

Agenda

July 9, 2015 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Meeting will begin at 1:30 pm
Executive Session from 2:00 pm to 2:30 pm
Regular Agenda will resume at 2:45 pm

Palm Beach County

Commission on Ethics

300 North Dixie Highway
West Palm Beach, FL 33401

561.355.1915

FAX: 561.355.1904

Hotline: 877.766.5920

E-mail:

ethics@palmbeachcountyethics.com

Commissioners

Michael S. Kridel, Vice Chair

Michael F. Loffredo

Judy M. Pierman

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. Award Presentations
- V. Nomination and election of Chair
- VI. Nomination and election of Vice Chair
- VII. Approval of Minutes from June 4, 2015
- VIII. Probable Cause Hearing (Executive Session)
 - a. C15-015
- IX. Probable Cause Hearing (Public)
 - a. C15-018
- X. Processed Advisory Opinions (Consent)
 - a. RQO 15-021 b. RQO 15-022
 - c. RQO 15-023 d. RQO 15-024
 - e. RQO 15-025 f. RQO 15-026
 - g. RQO 15-027 h. RQO 15-028
 - i. RQO 15-030
- XI. Items Pulled from Consent Agenda
 - a.
- XII. Proposed Advisory Opinions
 - a. RQO 15-029
- XIII. Executive Director Comments
- XIV. Commission Comments
- XV. Public Comments
- XVI. 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**

JUNE 4, 2015

**THURSDAY
1:31 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. ADMINISTRATION OF OATH OF OFFICE BY JUDGE JEFFREY COLBATH

Chair Salesia Smith-Gordon requested that mobile phones be silenced.

(CLERK'S NOTE: Chief Judge Jeffrey Colbath administered the oath of office to newly elected Commissioner Judy Pierman.)

II. CALL TO ORDER

III. ROLL CALL

MEMBERS:

Salesia V. Smith-Gordon, Chair
Michael S. Kridel, Vice Chair - Absent
Clevis Headley
Michael F. Loffredo - Absent
Judy M. Pierman

STAFF:

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

ADMINISTRATIVE STAFF:

Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

IV. INTRODUCTORY REMARKS

Chair Salesia Smith-Gordon welcomed Commissioner Pierman.

V. APPROVAL OF MINUTES FROM MAY 7, 2015

MOTION to approve the May 7, 2015, minutes. Motion by Clevis Headley, seconded by Salesia Smith-Gordon, and carried 3-0. Michael Kridel and Michael Loffredo absent.

VI. Pages 5-6

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VII.a. Request for Opinion (RQO 15-014)

VII.b. RQO 15-016

VII.c. RQO 15-018

VII.d. RQO 15-019

VII.e. RQO 15-020

MOTION to approve the consent agenda. Motion by Clevis Headley, seconded by Judy Pierman, and carried 3-0. Michael Kridel and Michael Loffredo absent.

VIII. ITEMS PULLED FROM CONSENT AGENDA – None

IX. PROPOSED ADVISORY OPINIONS

IX.a. RQO 15-015

Christie E. Kelley, Esq., COE staff counsel, said that:

- A County code enforcement officer asked whether she could work on cases involving properties owned and managed by her landlord or whether the cases should be assigned to other officers.
- The County's Code of Ethics (Code) prohibited her from using her official position to give a special financial benefit to a specified person or entity.

IX.a. – CONTINUED

- The Code did not specify a landlord; therefore, she was not prohibited from working on code enforcement cases involving properties owned and managed by her landlord as long as she did not use her official position as a code enforcement officer to give herself a special financial benefit or to corruptly secure a benefit for her landlord.
- The landlord/tenant relationship may not constitute a prohibited conflict, but it may create an appearance of impropriety, especially if her opinions were discretionary.
- Staff concurred with the code enforcement officer's recommendation that cases involving her landlord's properties should be reassigned to another code enforcement officer.

MOTION to approve proposed advisory opinion letter RQO 15-015. Motion by Clevis Headley, seconded by Judy Pierman, and carried 3-0. Michael Kridel and Michael Loffredo absent.

IX.b. RQO 15-017

Steven P. Cullen, Esq., COE Executive Director, stated that the proposed advisory opinion letter was incorrectly numbered RQO 15-016 and that the COE's packet contained a revised proposed advisory opinion letter.

Ms. Kelley said that:

- The County employee requesting the opinion originally believed that she would be making funding-level recommendations as the recently appointed manager of planning and evaluation for the Community Services Department.
- Her role included overseeing outcome and performance measures for contracts with financially assisted agencies (FAA).
- One FAA contract was with the Palm Beach County (PBC) Division of the Children's Home Society of Florida (CHSF).
- The County employee previously submitted a private adoption application to CHSF's Martin County division.

IX.b. – CONTINUED

- The County employee and her spouse were not CHSF officers or directors.
- An opinion was requested whether a conflict of interest existed between her oversight of outcome and performance measures of FAA contracts with CHSF's PBC division and her active private adoption application with CHSF's Martin County division.
- Staff submitted that:
 - No prohibited conflict of interest existed as long as she did not use her official position to corruptly secure a special benefit for anyone.
 - Since she had an active private application with CHSF's Martin County division, her oversight of outcome and performance measures of the FAA contract with CHSF's PBC division may create an appearance of impropriety.
 - She could request that her director or another staff member perform the oversight during the pending adoption.

Mr. Cullen explained that staff focused on an appearance of impropriety since no clear conflict of interest existed in the Code.

Commissioner Clevis Headley suggested that the proposed advisory opinion letter include language that the COE strongly recommended that the County employee choose her director or another staff member to perform the oversight.

Chair Smith-Gordon expressed a concern that an aspect of the private adoption may be missing. She suggested that the COE direct staff to bring back more information.

MOTION to direct staff to bring back more information regarding proposed advisory opinion letter RQO 15-017. Motion by Judy Pierman.

MOTION DIED FOR LACK OF A SECOND.

IX.b. – CONTINUED

Chair Smith-Gordon clarified that the additional information regarded the private adoption and whether a financial benefit existed.

Ms. Kelley said that the adoption application and process involved fees.

Mr. Cullen reiterated that the proposed advisory opinion letter contained a directive under the Code that the employee could not use her official position to give a special financial benefit to anyone.

MOTION to approve proposed advisory opinion letter RQO 15-017. Motion by Clevis Headley.

(CLERK'S NOTE: The motion was seconded later in the meeting.)

PUBLIC COMMENT: Richard Radcliffe.

Ms. Kelley explained that the proposed advisory opinion letter was revised to reflect the County employee's correction that her new position would not involve funding recommendations to the BCC.

Commissioner Pierman said that Ms. Kelley's explanation offered a different perspective into the events.

(CLERK'S NOTE: Commissioner Headley inadvertently made the motion again.)

MOTION SECONDED by Judy Pierman, and carried 3-0. Michael Kridel and Michael Loffredo absent.

RECESS

At 1:55 p.m., the chair declared the meeting recessed for an executive session.

VI. EXECUTIVE SESSION – C15-004

RECONVENE

At 3:01 p.m., the meeting reconvened, and at Chair Smith-Gordon's request for a roll call, Commissioners Clevis Headley and Judy Pierman were present.

VI. – CONTINUED

Chair Smith-Gordon read the following Public Report Finding No Probable Cause and Order of Dismissal as discussed during the executive session:

Complainant, Steven P. Cullen, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on January 21, 2015, alleging that Respondent, Kelvin Black, City of West Palm Beach Sanitation Department employee, violated §2-443(a) of the Palm Beach County Code of Ethics by using his official position in a manner which he knew would give himself a special financial benefit.

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On June 4, 2015, the Commission conducted a hearing and reviewed the Memorandum of Inquiry and the Probable Cause Recommendation. After oral statements by the Advocate and Respondent, the Commission concluded no probable cause exists to believe any violation occurred.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against respondent, Kelvin Black, is hereby DISMISSED WITH PREJUDICE.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on June 4, 2015.

By: Salesia V. Smith-Gordon, Chair

(CLERK'S NOTE: The clerk added the language as printed in the Public Report Finding No Probable Cause and Order of Dismissal.)

(This space intentionally left blank.)

(CLERK'S NOTE: The numeric order of the agenda was restored.)

X. EXECUTIVE DIRECTOR COMMENTS

X.a.

DISCUSSED: Ethics Ordinance Drafting Committee (EODC).

Mr. Cullen said that the EODC meeting was moved to July 27, 2015, at 9:00 a.m., in the McEaddy Conference Room. He added that the three COE proposed Code changes on the agenda involved public hearing procedures, the vendor definition, and gift reporting.

X.b.

DISCUSSED: COE Opinion Database.

Mr. Cullen said that the County's Information Systems Services Department developed an online database for the COE's opinions. He said that the database would improve the look and function of how opinions were stored on the Web site. He added that the database was being tested and should be completely functional within 30 to 60 days.

XI. COMMISSION COMMENTS

XI.a.

DISCUSSED: Welcoming Commissioner Judy Pierman.

Chair Smith-Gordon welcomed Commissioner Pierman and said that she would be a positive asset to the COE.

XI.b.

DISCUSSED: Chair Salesia Smith-Gordon's Resignation.

Chair Smith-Gordon said that she was resigning to devote time to her husband's election campaign as a District 7 County commissioner. She added that she would continue to be a COE advocate.

XI.b. – CONTINUED

Mr. Cullen noted that the COE positions were voluntary, and the commissioners were prohibited from engaging in political activity. He thanked Chair Smith-Gordon for her service.

XII. PUBLIC COMMENTS

XII.a.

DISCUSSED: Expression of Thanks and Commendation.

Inspector General John Carey thanked Chair Smith-Gordon for her service and support in chairing the COE and the Inspector General Committee.

