



Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

300 North Dixie Highway
West Palm Beach, FL 33401

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Commissioners

Rodney G. Romano

Michael H. Kugler

Peter L. Cruise

Michael S. Kridel

Danielle A. Sherriff

Executive Director

Christie E. Kelley

General Counsel

Rhonda Giger

Intake and Compliance Manager

Gina A. Levesque

Investigator

Mark A. Higgs

Investigator

Abigail Irizarry

Second Amended Agenda

January 12, 2023 – 1:30 p.m.

Governmental Center,
301 North Olive Avenue. 6th Floor

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Introductory Remarks
- V. Approval of Minutes
 - a. November 3, 2022
 - b. December 8, 2022
- VI. 2022 Annual Report Presentation
- VII. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 22-027
 - b. RQO 22-028
 - c. RQO 22-029
 - d. RQO 22-030 (modified)
- VIII. Items Pulled from Consent Agenda
 - a.
- IX. Executive Director Comments
- X. Commission Comments
- XI. Public Comments
- XII. 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 (COE)
PALM BEACH COUNTY, FLORIDA**

NOVEMBER 3, 2022

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

**COMMISSION CHAMBERS
WEISMAN GOVERNMENTAL CENTER**

MEMBERS:

Rodney G. Romano, Chair
Michael H. Kugler, Vice Chair
Peter L. Cruise
Michael S. Kridel
Danielle A. Sherriff

COUNTY STAFF PRESENT:

Rhonda Giger, General Counsel
Mark A. Higgs, COE Investigator II
Abigail Irizarry, COE Investigator II
Christie E. Kelley, COE Director III
Gina A. Levesque, COE Intake and Compliance Manager

CLERK OF THE CIRCUIT COURT & COMPTROLLER'S OFFICE STAFF PRESENT:

Danielle Freeman, Deputy Clerk

I. CALL TO ORDER

The chair called the meeting to order at 1:31 p.m.

II. PLEDGE OF ALLEGIANCE

Commissioner Kridel led the Pledge of Allegiance.

IV. ROLL CALL

Present: Chair Rodney Romano, Vice Chair Michael H. Kugler, Commissioner Michael S. Kridel, and Commissioner Danielle Sherriff

Absent: Commissioner Peter Cruise

III. INTRODUCTORY REMARKS

Chair Romano spoke on the importance of professionalism, integrity, and civility in the workplace in light of recent events in the news.

V. APPROVAL OF MINUTES

MOTION to approve the September 8, 2022, and October 6, 2022, minutes. Motion by Vice Chair Kugler, seconded by Commissioner Kridel, and carried 4-0.

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

- a. RQO 22-022
- b. RQO 22-023
- c. RQO 22-024

MOTION to approve the consent agenda as published. Motion by Vice Chair Kugler, seconded by Commissioner Kridel, and carried 4-0.

VII. ITEMS PULLED FROM CONSENT AGENDA

No items were pulled from consent.

VIII. EXECUTIVE DIRECTOR COMMENTS

Christie Kelley, COE Director III, provided the following updates:

1. Ms. Kelley congratulated Mark Higgs and Abigail Irizarry on their recent certification as forensic investigators by the International Association of Interviewers.
2. In October, staff conducted 22 in-person training sessions.
3. The COE was co-sponsoring a two-day conference with the Naples Ethics Commission, the Collier County Sheriff's Office, and the Miami-Dade Commission on Ethics & Public Trust. The conference was scheduled for March 2023 and was titled "Government Ethics in Public Corruption." Two COE staff members would be on the panel at the conference.

Chair Romano remarked that it was nice to see COE staff continue to take on leadership roles throughout the state.

IX. COMMISSION COMMENTS

1. Vice Chair Kugler echoed Chair Romano's sentiments.

X. PUBLIC COMMENTS

No public comments were made.

XI. ADJOURNMENT

MOTION to adjourn. Motion by Vice Chair Kugler, seconded by Commission Sherriff, and carried 4-0.

At 1:37 p.m., the chair declared the meeting adjourned.

APPROVED: 01/12/2023

Chair/Vice Chair

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

DECEMBER 8, 2022

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

**COMMISSION CHAMBERS
WEISMAN GOVERNMENTAL CENTER**

MEMBERS:

Rodney G. Romano, Chair
Michael H. Kugler, Vice Chair
Peter L. Cruise
Michael S. Kridel
Danielle A. Sherriff

COUNTY STAFF PRESENT:

Rhonda Giger, General Counsel
Mark A. Higgs, COE Investigator II
Abigail Irizarry, COE Investigator II
Christie E. Kelley, COE Director III
Gina A. Levesque, COE Intake and Compliance Manager

CLERK OF THE CIRCUIT COURT & COMPTROLLER'S OFFICE STAFF PRESENT:

Jillian Zalewska, Deputy Clerk

I. CALL TO ORDER

The vice chair called the meeting to order at 1:30 p.m.

II. PLEDGE OF ALLEGIANCE

Commissioner Cruise led the Pledge of Allegiance.

III. ROLL CALL

All members were present.

IV. INTRODUCTORY REMARKS

There were no introductory remarks.

V. EXECUTIVE SESSION-C22-005

MOTION to adjourn the meeting pending executive session. Motion by Commissioner Cruise, seconded by Vice Chair Kugler, and carried 5-0.

