



Honesty - Integrity - Character

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@pbcgov.org

Commissioners

Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Judy M. Pierman
Sarah L. Shullman

Executive Director

Mark E. Bannon

Intake and Compliance Manager

Gina A. Levesque

General Counsel

Christie E. Kelley

Chief Investigator

Anthony C. Bennett

Investigator

Abigail Irizarry

Agenda

July 6, 2017 – 1:30 p.m.

Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

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

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Scheduling Conference Re: C16-011 (Sarah Shullman, Presiding Commissioner)
- V. Approval of Minutes from June 1, 2017
- VI. Review of Evidentiary Standards
- VII. Executive Session
 - a. C17-003 b. C17-004 c. C17-005
 - d. C17-006 e. C17-007 f. C17-008
- VIII. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 17-010
 - b. RQO 17-012
 - c. RQO 17-013
- IX. Items Pulled from Consent Agenda
 - a.
- X. Executive Director Comments
- XI. Commission Comments
- XII. Public Comments
- XIII. 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

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

JUNE 1, 2017

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

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo – Absent
Judy M. Pierman
Sarah L. Shullman

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Executive Director
Anthony C. Bennett, COE Chief Investigator
Abigail Irizarry, COE Investigator I
Christie E. Kelley, Esq., COE General Counsel
Gina A. Levesque, COE Intake and Compliance Manager

ADMINISTRATIVE STAFF:

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

III. INTRODUCTORY REMARKS – None

IV. APPROVAL OF MINUTES FROM MAY 4, 2017

MOTION to approve the May 4, 2017 minutes. Motion by Clevis Headley, seconded by Judy Pierman, and carried 4-0. Michael Loffredo absent.

RECESS

At 1:32 p.m., the chair declared the meeting recessed for an executive session.

V. EXECUTIVE SESSION RE: C16-011

RECONVENE

At 2:30 p.m., the meeting reconvened with Chair Kridel, Vice Chair Clevis Headley, and Commissioners Judy Pierman, and Sarah Shullman present.

Vice Chair Headley read the following Public Report Finding Probable Cause as discussed during the executive session:

Complainant, Mark E. Bannon, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on September 12, 2016, alleging that Respondent, Alson Jacquet, former Vice Mayor of the City of Delray Beach, violated §2-443(a) and §2-443(b) of the Palm Beach County Code of Ethics by using his official position as the *Vice Mayor* for the city to have his parking citation voided by the Delray Beach Police Department.

Pursuant to §2-258(a)1 of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On June 1, 2017, the Commission conducted a hearing and reviewed the Sworn Memorandum of Inquiry, the Report of Investigation, and the Probable Cause Recommendation submitted by the COE Advocate. After an oral statement by the Advocate and a similar opportunity provided to Respondent and his representative, the Commission determined that there are reasonably trustworthy facts and circumstances to find probable cause exists and that the Respondent may have violated §2-443(a) and §2-443(b) of the Palm Beach County Code of Ethics. A final hearing will be set to determine whether any violation occurred.

Therefore it is:

ORDERED AND ADJUDGED that probable cause exists and the complaint against Respondent, Alson Jacquet, will be set for FINAL HEARING within 120 days to be coordinated between the parties.

V. – CONTINUED

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on June 1, 2017.

(CLERK'S NOTE: The clerk added the language as printed in the Public Report Finding Probable Cause.)

VI. PROCESSED ADVISORY OPINIONS (Consent Agenda)

VI.a. Request for Opinion (RQO 17-007)

VI.b. RQO 17-008

VI.c. RQO 17-009

MOTION to approve the consent agenda. Motion by Judy Pierman, seconded by Clevis Headley, and carried 4-0. Michael Loffredo absent.

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. EXECUTIVE DIRECTOR COMMENTS

VIII.A.

DISCUSSED: COE Update.

Mark Bannon, COE Executive Director, said that staff was continuing its investigations, inquiries, and municipal ethics training as well as attending municipal meetings.

IX. COMMISSION COMMENTS – None

X. PUBLIC COMMENTS – None

(This space intentionally left blank.)

XI. ADJOURNMENT

At 2:35 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

The evidentiary standard for the filing of a complaint is legal sufficiency.

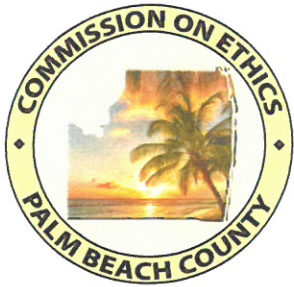
- For legal sufficiency to exist:
 - the person must be under the jurisdiction of the Commission on Ethics (COE), and
 - his or her alleged actions, if true, would be a violation of the Code of Ethics.

The evidentiary standard for the probable cause hearing is probable cause.

- Probable cause exists where there are reasonably trustworthy facts and circumstances that warrant proceeding to a final hearing.

The evidentiary standard for the final public hearing is the “clear and convincing evidence” standard.