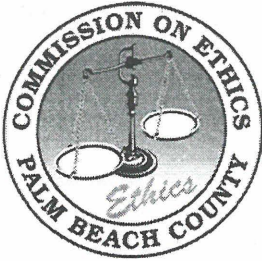
Richard Radcliffe, Executive Director, Palm Beach County League of Cities, thanked Chair Smith-Gordon for her service and said that she would be missed. He added that people did not realize the difficulty of serving on the COE.

XIII. ADJOURNMENT

At 3:11 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



PALM BEACH COUNTY COMMISSION ON ETHICS
300 North Dixie Highway, Suite 450, West Palm Beach, Florida 33401
Hotline: 877-766-5920 or 561-355-1915

COMPLAINT FORM

1. Complainant (Person bringing Complaint) Add pages, if necessary.

Please list all information where you would like to be contacted. Our preference is email.

Name: Bart Novack E-Mail: _____
Address: 15670 Cedar Grove Lane
City: Wellington, FL Zip: 33414
Home #: 561-790-3344 Work #: _____ Cell #: _____

2. Respondent (Person against whom complaint is made) Add pages, if necessary.

Please provide as much information as possible.

Name: Mark Bannon E-Mail: _____
Address: 300 N. Dixie Hwy.
City: West Palm Beach, ste. 450 Zip: 33401
Home #: _____ Work #: 561-355-1915 Cell #: _____
Title/Office Held or Sought: Senior Investigator, Palm Beach Commission On Ethics

3. IF KNOWN, CHECK THE BOX OR BOXES THAT APPLY

☒ Allegation is against person in County/Municipal Government
☐ Allegation is about County/Municipal/Whistleblower Retaliation

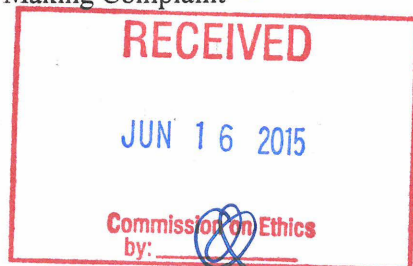
4. STATEMENT OF FACTS BASED ON YOUR PERSONAL KNOWLEDGE

In a separate attachment, please describe in detail the facts and actions that are the basis of your complaint, including the dates when the actions occurred. Also attach any relevant documents as well as names and contact information of persons who may be witnesses to the actions. If known, indicate the section of the ordinance you believe is being violated. For further instructions, see page 2 of this form.

5. OATH

I, the person bringing this complaint, do depose on oath or affirmation and say that the facts set forth in the foregoing complaint and attachments are true and correct, to the best of my knowledge and belief.

[Signature]
Signature of Person Making Complaint



STATE OF FLORIDA

COUNTY OF Palm Beach

Sworn to (or affirmed) and subscribed before me this 15 day of June, 2015, by

Bart Novack

(Name of Person Making Statement)

who is personally known to me ☒ or produced identification ☐. Type of identification produced: _____

[Signature]

(Signature of Notary Public)



Donna Crusco

July 9, 2015

(Print, Type, or Stamp Commissioned Notary Public)

June 13 2015

Bart Novack

15670 Cedar Grove Lane

Wellington, Fl. 33414

Commission on Ethics,

Enclosed is a PBC Gift Form dated and sign by Mark Bannon for the year 2013 in the amount of \$750.00 from Palm Beach County Police Benevolent Association. This was received July 17 2013 by the Commission on Ethics.

It is my understanding the PBA has a Lobbyist and they do lobby in front of Government Municipalities. As per sec.2-444 gift law (a,1) employee Bannon cannot accept more than \$100 and filed for \$750.

Can you verify this, if it was legal to take the 750.The good news is, he did file.

Thank You,


Bart Novack

PBC Gift Form**YEARLY GIFT DISCLOSURE
(GIFTS OVER \$100)**

LAST NAME -- FIRST NAME -- MIDDLE NAME BANNON, MARK E.		NAME OF MUNICIPALITY PALM BEACH COUNTY	
MAILING ADDRESS 300 N. DIXIE HWY, STE 450	DEPARTMENT PBC COMMISSION ON ETHICS	OFFICE OR POSITION HELD SENIOR INVESTIGATOR	
CITY W. PALM BEACH, FL	ZIP 33401	FOR YEAR 2013	

PART A – STATEMENT OF GIFTS

Please list below each gift, the value of which you believe to exceed \$100, accepted by you during the calendar year (October 1-September 30) for which this statement is being filed. You are required to describe the gift and state the monetary value of the gift, the name and address of the person making the gift, and the date(s) the gift was received. If any of these facts, other than the gift description, are unknown or not applicable, you should so state on the form. As explained more fully in the instructions on page 2 of the form, you are not required to disclose gifts from relatives or certain other gifts. **You are not required to file this statement for any calendar year during which you did not receive a reportable gift.**

DATE RECEIVED	DESCRIPTION OF GIFT	MONETARY VALUE	NAME OF PERSON MAKING THE GIFT	ADDRESS OF PERSON MAKING THE GIFT
6/27/2013	MICHAEL O'CONNOR'S (STEP-SON) SCHOLARSHIP AWARD FORMS	\$750.00	PBC POLICE BENEVOLENT ASSOC.	2100 N. F.P. AVE. RD. WPB, FL 33409

☐ CHECK HERE IF CONTINUED ON SEPARATE SHEET

PART B – RECEIPT PROVIDED BY PERSON MAKING THE GIFT

If any receipt for a gift listed above was provided to you by the person making the gift, you are required to attach a copy of that receipt to this form. You may attach an explanation of any differences between the information disclosed on this form and the information on the receipt.

☐ CHECK HERE IF A RECEIPT IS ATTACHED TO THIS FORM

PART C – OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed herein and on any attachments made by me constitutes a true accurate and total listing of all gifts required to be reported by Article XIII, Sec. 2-444 of the Palm Beach County Code of Ethics.

SIGNATURE OF REPORTING OFFICIAL

RECEIVED

JUL 17 2013

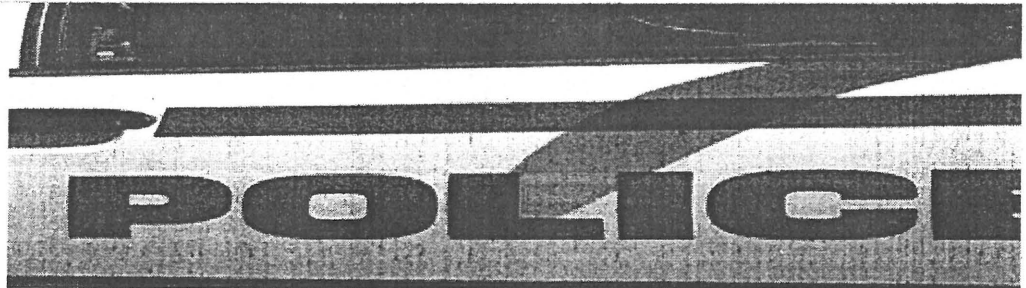
PART D – FILING INSTRUCTIONS

Commission on Ethics
by:

This form, when duly signed, must be filed with the Commission on Ethics, 2633 Vista Parkway, West Palm Beach, Florida 33411. The form must be filed no later than the first day of November for the previous reporting year.

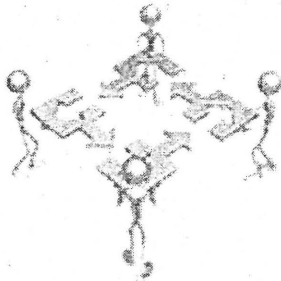
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The School District of Palm Beach County

[Home » Laborrelations » Police Benevolent Association](#)[District Links](#)[Labor Relations](#)[Classroom Teachers Association](#)[Florida Public Services Union \(Regular\)](#)[Florida Public Services Union \(Supervisory\)](#)[Florida Public Services Union \(Paraprofessional II\)](#)[AESOP](#)[Police Benevolent Association](#)

Palm Beach County Police Benevolent Association (PBA)

The Palm Beach County Police Benevolent Association is recognized as bargaining agent for all School District Certified Police Officers, and other the "R" bargaining unit.



PBA Representatives Officers

- Alex Lopez
- Kevin O'Sullivan
- Brian Qualters
- Ronnie Williams

- Lawrence Fagan, General Counsel

Palm Beach County Police Benevolent Association
2100 North Florida Mango Road
West Palm Beach, Florida 33409

PBA Collective Bargaining Agreement - January 1, 2012-I 31, 2013

Fulton-Holland Educational Services Center
3300 Forest Hill Boulevard West Palm Beach, FL 33406
Phone: +1 (561) 434 8000 +1 (866) 930 8402

NOTICE: Under Florida law, email addresses are public record. If you do not want your email addresses released in records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.



**PALM BEACH COUNTY
POLICE BENEVOLENT ASSOCIATION
SCHOLARSHIP FUND
APPLICATION
2014**

The Palm Beach County Scholarship Committee will begin accepting applications for college scholarship funds on January 1st of each year. The deadline for submission of application is **April 15th of each year**.

Scholarships are based on financial need, as well as merit. The information provided will be kept in confidence. All applicants will be notified of the date and time for a personal interview with the Scholarship Committee. All scholarships are awarded once a year.

PRINT OR TYPE ALL INFORMATION

APPLICANT INFORMATION

Name

Cell Phone Number

Home Telephone Number

Relationship to Member

University/College Attending

Course of Study (College Major)

Applicant's Signature

MEMBER INFORMATION

Member's Name

Member's Employer

Member's Social Security

Home Telephone Number

Cell Phone Number

Home Address

Member's Signature

**PALM BEACH COUNTY
POLICE BENEVOLENT ASSOCIATION
SCHOLARSHIP FUND**

Palm Beach County PBA Scholarship
(must be a son/daughter of an active PBA Member)

Kaitlin A. Kazanjian Memorial Scholarship
(must be a son/daughter of an active PBSO PBA Member)

Brian Chappell Memorial Scholarship
(must be a son/daughter of an active WPB PBA Member)

Scholarship Eligibility Requirements:

1. Be a son or daughter of a Palm Beach County PBA member with a minimum of 5 years membership or have prior Board approval. Children of Retirees are not eligible to apply.
2. Be, or plan to be, a part-time or full-time student at an accredited two-year or four-year college. Graduate Students are not eligible to apply.
3. Include an essay, no more than 500 words, about yourself, college career goals, and about your family.
4. Send application, essay, Letter of Acceptance and an official transcript with GPA in one package to PBA Scholarship Committee, 2100 North Florida Mango Road, West Palm Beach, Florida 33409. Please submit only one (1) application.

