perks for volunteering.

Staff submits the following for COE review: The Code of Ethics does not prohibit the City of Boynton Beach from offering a benefit to its volunteers. However, under the Code, municipal volunteers fall within the definition of an employee. As such, the Golf Course volunteers are required to comply with the gift law requirement. Therefore, if the value of the privileges or perks received by a volunteer, in the aggregate, exceeds \$100, they are reportable gifts and must be reported in an annual gift disclosure report filed with the COE.

RQO 14-025 Lucy Rodriguez

An employee of the Town of Palm Beach, who is also on the Board of the Palm Beach Economic Crime Unit, which is a 501(c)(3) not-for-profit charitable organization, asked if she was required to complete an annual gift disclosure report for a golf foursome that is being donated as a raffle prize for the charitable organization's fundraising golf tournament.

Staff submits the following for COE review: The donation of the golf foursome to the charitable organization falls within the charitable solicitation section of the Code of Ethics. As such, she does not need to complete an annual gift disclosure report for the donation, but she must maintain and submit a solicitation log to the COE. All of her solicitations must be disclosed in a solicitation log. The log must contain the name of the non-profit organization, the event for which the funds were solicited, the name of any person or entity that was contacted, and the amount of funds solicited. This solicitation log must be filed with the COE within 30 days after the event or within 30 days of the solicitation if it is not related to an event.



Palm Beach County Commission on Ethics

Commissioners

Salesia V. Smith-Gordon, *Chair*

Michael S. Kridel, *Vice Chair*

Michael F. Loffredo

Carmine A. Priore

Clevis Headley

Executive Director

Steven P. Cullen

August 20, 2014

Mr. Noel Pfeffer, City Attorney
City of Delray Beach
200 N.W. 1st Avenue
Delray Beach, FL 33444

Re: RQO 14-022
Misuse of Office/Conflict of Interest

Dear Mr. Pfeffer,

Your request for an advisory opinion from the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows:

QUESTION:

May Commissioner Al Jacquet, in his personal capacity, provide legal services to Mr. Tom Worrell, who does not have an ownership interest in any business in the City of Delray Beach (City) or any contracts, agreements, or applications pending with the City?

ANSWER:

Based on the facts submitted, Commissioner Jacquet is not prohibited from providing legal services in his personal capacity to Mr. Worrell.

The Palm Beach County Code of Ethics (Code) prohibits an elected official from using his official position as a commissioner to give a special financial benefit, not shared with similarly situated members of the general public, to a customer or client of his outside business or to corruptly secure a special benefit for any person.¹ If a matter before the City Commission would result in a special financial benefit to a customer or client of his outside business, the official must disclose the nature of the conflict, abstain from voting and participating in the matter, and complete the Conflict Form 8B.² For Mr. Worrell to be considered a customer or client, Commissioner Jacquet's outside business must have supplied goods or services to Mr. Worrell in excess of \$10,000 over the previous 24 months.³

However, since the COE cannot speculate about potential conflicts of interest that may come before Commissioner Jacquet and the City Commission in the future, any questions regarding voting conflicts would need to be resubmitted to the COE with specific facts and circumstances relative to a potential conflict.

¹ §2-443(a); §2-443(b)

² §2-443(c)

³ §2-442

FACTS:

You are the City Attorney for the City of Delray Beach and seeking an advisory opinion on behalf of Commissioner Al Jacquet, a City Commissioner. Commissioner Jacquet is also a member of the Florida Bar and has a private practice law firm. Commissioner Jacquet has received a request from a potential client, Mr. Tom Worrell, to provide general legal services to Mr. Worrell and his family with matters unrelated to any City business. Commissioner Jacquet will be compensated by Mr. Worrell through a written retainer agreement providing for a monthly fee in exchange for legal services. Commissioner Jacquet is being retained by Mr. Worrell based solely on his skills as an attorney.

Mr. Worrell previously had an ownership interest in a well-known restaurant/inn located in the City of Delray Beach. The restaurant/inn has previously applied for and received certain development approvals from the City. Mr. Worrell no longer has any ownership interest in the restaurant/inn and does not have any contracts, agreements, or applications pending with the City.

