

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

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

Investigator

Abigail Irizarry

Investigator

Mark A. Higgs

Agenda

December 12, 2019 – 1:30 p.m.

Governmental Center,

301 North Olive Avenue, 6th Floor

Commissioners Chambers

Meeting will begin at 1:30pm
Executive Session will begin at 1:45pm
Regular Agenda will resume at 2:15pm

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from November 7, 2019
- V. Executive Session for C19-004
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 19-021
 - b. RQO 19-022
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Executive Director Comments
- IX. Commission Comments
- X. Public Comments
- XI. Adjournment

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

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

NOVEMBER 7, 2019

**THURSDAY
1:30 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
Mark A. Higgs, COE 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 OCTOBER 3, 2019**

MOTION to approve the October 3, 2019 minutes. Motion by Michael Kridel, seconded by Peter Cruise, and carried 4-0. Rodney Romano absent.

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

V.a. (Request for Opinion) RQO 19-018

V.b. RQO 19-019

V.c. RQO 19-020

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

VI. PROPOSED ADVISORY OPINIONS

V.I.a. RQO 19-016

Mark Bannon, COE Executive Director, said that:

- The COE directed staff to review and make some changes to RQO 19-016.
- The most important change was reflected in the last paragraph of the rationale section.
 - The facts were unique and only applied to RQO 19-016.
 - They should not take this opinion to mean that in most cases where the amount of money paid through an indirect source may not form that bond because of the unique circumstances of this when it does.
 - When the \$10,000 threshold was reached, the parties would be considered a customer or a client.

MOTION to approve proposed advisory opinion letter RQO 19-016. Motion by Peter Cruise, seconded by Michael Kridel, and carried 4-0. Rodney Romano absent.

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. EXECUTIVE DIRECTOR COMMENTS – None

IX. COMMISSION COMMENTS

IX.a.

DISCUSSED: Commendation.

Commissioner Cruise commended the COE for raising money towards the SMART Ride cyclists' event, which took place from the City of Miami to the City of Key West.

IX.b.

DISCUSSED: Congratulations.

Chair Shullman congratulated Gina Levesque, COE Intake and Compliance Manager, on learning that she would be a grandmother.

X. PUBLIC COMMENTS

X.a.

DISCUSSED: Village of Wellington Building Permits Complaint.

Bruce Tumin said that:

- The quasi-judicial Village of Wellington (Village) Construction Board of Adjustment and Appeals (board) could prevent contractors, architects, and engineers from pulling a building permit.
- The Village Council appointed people to the board who did not understand the construction codes.
- The Village Council, its staff, and attorney stated that they were not required to follow County ordinances unless penalties were issued for preventing a permit from being pulled.

- He filed an Office of Inspector General (OIG) complaint which included willful misconduct by the Village for not following County ordinances.
- The OIG sent the complaint to the Village, which violated his whistleblower protection.
- The case should have been closed if the OIG believed that his allegations fell outside its jurisdiction.

X.b.

DISCUSSED: Training.

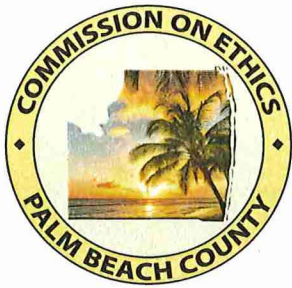
Richard Radcliffe, Executive Director for the Palm Beach County League of Cities (League), said that the League received mandatory State ethics training on October 30, 2019. He added that Mark Bannon, COE Executive Director, should be commended for the training he offered on State and local ethics ordinances.

XI. ADJOURNMENT

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

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

Honesty - Integrity - Character

Commissioners

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

Executive Director

Mark E. Bannon

November 20, 2019

Christina Romelus, Commissioner
City of Boynton Beach
3301 Quantum Blvd, Suite 101
Boynton Beach, FL 33426

Re: RQO 19-021
Outside Employment

Dear Commissioner Romelus,

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 the Palm Beach County Code of Ethics (Code) prohibit you from accepting employment with the Police Athletic League of West Palm Beach (PAL), a non-profit organization, while you also serve as a commissioner for the city?

BRIEF ANSWER:

No, the Code does not prohibit you from accepting this employment. However, you must ensure the requirements of the Code as described below are followed.