Disqualification:

Should the recipient of a scholarship fail to enroll and/or attend a qualifying college program within eight (8) months after its receipt, the full amount of the scholarship shall be returned to its appropriate Fund or, otherwise, be subject to collection.

Applicant's Acknowledgement

Are you a first-time Scholarship Applicant? ☐ Yes ☐ No

PALM BEACH COUNTY COMMISSION ON ETHICS
LEGAL SUFFICIENCY DETERMINATION

To: Palm Beach County Commission on Ethics
From: Steven P. Cullen, Executive Director
Re: C15-018 – Mark E. Bannon – Senior Investigator, Palm Beach County Commission on Ethics

- **Background:**

This matter came to the attention of the Palm Beach County Commission on Ethics through a sworn complaint filed by Bart Novack (Complainant) on June 16, 2015. Attached to the complaint form was a 3 paragraph letter. The Respondent is Mark Bannon, Senior Investigator, Palm Beach County Commission on Ethics.

Factually, the Complainant attached a copy of a Gift Form, filed by Mr. Bannon on July 17, 2013. The form reports a gift in the amount of \$750 from the Palm Beach County Police Benevolent Association (PBCPBA). The form reports a gift received on June 27, 2013 of "Michael O'Connor (Step Son) Scholarship Award funds." Complainant alleges: "It is my understanding that PBA has a lobbyist and they do lobby in front of Government Municipalities." The statement concludes by asking: "Can you verify this, if it was legal to take the 750. The good news is, he did file."

In making a Legal Sufficiency determination, Rule of Procedure 4.2 c) provides:

After the complaint has been reviewed and found to be in the proper form, the complaint shall be reviewed by the Executive Director or designee in order to determine whether the Commission has jurisdiction over the matter; that is whether it concerns an ordinance under the Commission's jurisdiction. Complaints need not be as precise as would be required by the rules of civil procedure and shall be deemed sufficient if the complainant under oath and substantially upon personal knowledge alleges matters, which, if true, would constitute a violation of an ordinance under the Ethics Commission's jurisdiction.

Facially, the Commission has jurisdiction over the matter and the ordinance in question is:

Sec. 2-444. Gift law.

- (a)(1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.

The question of whether the complaint "...substantially upon personal knowledge alleges matters, which, if true, would constitute a violation of an ordinance under the jurisdiction of the Commission on Ethics" is a close one. Although complainant alleges that the PBCPBA has a lobbyist which lobbies "Government Municipalities," it is not clear whether this is based upon personal knowledge. Particularly since he asks: "Can you verify this." This implies that he lacks personal knowledge as to whether the PBCPBA is a principal or employs a lobbyist and verification of this is seemingly ministerial. Additionally, the issue is not whether

any lobbying of "Government Municipalities" occurs, but rather whether Palm Beach County is lobbied. Since Rule 4.2 c) permits complaints to be legally sufficient based upon a legal standard less than the notice pleading requirements of the rules of civil procedure, it is appropriate to apply a relaxed standard.

- **Conclusion**

Therefore, applying that standard, based upon the information listed in the complaint, there is **LEGAL SUFFICIENCY** for further investigation.

BY:



Steven P. Cullen, Executive Director
Florida Bar No. 362204
PBC Commission on Ethics

6/26/2015

Date

PALM BEACH COUNTY COMMISSION ON ETHICS
REPORT OF INVESTIGATION

To: Palm Beach County Commission on Ethics
From: Steven P. Cullen, Executive Director
Re: C15-018 – Mark Bannon, Senior Investigator, Palm Beach County Commission on Ethics

- **Background**

This matter came to the attention of the PBC Commission on Ethics (COE) with the filing of a sworn Complaint by Bart Novak (Complainant). The Complaint was signed and notarized on June 15, 2015 listing Mark E. Bannon, Senior Investigator, as the Respondent.

The complaint included a one-page letter stating Respondent filed a gift form on July 17, 2013 with the COE for a gift with a monetary value of \$750 from the Palm Beach County Police Benevolent Association (PBCPBA). Complainant also alleges that the PBCPBA lobbies in front of Government Municipalities and as per sec. 2-444(a)(1), of the Palm Beach County Code of Ethics, Respondent cannot accept a gift with a value greater than \$100. Also included with the complaint was a copy of the PBC Gift Form filed on July 17, 2013, a one-page printout from the School District of Palm Beach County listing the PBCPBA Representatives and a two-page 2014 PBCPBA Scholarship Fund Application.

Although the question of Legal Sufficiency presented a very close question, I have found the Complaint legally sufficient based upon the relaxed pleading standard established by Rule of Procedure 4.2 c). The allegations of the complaint, if true, may establish a violation under COE jurisdiction.

- **Applicable law**

The following portions of the PBC Commission on Ethics ordinance are relevant:

Section 2-254. Creation and Jurisdiction.

The Palm Beach County Commission on Ethics (hereinafter "commission on ethics") is hereby established. The jurisdiction of the commission on ethics shall extend to *any person required to comply with the countywide code of ethics*, the county lobbyist registration ordinance, and the county post-employment ordinance... (Emphasis added)

The following portions of the PBC Code of Ethics are relevant:

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. The term "*employee*" includes but is not limited to all managers, department heads and personnel of the county or the municipalities located within the county.

Sec. 2-444. Gift law.

(a)(1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient

knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.

- **Investigation**

To determine how the scholarship process of the Palm Beach County Police Benevolent Association (PBCPBA) works, I interviewed by telephone on June 24, 2015 Gail Seldomridge, Office Manager. Ms. Seldomridge advised that sons or daughters of an active PBA member may apply for a scholarship. Those meeting four eligibility requirements may be awarded a scholarship. The requirements, documented on the organization's website are:

Scholarship Eligibility Requirements:

1. Be a son or daughter of a Palm Beach County PBA member with a minimum of 5 years membership or have prior Board approval.
2. Be, or plan to be, a part-time or full-time student at an accredited two-year or four-year college.
3. Include an essay, no more than 500 words, about yourself, college career goals, and about your family.
4. Send application, essay, Letter of Acceptance and an official transcript with GPA in one package to PBA Scholarship Committee, 2100 N. Florida Mango Road, West Palm Beach, Florida 33409. Please submit only one (1) application.

In understanding the corporate structure of the PBCPBA, staff determined and Ms. Seldomridge confirmed, the parent organization is Palm Beach County Police Benevolent Association, Inc., a not for profit corporation. Scholarships are paid by Police Benevolent Charity Fund, Inc., a Florida not for Profit Corporation and an IRS registered 501(c)(3) charitable organization.

Ms. Seldomridge advised that neither the Palm Beach County Police Benevolent Association, Inc. nor the Police Benevolent Association Charity Fund, Inc. is a "principal or employer of a lobbyist that lobbies" Palm Beach County. While she did confirm that the PBCPBA is a charter member of the Florida Police Benevolent Association which does employ lobbyists to represent the interests of members regarding state legislative matters, she confirmed that neither of the PBCPBA entities are a principal or employer of a lobbyist that lobbies Palm Beach County.

To confirm that neither of the PBCPBA corporate entities is a principal or employer of a lobbyist that lobbies Palm Beach County, staff searched the PBCPBA website (www.pbcpba.org) to determine if anything was listed regarding lobbying Palm Beach County and found nothing. However, a list of staff members to cross reference with the Palm Beach County Lobbyist Registration database was printed.

Additionally, staff searched the Palm Beach County Lobbyist Registration database and reviewed the names of every lobbyist and principal registered to lobby Palm Beach County Government. None of the names of PBCPBA representatives listed on the document provided by Complainant were on either list. Additionally, I searched and cross referenced the lobbyist and principal lists with the names of the 15 staff members listed on the PBCPBA website and did not find any of them listed.

Since the PBCBA website lists their group as being a charitable organization, staff reviewed the Florida Department of Agriculture website to determine if there were any other names used by the PBCPBA as a charitable organization. The Department of Agriculture listed the following DBA/Other Names for the PBCBA: Police Benevolent Association Charity Fund, Inc.; PBA Charity Fund; Martin County Cops for Kids Foundation; Martin County Police Benevolent Association; Palm Beach County Cops for Kids Foundation; Saint Lucie County Cops for Kids Foundation; and Saint Lucie County Police Benevolent Association. Staff searched and cross referenced the lobbyist and principal lists with the names of each of the charity names listed by the Department of Agriculture and did not find any of them listed.

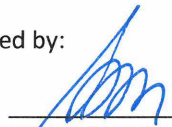
The following documents were generated and placed in the file:

1. Copy of the scholarship process from the PBCPBA website, 2 pages.
2. Copy of email to Gail Seldomridge, Office Manager, and John Kazanjian, President PBCPBA confirming that neither the Police Benevolent Charity Fund, Inc., nor the Palm Beach County Police Benevolent Association is a principal or employer of a lobbyist that lobbies Palm Beach County.
3. Florida Department of State, Division of Corporations, detail on Palm Beach County Police Benevolent Association, Inc., 2 pages.
4. Florida Department of State, Division of Corporations, detail on Police Benevolent Charity Fund, Inc., 2 pages.
5. IRS Exempt Organizations Select Check detail on Police Benevolent Association Charity Fund, Inc., 1 page.
6. List of staff members, PBCPBA, 1 page.
7. List of all lobbyists registered to lobby Palm Beach County from the Lobbyist Registration database, 11 pages.
8. Principals and lobbyists of Palm Beach County from the Lobbyist Registration database, cross referenced, 79 pages.
9. Department of Agriculture detail on Palm Beach County Police Benevolent Association, Inc., 2 pages.
10. Department of Agriculture detail on Police Benevolent Association Charity Fund, Inc., 2 pages.