LEGAL BASIS:

The legal basis for this opinion is found in §2-442, §2-443(a-c) of the Code:

Sec. 2-442. Definitions.

Customer or client means any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).

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;
 - (5) A customer or client of the official or employee's 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.

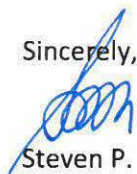
- (c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a) above. The official shall publicly disclose the nature of the conflict and 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).

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It 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 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Steven P. Cullen,
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

Commissioners

Salesia V. Smith-Gordon, *Chair*

Michael S. Kridel, *Vice Chair*

Michael F. Loffredo

Carmine A. Priore

Clevis Headley

Executive Director

Steven P. Cullen

August 22, 2014

Mr. Noel Pfeffer, City Attorney
City of Delray Beach
200 N.W. 1st Avenue
Delray Beach, FL 33444

Re: RQO 14-023
Misuse of Office/Conflict of Interest

Dear Mr. Pfeffer,

Your request for an advisory opinion from the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows:

QUESTION:

May Deputy Vice Mayor Jordana Jarjura participate in a City of Delray Beach (City) Commission workshop involving the All Aboard Florida (AAF) project, scheduled for September 4, 2014, when her client, Lauderdale Marine Center (LMC), would be financially impacted by the AAF project, and may she vote on a formal resolution regarding the AAF project?

ANSWER:

Based on the facts submitted, Deputy Vice Mayor Jarjura may not vote on the formal resolution or participate in the workshop. In order to comply with the Palm Beach County Code of Ethics (Code), she will need to publicly disclose the nature of the conflict before the City Commission discusses the matter, abstain from participating and voting on the matter, and file a state voting conflict form (8B).¹

The Code prohibits an elected official from using her official position as a commissioner to give a special financial benefit, not shared with similarly situated members of the general public, to a customer or client of her outside business or employer or to corruptly secure a special benefit for any person.² A customer or client is any entity to which an official's outside employer or business has supplied services in excess of \$10,000 during the previous 24 months.³ Financial benefit, in the context of the Code, constitutes economic gain or loss.⁴ For a financial benefit to be "special", the benefit must uniquely affect the prohibited person or entity, rather than affecting the municipality as a whole.

¹ §2-443(c)

² §2-443(a); §2-443(b)

³ §2-442

⁴ RQO 10-013 (For the purpose of ordinance construction, the commission finds that a financial benefit includes either a private gain or loss)

Here, since she has supplied services in excess of \$10,000 over the previous 24 months to LMC, LMC is a customer or client of the Deputy Vice Mayor's outside employer or business. Additionally, based on the information provided, the AAF project will have a financial impact on LMC. LMC's location near the drawbridge on the New River will cause a disruption to its operation and deny access to the marina and shipyard each time the drawbridge is lowered. As such, voting on the matter would constitute giving a special financial benefit to a customer or client of the Deputy Vice Mayor's outside business or employer.

FACTS:

You are the City Attorney for the City and are seeking an advisory opinion on behalf of Deputy Vice Mayor Jordana Jarjura. In addition to her position as a City commissioner, she is also a practicing attorney with the law firm of Conrad & Scherer. Among the Deputy Vice Mayor's clients is LMC, a 50-acre full service marina and shipyard located on the New River in Fort Lauderdale. The Deputy Vice Mayor has represented LMC since 2010, handling the company's land use, environmental, local government regulation, and litigation issues, and has provided over \$10,000 in services over the previous 24 months.

Since early 2014, LMC has been monitoring the approval and construction of the proposed AAF project. AAF is a high-speed rail service that will operate on the Florida East Coast Railway corridor between Miami and Orlando. Trains will run at one hour intervals between 12-14 times per day, allowing 32 trains to pass. In order for boats and yachts to access the shipyard and marina, they must navigate down the New River. The railway corridor includes a drawbridge over the New River that would need to be lowered to allow the trains to pass, and the increased lowering of this bridge will impact the navigation of the New River and LMC's marina operations.

The Broward County marine industry, including LMC, has been working with the City of Fort Lauderdale to try and get AAF to mitigate the impact on the marine industry. The Deputy Vice Mayor has been representing LMC in its discussions with AAF.