FACTS:

You are an elected official with the City of Boynton Beach. You are applying for a position as the Executive Director of PAL. PAL is a 501(c)(3) non-profit organization that focuses on juvenile crime prevention through academics and recreational activities to create and maintain the bond between police officers and kids on the street. The Executive Director of PAL reports to the Board of Directors and has overall strategic and operational responsibility for PAL's staff, programs, expansion, and execution of its mission. The Executive Director would also oversee fundraising efforts and cultivate relationships to garner new opportunities for grants, sponsorships, and partnerships.

PAL is not a vendor of the city and is not registered as a lobbyist or principal or employer of a lobbyist who lobbies the city.

RATIONALE:

Because PAL does not have any contracts or transactions to provide goods or service to the city, the contractual relationship provision does not apply.¹ Therefore, you are not prohibited from accepting employment with PAL.

However, as an elected official, you are prohibited from using your official position as a city commissioner to give a special financial benefit, not shared with similarly situated entities in the community, to your outside employer.² If you accept the position with PAL, you would oversee fundraising and sponsorship efforts. Lending your name and official title as a city commissioner to any fundraising, sponsorship, grant, or partnership efforts on behalf of PAL would per se constitute using your elected office to give PAL a special financial benefit.³ This applies to you, as well as anyone indirectly soliciting on your behalf. Therefore, your participation in any of these efforts would need to be in your personal name without title or connection to your official position as a city commissioner.

¹ §2-443(d)

² §2-443(a)

³ RQO 12-081

Further, as the Executive Director of PAL, you would also be prohibited from using your official position as a city commissioner to corruptly secure a special benefit of any kind for PAL.⁴ Additionally, you would be prohibited from participating in or voting on any matter that would result in a special financial benefit being given to PAL.⁵

Moreover, as the Executive Director of PAL, any solicitations for funds by PAL staff or anyone else if done under your direction would be considered to be an indirect solicitation on your behalf. In general, you, or any other person or entity on your behalf, are prohibited from knowingly soliciting or accepting, directly or indirectly, any gift with a value greater than \$100 in the aggregate for the calendar year from any person or entity that you know, or should know with the exercise of reasonable care, is a vendor, lobbyist or principal or employer of a lobbyist who lobbies, sells or leases to the municipality you serve.⁶ However, §2-444(h) of the Code creates an exception to this prohibition for charitable donations solicited on behalf of a 501(c)(3) non-profit organization. Since PAL is a 501(c)(3) organization, should you, your staff at PAL, or anyone else acting under your direction solicit or accept a donation in excess of \$100 from a vendor, lobbyist, or principal or employer of a lobbyist of the City of Boynton Beach, then to comply with §2-444(h), you must maintain a record of the solicitation and submit the record to the COE within 30 days of the event, or if no event, within 30 days of the solicitation. Additionally, you, your staff, or anyone acting on your behalf, are prohibited from soliciting any person or entity with a pending application before the city.

Finally, you are reminded that gifts may not be solicited or accepted because of the past, present, or future performance of a legal duty or official action.⁷ You must take great care that solicitations accepted on behalf of PAL do not result in a quid pro quo for your "official action" as a city commissioner.

LEGAL BASIS:

The legal basis for this opinion is found in the following sections 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:
- (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
- (b) **Corrupt misuse of official position.** An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.
- (c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

⁴ §2-443(b)

⁵ §2-443(c)

⁶ §2-444(a)(1)

⁷ §2-444(e)

(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.

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.

(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.

(h) **Solicitation of contributions on behalf of a non-profit charitable organization.**

- (1) Notwithstanding the prohibition on gifts as outlined in subsections (a) and (b), the solicitation of funds by a county or municipal official or employee for a non-profit charitable organization, as defined under the Internal Revenue Code, is permissible so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited. The solicitation by an official or employee as contemplated herein, is expressly prohibited if made to any person or entity with a pending application for approval or award of any nature before the county or municipality as applicable.
- (2) To promote the full and complete transparency of any such solicitation, officials and employees shall disclose, on a form provided by the commission on ethics, the name of the charitable organization, the event for which the funds were solicited, the name of any person or entity that was contacted regarding a solicitation or pledge by the official or employee, and the amount of the funds solicited or pledged if known. The form shall be completed legibly and shall be filed with the commission on ethics. The form shall be filed within thirty (30) days from the occurrence of the event for which the solicitation was made, or if no event, within thirty (30) days from the occurrence of the solicitation.
- (3) Officials and employees may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions described in this subsection.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. 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.