- **Recommendation**

There is no evidence whatsoever to support the Complaint in this case. In order for the reported gift to violate Sec. 2-444 (a)(1) of the Code of Ethics, there would have to be evidence that the scholarship in question was paid by a "person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable." Simply, there is no such evidence generated by this investigation.

Submitted by:



Steven P. Cullen, Executive Director
Florida Bar No. 362204
PBC Commission on Ethics



Date

PALM BEACH COUNTY COMMISSION ON ETHICS

PROBABLE CAUSE RECOMMENDATION

To: Commission on Ethics
From: Christie E. Kelley, Esquire
Re: C15-018 – Mark E. Bannon, Senior Investigator, Palm Beach County Commission on Ethics

- **Recommendation**

A finding of NO PROBABLE CAUSE should be entered in the above captioned matter as to the allegations made in the Complaint.

Probable Cause exists where there are reasonably trustworthy facts and circumstances for the Commission on Ethics (COE) to conclude that the Respondent, Mark Bannon, violated the Palm Beach County Code of Ethics.

- **Jurisdiction**

The COE has jurisdiction pursuant to Chapter 2, Article V, Division 8, section 2-258(a) of the Palm Beach County Commission on Ethics Ordinance which states in pertinent part:

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) Countywide Code of Ethics;
- (2) County Post-Employment Ordinance, and
- (3) County Lobbyist Registration Ordinance.

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. The term “employee” includes but is not limited to all managers, department heads and personnel of the county or the municipalities located within the county.

Sec. 2-444. Gift law.

- (a)(1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.

- **Background**

This matter came to the attention of the COE with the filing of a sworn Complaint by Bart Novak (Complainant). The Complaint was signed and notarized on June 15, 2015 listing Mark E. Bannon, Senior Investigator, as the Respondent.

The complaint included a one-page letter, which stated that Respondent filed a gift form with the COE on July 17, 2013 for a gift with a monetary value of \$750 from the Palm Beach County Police Benevolent Association (PBCPBA). Complainant also alleges that the PBCPBA lobbies in front of Government Municipalities, and as per Sec. 2-444(a)(1) of the Palm Beach County Code of Ethics, Respondent cannot accept a gift with a value greater than \$100. The complaint also included a copy of the Palm Beach County Gift Form filed on July 17, 2013, a one-page printout from the School District of Palm Beach County listing the PBCPBA Representatives, and a two-page 2014 PBCPBA Scholarship Fund Application.

Although the question of Legal Sufficiency presented a very close question, the Executive Director found the Complaint legally sufficient based upon the relaxed pleading standard established by Rule of Procedure 4.2 c).

- **Facts establishing no probable cause for a violation of Section 2-444(a)(1), Gift Law**

All information from the Legal Sufficiency Determination, Memorandum of Investigation, and supporting documents are adopted by reference into this Probable Cause Recommendation.

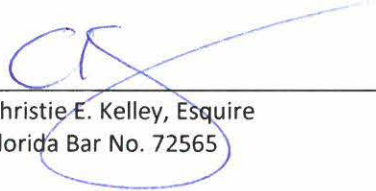
In order for the reported gift to violate Sec. 2-444 (a)(1) of the Palm Beach County Code of Ethics, the evidence must show that the scholarship in question was paid by a "person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable."

All of the evidence gathered in the Memorandum of Investigation reveals that none of the PBCPBA entities associated with the reported gift is a "lobbyist or principal or employer of a lobbyist" who lobbies Palm Beach County.

- **Conclusion**

There is no probable cause to conclude that Respondent, Mark Bannon, violated Sec. 2-444 (a)(1) of the Palm Beach County Code of Ethics. A finding of **NO PROBABLE CAUSE** and **ORDER OF DISMISSAL** should be entered.

By:


Christie E. Kelley, Esquire
Florida Bar No. 72565

7-2-2015
Date

X. Processed Advisory Opinions

a. RQO 15-021 Dot Bast Wiggins

A City of Delray Beach employee asked if a prohibited conflict of interest would exist for her if her husband's business sells saw blades to the City's Fire Rescue Department, when her husband's business is the sole source of a trademarked blade.

Staff submits the following for COE review: The Palm Beach County Code of Ethics (Code) prohibits a business of which a member of the employee's household has at least a five percent ownership share from contracting with the City. Thus, her husband's business may only enter into a contract or a transaction to provide saw blades to the City if one of the exceptions to the contractual relationship prohibition applies. Since her husband's business is the sole source of the trademarked EXTRACTOR Rescue Blade, that product meets the sole source exception, and a conflict of interest would not exist if his business sells that product to the City. For the other products that her husband sells which do not meet the sole source exception, the Code provides an exception for contracts or transactions totaling less than \$500 per calendar year. Finally, the Code provides an exception for contracts awarded under a system of sealed, competitive bidding, where the lowest bidder is selected.

b. RQO 15-022 Rafael Ballesterro

A City of Delray Beach employee asked if he would have a prohibited conflict of interest if he assists his mother in entering into an arrangement with AKA Services, Inc. for use of his mother's property to store equipment and materials for a City neighborhood improvement project in exchange for tree removal services and restoration of the property when the project is completed

Staff submits the following for COE review: The employee would not have a prohibited conflict of interest. Based on the facts submitted, the contractor and project manager chose the property on their own. They were not approached by the City employee, and the City employee did not use his official position to arrange this opportunity for his mother. The property was selected solely because it was at a convenient location and was already being used by another company for storage. If the City employee assists his mother in entering into an arrangement with AKA Services, Inc., he will not be using his official position to give a special financial benefit to himself or his mother, and a prohibited conflict of interest would not exist for him. Under these facts, the City employee would not violate the Code's contractual relationship prohibition because he would not be entering into a contract with the City. His mother would be entering into an agreement with AKA Services, Inc. for the temporary use of her property in exchange for tree removal services and restoration of the property when the project is completed.

c. RQO 15-023 Vanessa Dunham

A Town of Juno Beach employee asked if Town employees may accept tickets from the Northern Palm Beach County Chamber of Commerce for events in the community.

Staff submits the following for COE review: Since the Northern Palm Beach County Chamber of Commerce is not a vendor, lobbyist, or principal or employer of a lobbyist in the Town of Juno Beach, there is no prohibition on the amount of a gift. So long as there is no "quid pro quo" or special treatment or other privilege given or obtained by the Northern Palm Beach County Chamber of Commerce in exchange for tickets to the events, employees of the Town of Juno Beach may accept

these gifts from the Northern Palm Beach County Chamber of Commerce. An employee must only report the gift of the tickets if the total value of the tickets given to that employee from the Northern Palm Beach County Chamber of Commerce exceeds \$100.

d. RQO 15-024 David Tolces

The attorney for the Delray Beach Community Redevelopment Agency (CRA) asked (1) if a CRA commissioner who serves on the board of directors for a not-for-profit entity is prohibited from voting on a matter that comes before the CRA involving agreements, services, financial assistance, or any other matter related to that not-for-profit entity, when the bylaws for the not-for-profit entity requires that a CRA commissioner serve on its board of directors; and (2) if a CRA commissioner is prohibited from voting on a matter that comes before the CRA involving agreements, services, financial assistance, or any other matter related to a not-for-profit entity of which the CRA commissioner serves as a liaison.

Staff submits the following for COE review:

- (1) A CRA commissioner who serves on the board of directors for a not-for-profit entity is prohibited from voting on, as well as discussing or participating in, any matter that comes before the CRA involving that not-for-profit entity if the vote would result in a special financial benefit to that entity.
- (2) A CRA commissioner who merely serves as a non-voting liaison to a not-for-profit entity is not prohibited from voting on a matter related to that not-for-profit entity as long as none of the prohibited persons or entities listed in Sec. 2-443(a) of the Code would receive a special financial benefit.

e. RQO 15-025 Bruce Guyton

The commissioner for the City of Riviera Beach asked if his appointment to the board of directors of the Palm Beach County Metropolitan Planning Organization (MPO) by the City of Riviera Beach would create a prohibited conflict of interest for him because of his public employment with Palm Beach County as a transit planner for Palm Tran.

Staff submits the following for COE review: His appointment to the Palm Beach County MPO board of directors, his employment with Palm Beach County as a transit planner for Palm Tran, and his position as a commissioner for the City of Riviera Beach would not create a prohibited conflict of interest because the MPO, the City of Riviera Beach, and Palm Beach County are all governmental entities and not among the prohibited persons or entities under Sec. 2-443(a).

f. RQO 15-026 Kathleen McGiveron

The chairperson of two political action committees (PAC) asked if a conflict of interest would arise for her if she ran for a political office.

Staff submits the following for COE review: The COE has jurisdiction over all Palm Beach County and municipal employees, elected officials, and appointed officials. Because she is not a Palm Beach County or municipal employee, elected official, or appointed official, she are not under the jurisdiction of the COE. The COE does not have jurisdiction over PAC members. COE Rule of Procedure 2.2 states, in relevant part, that only persons who are under the jurisdiction of the Code of Ethics may request an advisory opinion regarding the interpretation or application of the Code of Ethics. As such, the COE cannot comment on any potential conflicts of interest if she runs for office while serving as chairperson of two PACs.

g. RQO 15-027 Pamela Ryan

The attorney for the City of Riviera Beach asked if Councilman Terence Davis could donate community benefit funds for a program at a local church of which he is a member without violating the Code.