The City is also studying the proposed AAF project and its direct impact on the City, including the 11 at-grade railroad crossings located within the City. A City Commission Workshop is scheduled for September 4, 2014 to discuss the AAF project. Although no action or vote can occur at a workshop, the Commission will likely consider adopting a formal resolution in response to the proposed AAF project at a subsequent City Commission meeting.

LEGAL BASIS:

The legal basis for this opinion is found in §2-442 and §2-443(a-c) of the Code:

Sec. 2-442. Definitions.

Customer or client means any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).

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.

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:
- (5) A customer or client of the official or employee's 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) 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).

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It 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 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Steven P. Cullen,
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

Commissioners

Salesia V. Smith-Gordon, *Chair*

Michael S. Kridel, *Vice Chair*

Michael F. Loffredo

Carmin A. Priore

Clevis Headley

Executive Director

Steven P. Cullen

August 25, 2014

Ms. Julie Oldbury,
Director of Human Resources and Risk Management
City of Boynton Beach
100 E. Boynton Beach Blvd.
Boynton Beach, FL 33435

Re: RQO 14-024
Gift Law

Dear Ms. Oldbury,

Your request for advisory opinion from the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows:

QUESTION:

May volunteers of the Links at Boynton Beach Golf Course (Golf Course) receive special privileges or perks for volunteering?

ANSWER:

Based on the facts submitted, the Palm Beach County Code of Ethics (Code) does not prohibit the City of Boynton Beach (City) from offering a benefit to its volunteers.¹ However, under the Code, municipal volunteers fall within the definition of an employee.² As such, the Golf Course volunteers are required to comply with the gift law requirement. Therefore, if the value of the privileges or perks received by a volunteer, in the aggregate, exceeds \$100, they are reportable gifts and must be reported in an annual gift disclosure report filed with the COE.³

FACTS:

You are the Director of Human Resources and Risk Management for the City. The City would like to extend certain perks or privileges to the volunteers of the City's Golf Course. These volunteers will be assisting in the day-to-day operations of the Pro Shop and must be available from October 2014 through May 2015. To be eligible to receive the perks or privileges, the volunteer must work a minimum of eight hours a week. The perks or privileges to the volunteers would be:

- Playing free golf (on standby only) up to a maximum of three times during the seven-day week;
- Free unlimited driving range privileges;
- 10% additional discount off prices marked on any Pro Shop merchandise in stock only.

¹ RQO 12-021

² §2-442

³ §2-444(f)

LEGAL BASIS:

The legal basis for this opinion is found in §2-442, §2-444(f) and §2-444(g) of the Code:

Sec. 2-442. Definitions.

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

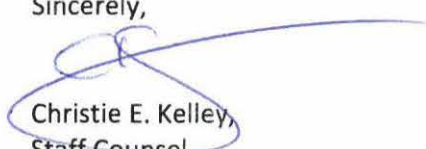
Sec. 2-444. Gift law.

- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
- (2) *All other officials and employees who are not reporting individuals under state law.*
- b. *All other gifts.* All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics no later than November 1 of each year beginning November 1, 2011, for the period ending September 30 of each year. All officials or employees who are not reporting individuals under state law and who do not receive a gift in excess of one hundred dollars (\$100) during a given reporting period shall not file an annual gift disclosure report. The annual gift disclosure report shall be created by the county commission on ethics and shall be in a form substantially similar in content as that required by state law.
- (g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It 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 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Christie E. Kelley,
Staff Counsel

CEK/gal



Palm Beach County Commission on Ethics

Commissioners

Salesia V. Smith-Gordon, *Chair*
Michael S. Kridel, *Vice Chair*
Michael F. Loffredo
Carmine A. Priore
Clevis Headley

Executive Director

Steven P. Cullen

August 28, 2014

Ms. Lucy M. Rodriguez, Crime Intelligence Analyst
Palm Beach Police Department
345 South County Rd.
Palm Beach, FL 33480

Re: RQO 14-025
Charitable Solicitation

Dear Ms. Rodriguez,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on September 4, 2014.