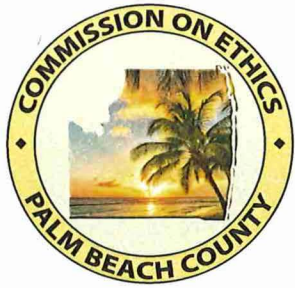
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon,
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

Honesty - Integrity - Character

Commissioners

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

Executive Director

Mark E. Bannon

December 5, 2019

Mr. Daniel P. Clark, PE, Town Manager
Town of Lake Clarke Shores
1701 Barbados Road
Lake Clarke Shores, FL 33406

Re: RQO 19-022
Outside Employment/Misuse of office or employment

Dear Mr. Clark,

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

QUESTION:

Does the Palm Beach County Code of Ethics (Code) prohibit you as the Town of Lake Clark Shores Town Manager from starting a business and consulting for other businesses during non-work hours?

BRIEF ANSWER:

The Code does not prohibit you from starting a business and consulting for other businesses during non-work hours as long as you follow the requirements of the Code as described in this advisory opinion.

FACTS:

You are the Town Manager for the Town of Lake Clarke Shores (Town), and thus a Town employee. While you are a professional engineer, you also have experience and expertise in the area of mergers and business restructuring. In the past, you have used this experience to assist friends regarding this topic free of charge and would now like to open a private consulting business to provide the same services to private businesses for payment on a part-time basis. You have identified some potential business customers and indicated that none of them will be associated with the Town, nor will their staff or directors be associated with the Town. Further, the businesses neither are nor will be a "current vendor" of the Town, and all consulting work will be conducted outside your work hours as Town Manager.

RATIONALE:

The Code prohibits you from entering into any contract or other transaction for goods or services with your public employer.¹ This prohibition extends not only to you, directly or indirectly, but to your outside business as well. This prohibition includes entering into contracts or providing services to any person or entity who is a current vendor of your government employer unless the part-time employment exception applies.² This exception is only applicable to certain part-time employment relationships with a vendor, but not to business relationships. The Code defines an outside business as any entity in which you or specified relatives have an ownership interest of at least five percent.³ Thus, the consulting business you intend to open would be considered your outside business under the Code.

Based on the facts provided, as long as neither you nor your outside business enter into any contracts or other transactions for goods or services with the Town, directly or indirectly, and you operate your business outside of

¹ §2-443(d)

² §2-443(e)(5)

³ §2-442

your Town work hours, you will not be in violation of the prohibited contractual relationships provision of the Code. Further, you are prohibited from entering into any contractual relationships to provide paid services with a vendor of the Town as this would violate the Contractual Relationships section of the Code.⁴

In addition, the Code prohibits you, as a public employee, from using your official position with the Town to give a special financial benefit to specified persons or entities, including yourself, your outside business, or a customer or client of your outside business.⁵ The Code defines a customer or client as a person or entity to which your outside business has supplied goods or services during the previous 24 months in excess of \$10,000.⁶ Therefore, you must also take great care not to misuse your governmental employment in any way to give a special financial benefit to yourself, your outside business, or the customers or clients of your outside business. This would include using your position with the Town to influence another person to take or fail to take some action that would give a special financial benefit to your customers or clients, soliciting business during your Town work hours, and identifying yourself as Town Manager or a Town employee on any written or verbal communication to attempt to obtain a customer.

Because of your position as Town employee, a prohibited conflict of interest would be created for you if you were to use your official position to assist a customer or client of your outside business on any project needing approval from the Town Council or any Town department, were you to assist in obtaining such approval. Further, based on your unique position as Town Manager, we also recommend that you refrain from working for any potential customer or client of your outside business located within the Town who may need to obtain Town Council or department approvals, as it may create an appearance of impropriety due to your position as Town Manager, even where you are not directly involved in this process.

Finally, you are reminded that as a Town employee you must comply with the Town's rules regarding outside employment or businesses ownership.

LEGAL BASIS:

The legal basis for this opinion is found in the following sections of the Code:

Sec. 2-442. Definitions.

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

Outside employer or business includes:

- (2) Any entity located in the county ... 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....

Vendor means any person or entity who has a pending bid proposal, an offer or request to sell goods or services, sell or lease real or personal property, or who currently sells goods or services, or sells or leases real or personal property, to the county or municipality involved in the subject contract or transaction as applicable. For the purposes of this definition a vendor entity includes an owner, director, manager or employee.

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;
- (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;

⁴ §2-443(d)

⁵ §2-443(a)

⁶ §2-442

- (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 assumes 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 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

MEB/gal