Staff submits the following for COE review: The Code does not prohibit Councilman Davis from donating community benefit funds for a program at St. James Missionary Baptist Church, where neither he nor his spouse is a director or officer of the church, so long as the funds collected are taken into the general revenue funds for the City, and the distribution of these funds to the church is determined to be for a “public purpose.”

h. RQO 15-028 Mimi Levison

A member of the Palm Beach County Library System’s Library Advisory Board (LAB) asked (1) if her service on LAB prohibits her grandchild from being hired by Palm Beach County to work in the library system, and (2) would a prohibited conflict of interest arise with her continued service on LAB if her grandchild is hired to work in the Palm Beach County Library System.

Staff submits the following for COE review:

- (1) Her service on LAB does not prohibit her grandchild from being hired to work in the library system. However, she must take great care to avoid using her official position to influence others to hire her grandchild.
- (2) If her grandchild is hired to work in the library system, a prohibited conflict of interest would not exist if she remains a member of LAB so long as she does not use her official position to give a special financial benefit to her grandchild or use her position in an improper manner to obtain a benefit for her grandchild.

i. RQO 15-030 Holly Vath

A City of Delray Beach employee asked where the City issued a competitive bid for Police Department leased vehicles, would a prohibited conflict of interest arise for a City Police Information Specialist who is the daughter of one of the owners of a company that has submitted a bid, if that company is awarded the bid.

Staff submits the following for COE review: A prohibited conflict of interest would not arise, as long as the employee complies with the following cautions and requirements. Generally, the contractual relationships provision of the Code would create a prohibited conflict of interest where a business owned by an employee’s father contracts with the municipality. However, because the bid here is awarded by the City under a system of sealed, competitive bidding to the lowest bidder, as long as the employee complies with the three additional requirements of Sec, 2-443(e) (1), the exception applies. These requirements include not participating in the bid specifications or the award of the bid, not using influence to persuade the award of the bid, and filing a disclosure statement with the Supervisor of Elections and the COE.



Palm Beach County Commission on Ethics

Commissioners

Michael S. Kridel, *Vice Chair*
Michael F. Loffredo
Judy M. Pierman
Clevis Headley

Executive Director
Steven P. Cullen

June 12, 2015

Ms. Dot Bast, Human Resources Administrator
City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

Re: RQO 15-021
Contractual Relationships

Dear Ms. Bast,

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

QUESTION:

Would a prohibited conflict of interest exist for you, as a City of Delray Beach (City) employee, if your husband's business sells saw blades to the City's Fire Rescue Department?

ANSWER:

Based on the facts submitted, your husband's business may only enter into a contract or a transaction to provide saw blades to the City if one of the exceptions to the contractual relationship prohibition applies.

The Palm Beach County Code of Ethics (the Code) prohibits you from using your official position to gain a special financial benefit to specified persons or entities, including your husband or your husband's business.¹ Accordingly, you are prohibited from using your position as the City's human resources administrator to give your husband or his business a special financial benefit. Additionally, the Code prohibits you from entering into any contract or other transaction to provide goods or services to your public employer.² The Code also prohibits a business of which a member of your household has at least a five percent ownership share from contracting with your public employer.³ However, the Code has several exceptions to the contractual relationship prohibition which may apply to your situation.⁴

First, the Code provides a sole source exception where the outside employer or business is the sole source of the product or the services within the City.⁵ Since your husband's business is the sole source of the trademarked EXTRACTOR Rescue Blade, that product meets the sole source exception, and a

¹ §2-443(a)

² §2-443(d)

³ RQO 11-090

⁴ §2-443(e)

⁵ §2-443(e)(4)

conflict of interest would not exist if his business sells that product to the City. However, prior to the transaction, you must fully disclose your interest in the business to the City and the COE.

In addition, for the other products that your husband sells which do not meet the sole source exception, the Code provides an exception for contracts or transactions totaling less than five hundred dollars (\$500) per calendar year.⁶ Under this exception, you would not have a prohibited conflict of interest if your husband's business enters into a contract or transaction with the City as long as the total amount of the contract or transaction between Fire Rescue Blades of Delray Beach, Inc. and the City does not exceed \$500 in the aggregate. Since the EXTRACTOR Rescue Blade meets the sole source exception, the \$500 limit does not apply to that product. However, any additional products that your husband's business sells to the City would be limited to less than \$500 in the aggregate per year.

Finally, the Code provides an exception for contracts awarded under a system of sealed, competitive bidding, where the lowest bidder is selected.⁷ The sealed bid exception applies so long as you 1) do not participate in the determination of bid specifications, 2) do not use your official position to influence or persuade your public employer, and 3) file a statement with the Supervisor of Elections and the COE disclosing your interest in Fire Rescue Blade of Delray Beach, Inc. prior to submitting the bid. Each individual bid submission must comply with all of the exception requirements listed in §2-443(e)(1).⁸ As long as the bid submission satisfies these requirements, your husband is not prohibited from applying and accepting bids awarded under this exception to the contractual relationship prohibition.

FACTS:

You are the Human Resources Administrator for the City of Delray Beach. Your husband is the sole owner of Fire-Rescue Blades of Delray Beach, Inc. The business is the sole source of the EXTRACTOR Rescue Blade, a trademarked saw blade. The blade is unique because it is a high-tech, high-quality all-purpose diamond fire rescue saw blade that cuts through materials extremely fast without breaking. The business sells other types of saw blades as well. The price of each saw blades, depending on type and diameter, ranges from approximately \$35 to \$220. Your husband would like to sell these saw blades to the City's Fire-Rescue Department. You are not involved in the business in any capacity.

LEGAL BASIS:

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

Sec. 2-442. Definitions.

Outside employer or business includes:

- (2) Any entity located in the county or which does business with or is regulated by the county or municipality as applicable, in which the official or employee has an ownership interest. For purposes of this definition, an "ownership interest" shall mean at least five (5) percent of the total assets or common stock owned by the official or employee or any combination of the official or employee's household members, spouse, child, step-child, brother, sister, parent or step-parent, or a person claimed as a dependent on the official or employee's latest individual federal tax return.

⁶ §2-443(e)(5)

⁷ §2-443(e)(1)

⁸ RQO 12-076


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;
 - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
 - (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;
- (d) **Contractual relationships.** No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable.
- (e) **Exceptions and waiver.**
In addition, no official or employee shall be held in violation of subsection (d) if:
- (1) The business is awarded under a system of sealed, competitive bidding to the lowest bidder and:
 - a. The official or employee or member of his or her household has in no way participated in the determination of the bid specifications or the determination of the lowest bidder;
 - b. The official or employee or member of his or her household has in no way used or attempted to use the official or employee's influence to persuade the agency, governmental entity or any personnel thereof to enter such a contract other than by the mere submission of the bid; and
 - c. The official or employee, prior to or at the time of the submission of the bid, has filed a statement with the supervisor of elections and the commission on ethics, disclosing the nature of the interest in the outside employer or business submitting the bid.
 - (3) The outside employer or business involved is the only source of supply within the county or municipality as applicable and there is full disclosure by the official or employee of his or her interest in the outside employer or business to the county or municipality as applicable and the ethics commission prior to the purchase, rental, sale, leasing, or other business being transacted.
 - (4) The total amount of the contracts or transactions in the aggregate between the outside employer or business and the county or municipality as applicable does not exceed five hundred dollars (\$500) per calendar year.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. 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

Michael S. Kridel, *Vice Chair*
Michael F. Loffredo
Judy M. Pierman
Clevis Headley

Executive Director
Steven P. Cullen

June 8, 2015

Mr. Rafael Ballesterro, Deputy Director of Construction
City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

Re: RQO 15-022
Misuse of Office

Dear Mr. Ballesterro,

Your request for an expedited advisory opinion pursuant to Commission on Ethics (COE) Rule of Procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

QUESTION:

Would a City of Delray Beach (City) employee have a prohibited conflict of interest if he assists his mother in entering into an arrangement with AKA Services, Inc. for use of his mother's property to store equipment and materials for a City neighborhood improvement project in exchange for tree removal services and restoration of the property when the project is completed?

ANSWER:

Under the facts submitted, the City employee would not have a prohibited conflict of interest if he assists his mother in entering into an arrangement with AKA Services, Inc. for use of his mother's property for a City neighborhood improvement project.

The Palm Beach County Code of Ethics (Code) prohibits a public employee from using his official position, or taking or failing to take any action, or influencing others to take or fail to take any action, in a manner which he knows would give a special financial benefit to specified persons or entities, including himself or a parent.¹ In addition, the Code prohibits a public employee from entering into a contract or transaction to provide goods or services to his public employer.²

Here, according to the information provided, the contractor and project manager chose the property on their own. They were not approached by the City employee, and the City employee did not use his official position to arrange this opportunity for his mother. The property was selected solely because it was at a convenient location and was already being used by another company for storage. As such, if the City employee assists his mother in entering into an arrangement with AKA Services, Inc., he will not be using his official position to give a special financial benefit to himself or his mother, and a prohibited conflict of interest would not exist for him. In addition, the City employee would not violate the Code's

¹ §2-443(a)

² §2-443(d)

contractual relationship prohibition because, under these facts, he would not be entering into a contract with the City. His mother would be entering into an agreement with AKA Services, Inc. for the temporary use of her property in exchange for tree removal services and restoration of the property when the project is completed.

FACTS:

You are the Deputy Director of Construction for the City of Delray Beach. The City often has neighborhood improvement projects in residential areas. Through the competitive bid process, a contractor is selected for these improvement projects. The contractors for these projects typically need a storage area for their equipment and materials, and the contractors usually contact the owners of empty lots for this use. The lot usage is either free, rented, or involves bartered services.

On a current City project, the contractor wishes to use property which is owned by a City employee's mother. The contractor noticed the vacant property because it was at a convenient location and large enough for the storage of equipment and materials. A landscaping contractor was using the property for storage of trailers and vehicles. Michael Heitzler, the project manager for AKA Services, Inc. called the landscape contractor and learned that the property was owned by the homeowner immediately to the north of the desired property.