QUESTION:

Are you, as an employee of the Town of Palm Beach (Town), who is also involved in fundraising for a 501(c)(3) not-for-profit charitable organization, required to complete an annual gift disclosure report for a golf foursome that is being donated as a raffle prize for the charitable organization's fundraising golf tournament?

ANSWER:

Based on the facts submitted, the donation of the golf foursome to the charitable organization falls within the charitable solicitation section of the Palm Beach County Code of Ethics (Code). As such, you do not need to complete an annual gift disclosure report for the donation, but you must maintain and submit a solicitation log to the COE.

Under the Code, as a public employee, you may never solicit a gift for an organization as a quid pro quo for an official action as a part of your duties as a public employee.¹ Additionally, you may not use on-duty Town staff or Town resources to solicit the contributions.² However, you may solicit funds on behalf of non-profit organizations from anyone so long as they do not have a pending application or award of any nature before the Town.³

Furthermore, all of your solicitations must be disclosed in a solicitation log. The log must contain the name of the non-profit organization, the event for which the funds were solicited, the name of any

¹ 52-444(h)(1)

² 52-444(h)(3)

³ 52-444(h)(1)

person or entity that was contacted, and the amount of funds solicited.⁴ This solicitation log must be filed with the COE within 30 days after the event or within 30 days of the solicitation if it is not related to an event.⁵ A solicitation log is enclosed for your convenience.

FACTS:

You are a Crime Intelligence Analyst at the Palm Beach Police Department. You are also on the Board of the Palm Beach Economic Crime Unit, which is a 501(c)(3) not-for-profit charitable organization. The Palm Beach Economic Crime Unit includes all Palm Beach County law enforcement agencies, banks, and credit unions. Since 1985, the Palm Beach Economic Crime Unit has financially supported South Florida law enforcement, financial institutions, as well as local businesses, with the training to identify, investigate, and prosecute economic crime in South Florida. The organization meets monthly to collaborate, share, and combat fraud in South Florida.

The Palm Beach Economic Crime Unit hosts two fundraising events a year. One of these events is a golf tournament that includes a prize raffle. This year's golf tournament will take place on Saturday, October 18, 2014. The golf tournament is a fundraiser to provide training and education to law enforcement officers and financial institution investigators to proactively investigate financial crimes. The profits raised from the annual golf tournament allow your organization to host an annual training seminar with more than 120 law enforcement officers participating free of charge.

As a member of the Golf Tournament Committee, you contacted Palm Beach Par 3 Golf Course about donating a golf foursome as a prize at the tournament. Palm Beach Par 3 Golf Course is the municipal golf course for the Town.

LEGAL BASIS:

The legal basis for this opinion is found in §2-444(h) of the Code:

Sec. 2-444 Gift law

- (h) Solicitation of contributions on behalf of a non-profit charitable organization.
 - (1) Notwithstanding the prohibition on gifts as outlined in subsections (a) and (b), the solicitation of funds by a county or municipal official or employee for a non-profit charitable organization, as defined under the Internal Revenue Code, is permissible so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited. The solicitation by an official or employee as contemplated herein, is expressly prohibited if made to any person or entity with a pending application for approval or award of any nature before the county or municipality as applicable.
 - (2) To promote the full and complete transparency of any such solicitation, officials and employees shall disclose, on a form provided by the commission on ethics, the name of the charitable organization, the event for which the funds were solicited, the name of any person or entity that was contacted regarding a solicitation or pledge by the official or employee, and the amount of the funds solicited or pledged if known. The form shall be completed legibly and shall be filed with the commission on ethics. The form shall be filed within thirty

⁴ §2-444(h)(2)

⁵ Id.

- (30) days from the occurrence of the event for which the solicitation was made, or if no event, within thirty (30) days from the occurrence of the solicitation.
- (3) Officials and employees may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions described in this subsection.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It 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 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Christie E. Kelley,
Staff Counsel

Enclosure
CEK/gal

Solicitation Log for _____ (Not-For-Profit Organization)

Person being solicited	Company Name	Date of solicitation	Solicited amount	Peldged amount	Event
Total amounts:		# of solicitations=			

Name (Official or Employee): _____

Name (Public Employer/Entity): _____