- Clear and convincing evidence is evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue. (Fla. Std. Jury Instr. (Civ.) 405.4.)
 - Clear and convincing evidence requires more proof than a ‘preponderance of the evidence’ (more likely than not) but less than ‘beyond a reasonable doubt.’ It is a medium level standard.
 - The Fourth District Court of Appeal describes the clear and convincing evidence standard as:
 - [C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witness must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.”
Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983)



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Judy M. Pierman
Sarah L. Shullman

Executive Director

Mark E. Bannon

June 30, 2017

Officer Trisha Heuser
Jupiter Police Department
210 Military Trail
Jupiter, FL 33458

Re: RQO 17-010
Gift law

Dear Officer Heuser,

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:

Are any of the gift law provisions of the Palm Beach County Code of Ethics (Code) implicated if representatives of Roger Dean Stadium solicit and accept donations for the Town of Jupiter's Explorer Program during its National Night Out event?

ANSWER:

Based on the facts submitted, the Code's gift law provisions do not apply to the circumstances here. Under the Code, employees of the Town of Jupiter (Town) are prohibited from knowingly soliciting or accepting, directly or indirectly, any gift with a value over \$100, in the aggregate per calendar year, from any person or entity that the employee knows, or should know with the exercise of reasonable care, is a Town vendor or a lobbyist, principal or employer of a lobbyist who lobbies the town.¹ Here, no Town employees will be involved in the solicitation and acceptance of donations; the representatives of Roger Dean Stadium will oversee the process. Thus, the \$100 gift limit from vendors or lobbies of the Town of Jupiter would not apply to the representatives of Roger Dean Stadium.

The Code also prohibits the Town of Jupiter from accepting any funds donated by a vendor or lobbyist of the Town if the funds will be distributed to any Town employees.² Again, based on the facts provided, this prohibition does not apply to this situation. Here, the donations will not be distributed to any Town employees. The donations collected by the representatives of Roger Dean Stadium will be provided to the Town for its Police Explorer Program. Therefore, the Town would not be prohibited from accepting the donated funds from the National Night Out event.

FACTS:

You are a police officer for the Town of Jupiter, working in the Community and Youth Outreach Unit. The Jupiter Police will be attending National Night Out at Roger Dean Stadium on August 1, 2017. Representatives from Roger Dean Stadium would like to ask for donations at the gate to benefit the Jupiter Police Explorer Program. The police department has a separate checking account for its Police Explorer Program. The Jupiter Police Department will not be soliciting or collecting the donations; the representatives from Roger Dean Stadium will be overseeing the solicitation and collection of any donations. The donations will be going toward the Jupiter Police Explorers Program. The Explorer Program is a youth organization affiliated with the Boy Scouts of America and is open to young adults

¹ §2-444(a)(1)

² RQO 11-110; RQO 13-012

between the ages of 14 and 21. The program is designed to give youth who may feel they have an interest in a law enforcement career hands-on experience in criminal justice and law enforcement.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-444(a)(1) of the Code:

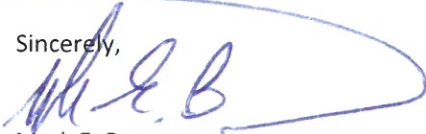
Sec. 2-444. Gift law.

(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.

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 assumes 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.

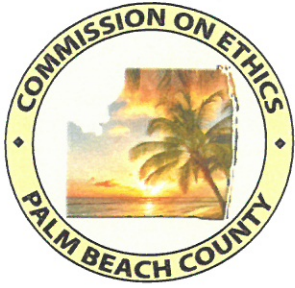
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon
Executive Director

CEK/gal



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Executive Director

Mark E. Bannon

June 30, 2017

Ms. Diana Grub Frieser
City of Boca Raton-Office of the City Attorney
201 W. Palmetto Park Road
Boca Raton, FL 33432

Re: RQO 17-012
Conflict of Interest

Dear Ms. Grub Frieser,

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:

Does a voting conflict arise for Councilmember Andrea Levine O'Rourke when a client of her spouse's employer (the Firm) appears before the City of Boca Raton Council on a matter unrelated to the services provided by the Firm?

ANSWER:

The Palm Beach County Code of Ethics (Code) prohibits an official from using her official position in any manner to give a special financial benefit to her spouse or her spouse's employer.¹ Similarly, the official is also prohibited from participating and voting on any matter that will result in a special financial benefit to the official's spouse or the spouse's employer.²

In addition, the Code prohibits an official from using her official position in any manner to give a special financial benefit to a customer or client of her outside employer or business.³ In addition, an official is prohibited from participating in and voting on a matter that will result in a special financial benefit to a customer or client of her outside employer or business.⁴ Under the Code, an outside business is an entity in which the official has an ownership interest.⁵ An ownership interest means that "at least five (5) percent of the total assets or common stock [is] owned by the official...or any combination of the official's...household members, spouse...."

Based on the facts provided here, Councilman O'Rourke will not have a voting conflict under these circumstances. First, the matter before the city council involving the client of Councilmember O'Rourke's spouse will not provide a financial benefit to her spouse or to her spouse's employer. The client will be appearing on issues related to the multiple properties throughout the City of Boca Raton in which he has a financial interest. These issues are unrelated to the services provided by her spouse or the Firm. Therefore, a voting conflict would not arise for Councilmember O'Rourke under Sec. 2-443(2) or Sec. 2-443(4) because neither her spouse nor her spouse's employer would receive a financial benefit from the matter before the city council concerning the client's properties.