Mr. Heitzler met in person with the homeowner, who is a senior citizen, and inquired about the use of the property. He was told that the property was currently being used by another contractor but that she owned another lot immediately adjacent to it. The homeowner stated that she was willing to let Mr. Heitzler use the other lot in exchange for tree removal services and restoration of the property at the conclusion of his contract work for the City. During Mr. Heitzler's initial contact with the homeowner, her grandson was present and informed him that his father, the homeowner's son, was employed by the City. Because the City employee's mother is a senior citizen, the employee helps with handling many of her affairs. Mr. Heitzler contacted the employee, who informed Mr. Heitzler that his mother was the homeowner. He agreed to handle this arrangement for her to ensure the lot is adequately restored. Mr. Heitzler provided a letter to the homeowner offering to perform the services on the property and restoring it to her satisfaction upon vacating the property. The City employee does not have any contractual relationship with the contractor, and he did not initiate the contact with the contractor or property manager.

LEGAL BASIS:

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

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;
 - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;

- (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
- (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;
- (5) A customer or client of the official or employee's outside employer or business;
- (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner "substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
- (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.

(d) **Contractual relationships.** No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. 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

Michael S. Kridel, *Vice Chair*

Michael F. Loffredo

Judy M. Pierman

Clevis Headley

Executive Director

Steven P. Cullen

June 26, 2015

Ms. Vanessa Dunham, Town Clerk
Town of Juno Beach
340 Ocean Drive
Juno Beach, FL 33408

Re: RQO 15-023
Gift Law

Dear Ms. Dunham,

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

QUESTION:

May Town of Juno Beach employees accept tickets from the Northern Palm Beach County Chamber of Commerce for events in the community?

ANSWER:

The Palm Beach County Code of Ethics (Code) prohibits public officials and employees from accepting anything of value in exchange for the past, present and future performance of their legal duties.¹ In addition, they may not accept gifts with a combined value over \$100 during the calendar year from vendors, lobbyists, or principals or employers of lobbyists who lobby, sell or lease to their government employer.² If the gift is not from a vendor, lobbyist, or principal or employer of a lobbyist, there is no prohibition on the amount of a gift. However, gifts with a value over \$100 must be reported by employees.³ Although state law controls the gift reporting requirements for state reporting individuals, under the Code, a Town of Juno Beach employee who is a state reporting individual and who files a State of Florida Quarterly Gift Disclosure Form (Form 9) with the state must also file a copy of the Form 9 at the same time with the COE.⁴ Town of Juno Beach employees who are not state reporting individuals must report gifts with a value over \$100 on their annual gift reports, which must be reported to the COE by November 1 for the previous reporting year.⁵

Based on the facts submitted, the Northern Palm Beach County Chamber of Commerce is not a vendor, lobbyist, or principal or employer of a lobbyist in the Town of Juno Beach, and as such, there is no prohibition on the amount of a gift. So long as there is no "quid pro quo" or special treatment or other

¹ §2-444(e)

² §2-444(a)

³ §2-444(f)

⁴ §112.3148, Florida Statutes; §2-444(f)(1)

⁵ §2-444(f)(2)b.

privilege given or obtained by the Northern Palm Beach County Chamber of Commerce in exchange for tickets to the events, employees of the Town of Juno Beach may accept these gifts from the Northern Palm Beach County Chamber of Commerce. An employee must only report the gift of the tickets if the total value of the tickets given to that employee from the Northern Palm Beach County Chamber of Commerce exceeds \$100.

FACTS:

You are the clerk for the Town of Juno Beach. The Town of Juno Beach occasionally receives tickets from the Northern Palm Beach County Chamber of Commerce. These tickets are for events, such as ArtFest or ArtiGras, and the tickets may include access to the hospitality suite. When the Town of Juno Beach receives these tickets, an email is sent to all employees. Those interested in the tickets must submit their name. If enough employees are interested in the tickets, a drawing is held. The value of each ticket is not over \$100.

The Northern Palm Beach County Chamber of Commerce is a not-for-profit organization. They focus on the development and retention of businesses by taking an active role in issues that affect the profitability of local companies, protecting and improving the quality of life for residents, and providing superior services and resources to its members. The Northern Palm Beach County Chamber of Commerce is not a vendor or a lobbyist of the Town of Juno Beach.

LEGAL BASIS:

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

Sec. 2-444. Gift law.

- (e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:
 - (1) An official public action taken or to be taken, or which could be taken;
 - (2) A legal duty performed or to be performed or which could be performed; or
 - (3) A legal duty violated or to be violated, or which could be violated by any official or employee.
- (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.
 - (1) *Gift reports for officials and employees identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. A copy of each report shall be filed with the county commission on ethics.
 - (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. Food and beverages consumed at a single setting or a meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift may consult, among other sources, Florida Statutes, §112.3148, and the Florida Administrative Code as may be amended.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. 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

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Judy M. Pierman
Clevis Headley

Executive Director
Steven P. Cullen

July 2, 2015

David Tolces, Esquire
3099 E. Commercial Blvd, Ste 200
Fort Lauderdale, FL 3338

Re: RQO 15-024
Voting Conflict

Dear Mr. Tolces,

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

QUESTIONS:

- 1) Under the Palm Beach County Code of Ethics (Code), is a Delray Beach Community Redevelopment Agency (CRA) commissioner, who serves on the board of directors for a not-for-profit entity, prohibited from voting on a matter that comes before the CRA involving agreements, services, financial assistance, or any other matter related to that not-for-profit entity, when the bylaws for the not-for-profit entity requires that a CRA commissioner serve on its board of directors?
- 2) Under the Code, is a CRA commissioner prohibited from voting on a matter that comes before the CRA involving agreements, services, financial assistance, or any other matter related to a not-for-profit entity of which the CRA commissioner serves as a liaison?

ANSWERS:

Based on the facts provided, a CRA commissioner, who serves on the board of directors for a not-for-profit entity, is prohibited from voting on, as well as discussing or participating in, any matter that comes before the CRA involving that not-for-profit entity if the vote would result in a special financial benefit to that entity. However, a CRA commissioner, who merely serves as a non-voting liaison to a not-for-profit entity, is not prohibited from voting on a matter related to that not-for-profit entity as long as none of the prohibited persons or entities listed in Sec. 2-443(a) of the Code would receive a special financial benefit.

The Code defines an "official" as a member appointed by a local municipal governing body to serve on any advisory, quasi judicial or any other board of the county, state, or any other regional, local, municipal, or corporate entity.¹ Thus, under the Code, CRA commissioners are considered to be "officials." As officials, the Code prohibits CRA commissioners from using their position in any way which could result in a special financial benefit for certain person or entities.² One of those specified persons or entities is a not-for-profit organization where the official, or his or her spouse, serves as an officer or director.³ The Code further

¹ §2-442

² §2-443(a)

³ Id.

prohibits a CRA commissioner from voting on and participating in a matter that would result in a special financial benefit to the not-for-profit organization where the commissioner serves as an officer or director.⁴ If a matter before the CRA would result in a special financial benefit, in order to comply with the Code, the commissioner must 1) disclose the nature of his or her conflict before the CRA discusses the issue; 2) abstain from any discussion or vote and not participate in the matter; and 3) file a state voting conflict form (8B), submitting a copy to the clerk as required by state law and to the COE.⁵ Additionally, officials are prohibited from using their official position in an improper manner to obtain a special benefit for anyone.⁶ The fact that the bylaws of a not-for-profit entity require that a CRA commissioner serve on its board of directors does not ameliorate any voting conflict arising under the Code.

Based on the facts submitted, the two CRA commissioners who sit on the board of directors for the Delray Beach Marketing Cooperative, Inc. would have a voting conflict because they are directors of the not-for-profit entity. The two commissioners must abstain from voting on and participating in any matter that would result in a special financial benefit to the Delray Beach Marketing Cooperative, Inc. However, the CRA commissioner, who merely acts as a non-voting liaison between the West Atlantic Redevelopment Coalition, Inc. and the CRA, would not have such a voting conflict because the commissioner's only role as liaison is to gather information. The commissioner who serves as the non-voting liaison is not prohibited from voting on or participating in a matter related to the West Atlantic Redevelopment Coalition, Inc. as long as none of the other specified persons or entities listed in Sec. 2-443(a) would receive a special financial benefit.

FACTS:

Your law firm represents the CRA in the capacity of General Counsel. The CRA commissioners have directed you to seek an advisory opinion from the COE.

Members of the CRA are appointed by the Delray Beach City Commission. The CRA has final decision-making authority and can enter into contracts for goods and services and for providing financial assistance to organizations that serve the CRA. The CRA commissioners review requests for funding, services, or other matters from not-for-profit organizations. Various local not-for-profit entities, such as the Delray Beach Marketing Cooperative, Inc. and the West Atlantic Redevelopment Coalition, Inc., have entered into either funding agreements or Memorandums of Understanding with the CRA.

Several of the CRA commissioners volunteer to serve on the board of directors for various not-for-profit entities. In addition, two CRA commissioners are actually required to sit on the Delray Beach Marketing Cooperative, Inc.'s five-member board of directors. The Delray Beach Marketing Cooperative, Inc. is a partnership between the City of Delray Beach, the CRA, and the Delray Beach Chamber of Commerce. Its mission is to attract people to the city, create a positive image, and increase awareness of the City of Delray Beach through marketing programs, special events, and community collaboration. The commissioners who serve on the cooperative's board of directors do not receive any compensation.

The CRA also occasionally appoints a commissioner to serve as a non-voting liaison to a not-for-profit entity's board of directors. The role of the liaison is to gather and provide information for the benefit of the CRA. The West Atlantic Redevelopment Coalition, Inc. is one of the not-for-profit entities to which the CRA appoints a liaison. The West Atlantic Redevelopment Coalition, Inc. advises the CRA and the City of Delray Beach on any matter pertaining to redevelopment issues on West Atlantic Avenue.

⁴ §2-443(c)

⁵ Id.

⁶ §2-443(b)

LEGAL BASIS:

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

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;
 - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
 - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
 - (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;
 - (5) A customer or client of the official or employee's outside employer or business;
 - (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner—"substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
 - (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.
- (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).

