



Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

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Commissioners

Sarah L. Shullman, Chair
Bryan Kummerlen, Vice Chair
Michael S. Kridel
Rodney G. Romano
Peter L. Cruise

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

October 4, 2018 – 1:30 p.m.
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from September 6, 2018
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 18-015
- VI. Items Pulled from Consent Agenda
 - a.
- VII. Executive Director Comments
- VIII. Commission Comments
- IX. Public Comments
- X. 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**

SEPTEMBER 6, 2018

**THURSDAY
1:34 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Sarah L. Shullman, Chair
Bryan Kummerlen, Vice Chair
Peter L. Cruise
Michael S. Kridel
Rodney G. Romano- Absent

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Executive Director
Anthony 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:

Leslie Dangerfield, Deputy Clerk, Clerk & Comptroller's Office (clerking)
Yadzia Roa, Deputy Clerk, Clerk & Comptroller's Office (condensing)

III. INTRODUCTORY REMARKS – None

IV. APPROVAL OF MINUTES FROM AUGUST 2, 2018

MOTION to approve the August 2, 2018 minutes. Motion by Michael Kridel, seconded by Bryan Kummerlen, and carried 4-0. Rodney Romano absent.

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VII. RQO 18-014

b. RQO 18-016

MOTION to approve the consent agenda. Motion by Peter Cruise, seconded by Bryan Kummerlen, and carried 4-0. Rodney Romano absent.

VI. ITEMS PULLED FROM CONSENT AGENDA – None

VII. EXECUTIVE DIRECTOR COMMENTS

Mark Bannon, COE Executive Director, said that:

- The Conference of the Council on Governmental Ethics Laws (COGEL) would be held in Philadelphia in December 2018 and COE Investigator Abigail Irizarry would be attending.
- Changes were made to the code of ethics, the COE ordinance and the law administration ordinance codes.

IX. COMMISSION COMMENTS

Commissioner Cruise thanked Mr. Bannon and Commissioner Kridel for coming to the dedication of the Ethics Academy at Florida Atlantic University (FAU). He added that the 12th annual ethics seminar would be held on November 14th, 2018 at FAU with Mr. Bannon as one of the featured speakers.

X. PUBLIC COMMENTS – None

XI. ADJOURNMENT

At 1:39 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



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Commissioners
Sarah L. Shullman, Chair
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Rodney G. Romano
Michael S. Kridel
Peter L. Cruise
Executive Director
Mark E. Bannon

September 14, 2018

Troy Schaaf, Sergeant
Lantana Police Department
901 N. 8th Street
Lantana, FL 33462

Re: RQO 18-015
Conflict of Interest

Dear Sergeant Schaaf,

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 you serve on the Town of Lantana Police Pension Board when you may vote on items that will affect your pension benefits as a Town of Lantana police officer?

ANSWER:

The Code prohibits public employees or officials from using their official positions in any way to give a special financial benefit not shared by similarly situated members of the general public to specified persons or entities, including themselves.¹ Further, the Code prohibits officials from participating in or voting on a matter that will result in a special financial benefit being given to any of the persons or entities specified in Section 2-443(a)(1)-(7).²

Typically with a question involving a voting conflict, the COE analyzes whether the financial benefit is shared with similarly situated members of the general public and considers the number of persons who stand to gain or lose from the decision.³ The COE has held where the class of persons who stand to gain from a decision is small, it is more likely that an official will have a conflict.⁴ The general line drawn by the Florida Commission on Ethics involves situations where the interest of the public official involves 1% or less of the class, in other words, 100 or more affected persons. Here, the size of the class is small, consisting of 39 members. Your interest in the class is 2.5%, which is above the 1% threshold used by the

¹ §2-443(a)

² §2-443(c)

³ RQO 10-013

⁴ CEO 92-37 (two percent or eight percent of the property to be affected or 5 of 60 sites and 5 of 168 sites is of sufficient size to result in a "special" gain); CEO 93-19 (measure to construct a sidewalk affecting 40 homes would not affect enough persons in order for its effect not to be considered "special" under the voting conflicts law).

COE and the Florida Commission on Ethics. As such, it would appear that you are more likely to have a voting conflict because of the small size of the class.

However, it should be noted that your appointment to the board is required by ordinance and by Florida statutes.⁵ Section 185.05, Florida Statutes, requires that membership of the board of trustees of municipal police officers' retirement funds must consist of five members, "two of who must be police officers...who are elected by a majority of the active police officers who are members of [the retirement plan]." The Florida Commission on Ethics has previously opined that at first glance a conflict of interest appears to exist for police officers sitting on retirement boards because Florida Statutes prohibits a public official or employee from having or holding "any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interest and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties."⁶ However, the Florida Commission then held that Section 112.313(7)(b), Florida Statutes, which states that a "public [official] or employee is not prohibited from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance," negates the apparent conflict of interest for police officers who are required by law or ordinance to serve as board members of the retirement fund.⁷

Here, it initially appears that a voting conflict may exist for you because you would vote on a matter that gives you a financial benefit and the size of the class affected is small. However, the COE agrees the Florida Commission's interpretation and has determined that because your appointment to the pension board is required by ordinance and by state law, you will only have a voting conflict if there are circumstances unique to you as the voting official which would enable you to gain (or lose) more than the other members of the class vested or those who will become vested in the Lantana Police Pension. If such a circumstance arises, you must abstain from both voting and participating in the matter, publicly disclose the nature of the conflict, file a State of Florida Conflict Form (Form 8B), and submit a copy of the conflict form to the COE.⁸ However, where a vote by you would affect all members of the class equally, no voting conflict would exist.

FACTS:

You are a Sergeant of the Road Patrol Division for the Lantana Police Department. You are also an elected member of the Lantana Police Pension Board. As a trustee, you may be called upon to vote on items that affect your pension benefits. You are also a vested member in the pension.

By ordinance, the pension board has five members, consisting of two Lantana police officers who are elected, one former police officer who is vested in the pensions and is appointed, and two members who are appointed by the town. The pension plan currently has 39 vested members. As a pension member, you have a 2.5% interest in the class of pension members.

LEGAL BASIS:

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

⁵ §185.05, Florida Statutes; Lantana, Florida, Municipal Code §14-79

⁶ §185.05, Florida Statutes

⁷ CEO 86-10

⁸ §2-443(c)

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;
- (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. This opinion 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