¹ §2-443(a)(2); §2-443(a)(4)

² §2-443(c)

³ §2-443(a)(5)

⁴ §2-443(c)

⁵ §2-442

Additionally, Councilmember O'Rourke is not employed by the Firm; the Firm is her spouse's employer. Further, neither Ms. O'Rourke, her spouse, nor any of their family or household members have an ownership interest in the Firm. Thus, under the Code, the Firm is not Councilmember O'Rourke's outside business, and Sec. 2-443(5) is not applicable to this situation. As such, a voting conflict would not arise for Councilmember O'Rourke if a customer or client of her spouse's employer appears before the city council as long as her spouse or her spouse's employer does not receive a special financial benefit from the decision.

FACTS:

You are the City Attorney for the City of Boca Raton, and you are requesting an advisory opinion on behalf of Councilmember O'Rourke.

Councilmember O'Rourke's spouse is employed by a national financial and wealth management firm. Her spouse is an employee of the Firm, serving as a financial advisor, and provides financial planning and wealth management services to individuals and entities. Councilmember O'Rourke is not employed by the Firm, and neither she, her spouse, nor any of their family members have an ownership interest in the Firm.

One of the spouse's clients is an individual who has significant interests in real property holdings in the City of Boca Raton. One of the properties in which the client has an ownership interest recently sought the city council's approval for an amendment to its development order regulating the use of this property. You have stated that it is reasonably anticipated that this property and other properties in which the client has an ownership interest will appear before the city council in the future. The requests before the City Council are unrelated to Councilman O'Rourke's spouse, the spouse's employer, and any services provided to the client.

LEGAL BASIS:

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

Sec. 2-443. 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.

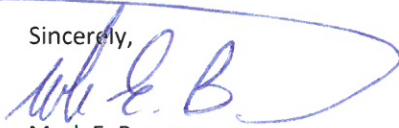
- (a) ***Misuse of public office or employment.*** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable 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:
 - (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;
 - (5) A customer or client of the official or employee's outside employer or business;
- (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 assumes 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.

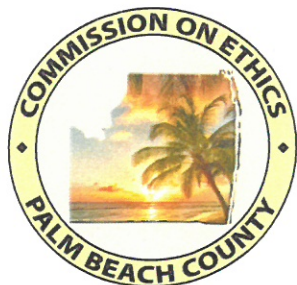
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon
Executive Director

CEK/gal



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Judy M. Pierman
Sarah L. Shullman

Executive Director

Mark E. Bannon

June 30, 2017

Mr. Leonard Berger
Chief Assistant County Attorney
Palm Beach County Attorney's Office
301 North Olive Ave, Suite 601
West Palm Beach, FL 33401

Re: RQO 17-013
Voting Conflict

Dear Mr. Berger,

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:

Under the Palm Beach County Code of Ethics (Code), does a voting conflict arise for Mary Lou Berger, a member of the Palm Beach County Board of County Commissioners (BCC), when Burt Aaronson, a former BCC Commissioner and her former supervisor, appears before the commission?

ANSWER:

As an elected official, Commissioner Berger is prohibited from using her official position in any manner which would result in a special financial benefit to any of the persons or entities specified in Sec. 2-443(a)(1-7). Similarly, she is also prohibited from participating in and voting on a matter which would give a special financial benefit to those specified persons entities.¹ An official's outside business or employer is one of the prohibited persons or entities.² However, a former employer or supervisor is not one of the persons or entities listed in Sec. 2-443(a)(1-7).³

Based on the facts submitted, Commissioner Berger is a current Palm Beach County Commissioner, elected in 2012. Mr. Aaronson was Commissioner Berger's supervisor when she served as his aide prior to his leaving office when his term ended in 2012. Because the Code does not prohibit her from participating in and voting on a matter giving a special financial benefit to a former employer or supervisor, Commissioner Berger is not prohibited from participating in discussions and voting on matters when Mr. Aaronson appears before the Palm Beach County Board of County Commissioners as long as the vote will not give a special financial benefit to any of the prohibited persons or entities listed in Sec. 2-443(a)(1-7).

FACTS:

You are the Chief Assistant County Attorney and are requesting an advisory opinion on behalf of Commissioner Mary Lou Berger, District 5.

A constituent of Commissioner Berger has questioned whether Commissioner Berger has a conflict of interest on matters involving G.L. Homes. One of G.L. Homes' lobbyists is Burt Aaronson, her former supervisor. Commissioner

¹ §2-443(b)

² §2-443(a)(4)

³ RQO 14-012

Berger served as an aide to Mr. Aaronson when he was a County Commissioner. Mr. Aaronson has not been Commissioner Berger's supervisor since 2012.

LEGAL BASIS:

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

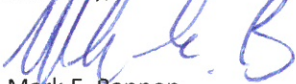
Sec. 2-443 Prohibited conduct.

- (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.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon
Executive Director

CEK/gal