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. 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

Michael S. Kridel, *Vice Chair*

Michael F. Loffredo

Judy M. Pierman

Clevis Headley

Executive Director

Steven P. Cullen

July 2, 2015

Mr. Bruce Guyton, Transit Planner
3201 Electronics Way
West Palm Beach, FL 33407

Re: RQO 15-025
Conflict of Interest

Dear Mr. Guyton,

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

QUESTION:

As a current commissioner for the City of Riviera Beach, would your appointment to the board of directors of the Palm Beach County Metropolitan Planning Organization (MPO) by the City of Riviera Beach create a prohibited conflict of interest for you because of your public employment with Palm Beach County as a transit planner for Palm Tran?

ANSWER:

Based on the facts provided, your appointment to the Palm Beach County MPO board of directors, your employment with Palm Beach County as a transit planner for Palm Tran, and your position as a commissioner for the City of Riviera Beach would not create a prohibited conflict of interest for you because the MPO, the City of Riviera Beach, and Palm Beach County are all governmental entities.

Just as you are prohibited by the Palm Beach County Code of Ethics (Code) from using your official position as a Palm Beach County employee and as an elected official for the City of Riviera Beach to give certain persons or entities a special financial benefit, the same prohibition will apply to your official position as an appointed member of the Palm Beach County MPO's board of directors.¹ In addition, the Code further prohibits you from voting on and participating in a matter that would result in a special financial benefit to those specified persons or entities.² Those specified persons or entities include an outside employer and a not-for-profit organization of which you are an officer or director.³ However, under the facts provided, the Palm Beach County MPO is a governmental entity, not a not-for-profit organization. Further, the definition of an outside employer excludes Palm Beach County or any other federal, regional, local, or municipal government entity. As such, since the MPO is not a not-for-profit organization and your two public employers, the City of Riviera Beach and Palm Beach County, are not among the specified persons or entities under Sec. 2-443(a), your appointment to the Palm Beach County MPO's board of directors would not create a prohibited conflict of interest for you.

FACTS:

You serve as a commissioner for the City of Riviera Beach, and you also work for Palm Beach County as a transit planner for Palm Tran. The City of Riviera Beach voted to appoint you as its representative on the Palm Beach

¹ 2-443(a)

² 2-443(c)

³ 2-443(a)

County Metropolitan Planning Organization (MPO). The Palm Beach County MPO, which provides a cooperative, comprehensive, and continuing transportation planning and decision-making process, is mandated by state and federal law and is an independent governmental entity.

Federal regulations and state statutes prescribe the number and balance of governmental entities that appoint specific elected officials to represent them as members of the Palm Beach County MPO Board. The Palm Beach County MPO Board is currently composed of 19 locally elected officials. Members include five Palm Beach County Commissioners, 13 elected officials from the larger municipalities, and one elected official from the Port of Palm Beach.

The Palm Beach County MPO provides both long-range and short-term transportation planning for all of Palm Beach County. The MPO projects needs and proposes transportation system maintenance and improvements to be funded with Federal and State transportation dollars. Each urban area in the United States has a MPO which acts as a liaison between local communities, their citizens, and the state departments of transportation. The MPO directs how and where available state and federal dollars for transportation improvements will be spent.

LEGAL BASIS:

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

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;
 - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
 - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
 - (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;
 - (5) A customer or client of the official or employee's outside employer or business;
 - (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner— "substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
 - (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.
- (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).

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. 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

Michael S. Kridel, *Vice Chair*

Michael F. Loffredo

Judy M. Pierman

Clevis Headley

Executive Director

Steven P. Cullen

June 26, 2015

Ms. Kathleen McGiveron
2121 Collier Ave
Lake Worth, FL 33461

Re: RQO 15-026
Jurisdiction of the COE

Dear Ms. McGiveron,

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

QUESTION:

Would a conflict of interest exist if you run for office when you are the chairperson of two political action committees (PAC)?

ANSWER:

The COE has jurisdiction over all Palm Beach County and municipal employees, elected officials, and appointed officials. Because you are not a Palm Beach County or municipal employee, elected official, or appointed official, you are not under the jurisdiction of the COE. The COE does not have jurisdiction over PAC members. COE Rule of Procedure 2.2 states, in relevant part, that only persons who are under the jurisdiction of the Code of Ethics may request an advisory opinion regarding the interpretation or application of the Code of Ethics.¹ As such, the COE cannot comment on any potential conflicts of interest if you run for office while serving as chairperson of two PACs.

FACTS:

You are the chairperson of two PACs. One PAC is registered in Palm Beach County, and the other PAC is registered in a municipality within Palm Beach County. You are considering running for office in the municipality where one of the PACs is registered. You are not an employee of Palm Beach County or a municipal employee.

LEGAL BASIS:

The legal basis for this opinion is found in PBC Commission on Ethics Rule of Procedure 2.2:

Rule 2.2 Persons Eligible to Receive an Advisory Opinion:

A person who is subject to any of the laws listed in paragraph 2.1(a) of this section may request an opinion regarding the interpretation or application of any of the ordinances under the Commission's jurisdiction to himself or herself.

¹ COE Rule of Procedure 2.2

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. 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

Michael S. Kridel, *Vice Chair*
Michael F. Loffredo
Judy M. Pierman
Clevis Headley

Executive Director
Steven P. Cullen

June 26, 2015

Ms. Pamala H. Ryan, City Attorney
City of Riviera Beach
600 W. Blue Heron Blvd.

Re: RQO 15-027
Misuse of Office

Dear Ms. Ryan,

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

QUESTION:

Would it violate the Palm Beach County Code of Ethics (Code) if City of Riviera Beach (City) Councilman Terence Davis donates community benefit funds for a program at a local church of which he is a member?

ANSWER:

Based on the facts submitted, the Code does not prohibit Councilman Davis from donating community benefit funds for a program at St. James Missionary Baptist Church, where neither he nor his spouse is a director or officer of the church, so long as the funds collected are taken into the general revenue funds for the City and the distribution of these funds to the church is determined to be for a "public purpose."

The Code prohibits an elected official from using their official office to take any action which would result in a special financial benefit, not shared by similarly situated members of the general public, to certain persons and entities.¹ Among those specified persons or entities are spouses, relatives, outside employers, and non-profit entities where the official or his or her spouse or domestic partner is an officer or director.² Based on the information provided, Councilman Davis is only a member, not an officer or director, of the church. Since none of the prohibited persons or entities would be receiving a special financial benefit, the donation of the community benefit funds to St. James Missionary Baptist Church would not violate the Code. In addition, an elected official is prohibited from using his or her official position in an improper way to corruptly secure a benefit for any person.³ As long as Councilman Davis does not use his official position to gain an improper benefit for the church, the Code does not prohibit him from donating community benefit funds to St. James Missionary Baptist Church for a church program.

FACTS:

You are a City Attorney, and you are requesting an advisory opinion on behalf of Councilman Terence Davis. Councilman Davis is a member of a local church, St. James Missionary Baptist Church, and he would like to donate

¹ §2-443(a)

² Id.

³ §2-443(b)

community benefit funds to the church for a church program. These funds are donated to the City by Waste Management of Florida, Inc. (WMF). WMF entered into a contract with the City to be the exclusive provider for the collection and disposal of residential and commercial solid waste material within the City. As a part of that contract, WMF contributes \$90,000 a year to the City for use by elected officials for public purposes. Under the City's current community benefits policy (Resolution 157-11), in order to comply with the COE's decision in RQO 11-084, the \$90,000 from WMF is now donated directly to the City and becomes a part of the City's general revenue. Each elected official may designate up to \$15,000 per year for public purposes. A public purpose is determined by "the majority of the City Council...at a City Council meeting."

The City's community benefits policy allows for such a donation to the local church for a program unless it is a violation under the Code. Councilman Davis is not employed by the church, and none of his relatives are employed by the church. Neither he nor his spouse is an officer or director of the church.

LEGAL BASIS:

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

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;
 - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
 - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
 - (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;
 - (5) A customer or client of the official or employee's outside employer or business;
 - (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner—"substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
 - (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.
- (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.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted, but

assume they are true for purposes of this advisory opinion. 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

Michael S. Kridel, *Vice Chair*

Michael F. Loffredo

Judy M. Pierman

Clevis Headley

Executive Director

Steven P. Cullen

June 26, 2015

Ms. Mimi Levison, Library Advisory Board
Palm Beach County Library System
3650 Summit Blvd.
West Palm Beach, FL 33406

Re: RQO 15-028
Conflict of Interest/Nepotism

Dear Ms. Levison,

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

QUESTION:

1. Does your service on the Palm Beach County Library System's Library Advisory Board (LAB) prohibit your grandchild from being hired by Palm Beach County to work in the library system?
2. If your grandchild is hired to work in the Palm Beach County Library System, would a prohibited conflict of interest exist if you continue to serve on the LAB?

ANSWER:

Question 1:

Based on the facts submitted, your service on the LAB does not prohibit your grandchild from being hired to work in the library system. However, you must take great care to avoid using your official position to influence others to hire your grandchild.

The Palm Beach County Code of Ethics (Code) prohibits a public official or employee from employing, appointing, promoting or advancing a relative.¹ Under the anti-nepotism provision of the Code, a grandchild does not meet the definition of a "relative."² As such, the anti-nepotism provision would not apply to this situation. Additionally, the LAB has the authority to appoint or employ only the Library Director. Because you and other members of the LAB are not vested with authority to hire, advance, or promote the other employees within the library system, the anti-nepotism provision would not prohibit your grandchild from being hired by Palm Beach County to work in the library system.

The Code also prohibits officials from using their official position or office to take or to influence others to take or fail to take any action to give a special financial benefit, not shared with similarly situated members of the general public, to certain persons or entities.³ Unlike the anti-nepotism provision, the misuse of office provision lists

¹ §2-445

² §2-445(2)

³ §2-443(a)

grandchildren among the specified persons who cannot receive a special financial benefit.⁴ Further, public officials are also prohibited from using their official position or office to corruptly secure a special benefit for any person.⁵

Question 2:

Based on the facts submitted, if your grandchild is hired to work in the library system, a prohibited conflict of interest would not exist if you remain a member of the LAB so long as you do not use your official position to give a special financial benefit to your grandchild or use your position in an improper manner to obtain a benefit for your grandchild.

The Code prohibits you from using your official position as an advisory board member or to influence others to take or fail to take any action to give a special financial benefit, not shared with similarly situated members of the general public, to specified persons or entities, including grandchildren.⁶ Under the Code, you must abstain from voting on and participating in any matter before the LAB that will result in a special financial benefit for your grandchild.⁷ If such a matter comes before your board, in order to comply with the Code, you will need to publicly disclose the nature of the conflict before your board discusses the issue, abstain from participating and voting on the matter, and file a state voting conflict form (8B) with the clerk of your board.⁸ In addition, the Code also prohibits you from using your official position improperly to corruptly secure a special benefit for any person.⁹

FACTS:

You are a member of the Palm Beach County Library System's LAB. The LAB consists of 15 members, appointed by the Palm Beach County Board of County Commissioners (BCC). Each member serves a three-year term and is required to reside within the library district. The LAB meets on a monthly basis, and members serve without pay. The board represents the Palm Beach County Library System to the BCC and works with the Library Director to improve and expand library service throughout Palm Beach County. Its role is to provide policy, budget, and other recommendations to the BCC. The LAB's only participation in the selection and hiring of library employees is for the Library Director. Your grandchild is applying for jobs within the Palm Beach County Library System but is not applying for the Library Director position.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-443(a), §2-443(b), §2-443(c), and §2-445 of the Code:

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:
 - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;

⁴ §2-443(a)(3)

⁵ §2-443(b)

⁶ §2-443(a)

⁷ §2-443(c)

⁸ Id.

⁹ §2-443(b)

- (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. 2-445. Anti-nepotism law.


An official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion or advancement in or to a position in the county or municipality as applicable in which the official is serving or over which the official exercises jurisdiction or control, any individual who is a relative or domestic partner of the official.

- (1) For the purposes of this section, "official" means any official or employee in whom is vested the authority by law, rule, or regulation or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in the county or municipality as applicable.
- (2) For the purposes of this section, "relative" means spouse, parent, child, sibling, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. 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



Commissioners

Michael S. Kridel, *Vice Chair*

Michael F. Loffredo

Judy M. Pierman

Clevis Headley

Executive Director

Steven P. Cullen

Palm Beach County Commission on Ethics

July 2, 2015

Holly Vath, Chief Purchasing Officer

City of Delray Beach

100 NW First Avenue

Delray Beach, FL 33444

Re: RQO 15-030
Conflict of Interest

Dear Ms. Vath,

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

Question:

Where the City of Delray Beach issued a competitive bid for Police Department leased vehicles, would a prohibited conflict of interest arise for a City Police Information Specialist who is the daughter of one of the owners of a company that has submitted a bid, if that company is awarded the bid?

Answer:

Based upon the facts submitted, a prohibited conflict of interest would not arise, assuming the employee's compliance with the following cautions and requirements.

The Code prohibits the employee from using 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 her father's company.¹ The Code also prohibits the employee's outside employer or business from contracting with the City.² Because "Outside employer or business" is defined by the Code to include "...at least five (5) percent of the total assets or common stock owned by the official or employee or any combination of the official or employee's household members, spouse, child, step-child, brother, sister, parent..." her father's ownership interest in the bidding company is imputed to the employee.³ Generally, the contractual relationships provision of the Code would create a prohibited conflict of interest where a business owned by an employee's father contracts with the municipality.⁴ However, because the bid here is awarded by the City under a system of sealed, competitive bidding to the lowest bidder, as long as the employee complies with the three additional requirements of Sec. 2-443(e) (1), the exception applies.⁵ These requirements include not participating in the bid specifications or the award of the bid, not using influence to persuade the award of the bid, and filing a disclosure statement with the Supervisor of Elections and the COE.

¹ Sec. 2-443(a)(3)

² Sec. 2-443(d)

³ Sec. 2-442, Outside employer or business, (2)

⁴ Sec. 2-443(d)

⁵ Sec. 4-443 (e)(1)

The COE cautions you that exceptions, by operation of law, are strictly construed. Assuming your strict compliance with the above requirements, a prohibited conflict of interest would not exist under the facts and circumstances submitted.

Facts:

The City of Delray Beach has issued a competitive bid for the leasing of Police Department vehicles. A City employee's father is one of the owners of a company that has submitted a bid. The employee is a Police Information Specialist. The employee neither works for nor has any ownership interest in the company submitting the bid. The City follows a system of sealed competitive bidding and awards the bid to the lowest bidder.

Sec. 2-442. Definitions.

Outside employer or business includes:

- (2) Any entity located in the county or which does business with or is regulated by the county or municipality as applicable, in which the official or employee has an ownership interest. For purposes of this definition, an "ownership interest" shall mean at least five (5) percent of the total assets or common stock owned by the official or employee or any combination of the official or employee's household members, spouse, child, step-child, brother, sister, parent or step-parent, or a person claimed as a dependent on the official or employee's latest individual federal tax return.

Sec. 2-443. Prohibited conduct.

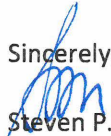
- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care 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:
- (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
- (d) *Contractual relationships.* No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business.
- (e) *Exceptions and waiver.* In addition, no official or employee shall be held in violation of subsection (d) if:
 - (1) The business is awarded under a system of sealed, competitive bidding to the lowest bidder and:
 - a. The official or employee or member of his or her household has in no way participated in the determination of the bid specifications or the determination of the lowest bidder;
 - b. The official or employee or member of his or her household has in no way used or attempted to use the official or employee's influence to persuade the agency, governmental entity or any personnel thereof to enter such a contract other than by the mere submission of the bid; and

- c. The official or employee, prior to or at the time of the submission of the bid, has filed a statement with the supervisor of elections and the commission on ethics, disclosing the nature of the interest in the outside employer or business submitting the bid.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. 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

SPC/gal

July 9, 2015

Ms. Pamala H. Ryan, City Attorney
City of Riviera Beach
600 W. Blue Heron Blvd.
Riviera Beach, FL 33404

Re: RQO 15-029
Voting Conflict

Dear Ms. Ryan,

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 9, 2015.

QUESTION:

Is “participating” in a matter by an elected official who has a voting conflict concerning that matter a violation of the Palm Beach County Code of Ethics (Code), even though the official abstained from voting?

ANSWER:

Based on the facts submitted, participation in a matter by an elected official who has a voting conflict concerning that matter is a violation of Sec. 2.443(c), even if the official abstained from voting. Under the Code, an elected official is prohibited from participating in any matter which would give a special financial benefit to any of the persons or entities specified in Sec. 2-443(a)(1-7), even if the official abstains from voting on the matter.

Although state law may allow an elected official, who has a voting conflict, to participate in a matter so long as he abstains from voting, the Code imposes a stricter standard. State law permits local government to adopt more stringent standards of conduct than those specified in the Florida Code of Ethics, provided those standards do not otherwise conflict with the state code.¹ Under the Code, the misuse of public office provision prohibits an elected official from using his or her official office to take any action which would result in a special financial benefit, not shared by similarly situated members of the general public, to certain persons and entities.² In conjunction with Sec. 2-443(a), the disclosure of voting conflicts provision requires an elected official to abstain from voting and not participate in any matter which would result in a special financial benefit to those specified persons or entities.³ “Participate” means that the official may not take part in any presentation or discussion regarding the issue.⁴ Therefore, if a matter comes before an elected official which would result in a special financial benefit to any of the specified persons or entities, in order to comply with the Code, the official must 1) disclose the nature of his or her conflict before any discussion on the issue begins; 2) abstain when the vote takes place and not participate in the matter; and 3) file a state voting conflict form (8B), submitting a copy to the clerk as required by state law and to the COE.⁵

¹ FLA. STAT. §112.326, *Nothing in this act shall prohibit the governing body of any political subdivision, by ordinance, or agency, by rule, from imposing upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in this part, provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of this part.* PBC Code §2-441, *the purpose of this code is to provide additional and more stringent ethics standards as authorized by Florida Statutes, §112.326.*

² §2-443(a)

³ §2-443(c)

⁴ RQO 12-039

⁵ §2-443(a)

FACTS:

You are a City Attorney for the City of Riviera Beach, and you are requesting an advisory opinion on a potentially reoccurring issue. Riviera Beach City Councilman Cedrick Thomas has an ongoing relationship with Palm Beach Maritime Academy, a Palm Beach County charter school. His bus company provides transportation for its students. His business relationship with the charter school pre-dated his election to the Riviera Beach City Council in 2008. The City of Riviera Beach has had a lease agreement with the charter school since 2006. Councilman Thomas sought an opinion from the State of Florida Commission on Ethics prior to the creation of the COE. The State of Florida Commission on Ethics stated that Councilman Thomas' relationship with the non-profit entity was acceptable as long as he abstained from voting.

At the last Riviera Beach City Council meeting, an issue regarding the City of Riviera Beach entering into a long-term lease with the Palm Beach Maritime Academy was placed on the agenda and discussed by the council. Councilman Thomas stated that he needed to abstain from voting due to his business relationship with the academy, but he stated that he wanted to participate in the discussion. You advised him against participating because it was your opinion that, although the state statutes would allow the councilman to participate, the Code is more stringent concerning voting conflict. Councilman Thomas did not participate out of an abundance of caution.

LEGAL BASIS:

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

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;
 - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
 - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
 - (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;
 - (5) A customer or client of the official or employee's outside employer or business;
 - (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner—"substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
 - (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.
- (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).

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. 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