RECESS

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

RECONVENE

At 2:23 p.m., the meeting reconvened with Chair Romano, Vice Chair Kugler, Commissioner Cruise, and Commissioner Sherriff present.

Vice Chair Kridel read the following Public Report and Final Order of Dismissal:
In Re: Kenneth Payne.

Complainant, Christie Kelley, Executive Director of the Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on May 18, 2022, alleging that Respondent, Kenneth Payne, who was a city of Riviera Beach employee at the time of the allegations, violated §2-443(a), §2-443(b), and §2-443(d) of the Palm Beach County Code of Ethics by misusing his position in public employment to secure a special financial benefit for himself or his outside business by engaging in activities related to his private business by using City time and/or resources, corruptly securing a special benefit for himself or his outside business by using his position as a public employee to gain access to property and/or resources for use by his private business, and/or entering into a transaction with his public employer, all of which were inconsistent with the proper performance of his public duties.

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 December 8, 2022, the Commission conducted a probable cause hearing and reviewed the 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 the Respondent may have violated §2-443(a), (b), and (d) of the Palm Beach County Code of Ethics.

Therefore it is:

ORDERED AND ADJUDGED that probable cause exists and the complaint against Respondent, Kenneth Payne, will be set for a final hearing within 120 days to be coordinated between the parties.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on December 8, 2022.

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

- a. RQO 22-025
- b. RQO 22-026

MOTION to approve the consent agenda as published. Motion by Vice Chair Kugler, seconded by Commissioner Cruise, and carried 5-0.

VII. ITEMS PULLED FROM CONSENT AGENDA

No items were pulled from consent.

VIII. EXECUTIVE DIRECTOR COMMENTS

Christie Kelley, COE Director III, provided the following updates:

1. Ms. Kelley and Ms. Giger met with the new BCC commissioners and provided them with a brief overview of the COE. Additionally, they explained the sunshine law and their State ethics requirements.
2. The position for the COE Education and Communications coordinator had been posted this week, and they look forward to filling the position.
3. A status check for the Lynne Hubbard case had been scheduled for December 21, 2022. A final hearing for the case was scheduled for January 25 and 27, 2022, beginning at 9 a.m.
4. Ms. Kelley reminded everyone that the COE meeting for January was scheduled for January 12. She also said an update on the annual report would be provided at the meeting.
5. Ms. Kelley wished everyone happy holidays.

IX. COMMISSION COMMENTS

1. Commissioner Kridel echoed Ms. Kelley's sentiments regarding the holidays.
2. Commissioner Kugler encouraged everyone to continue submitting their questions to the COE to obtain ethics opinions because it minimized the executive sessions. In addition, he commended Ms. Kelley and Ms. Giger on the detailed and well-written processed advisory opinions.
3. Commissioner Sherriff and Commissioner Cruise echoed the sentiments shared by Vice Chair Kugler regarding the processed advisory opinions, and they both wished everyone happy holidays.

Ms. Kelley reminded everyone that a hearing officer would present the hearing, and therefore the commission would not be in attendance.

4. Chair Romano thanked everyone for a momentous year and wished all happy holidays.

X. PUBLIC COMMENTS

There were no public comments.

XI. ADJOURNMENT

MOTION to adjourn. Motion by Vice Chair Kugler, seconded by Commission Sherriff, and carried 5-0.

At 2:31 p.m., the chair declared the meeting adjourned.

APPROVED: 01/12/2023

Chair/Vice Chair

December 15, 2022

Mr. Kenneth L. Metcalf, Town Manager
Town of Mangonia Park
1755 East Tiffany Drive
Mangonia Park, FL 33407

Re: RQO 22-027
Use of Official Position/Gift Law

Dear Mr. Metcalf,

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, as Manager of the Town of Mangonia Park (Town), from allowing Town employees complimentary use of Town facilities for private functions?

BRIEF ANSWER:

The Code does not preclude you from allowing Town employees complimentary use of Town facilities. However, the employees may be required to report it on a gift form.

FACTS:

You are the Town Manager of the Town of Mangonia Park. Although there is no written Town policy in place, the current practice of the Town is to allow Town employees complimentary use of Town facilities for their personal functions, including the use of the park pavilion, the community center, or the town hall. While the Town charges a fee to non-employees for the use of these facilities, this cost has been waived for employees.¹ If a member of the public rents Town facilities, part of the cost is allocated to having a staff member present during the event. If an employee uses a facility, no staff member is present, and the employee takes on the responsibility of making sure their event complies with all Town policies.

The Town is currently considering creating a written Town policy regarding the complimentary use of Town facilities for Town employees.

ANSWER:

The Code prohibits you from using your official position as the Town Manager to give a special financial benefit, not shared with similarly situated members of the general public, to specified persons or entities, including to someone who is known to you to work for your outside employer.² However, Section 2-442 of the Code specifically exempts local and municipal government entities from the definition of outside employer. As such, the Town is not considered your outside employer. The Code also prohibits you from using your official position to corruptly secure a special benefit for anyone. Corruptly is defined as an act that is done with a wrongful intent and inconsistent with the proper performance of your public duties.³

¹ The cost for non-employees includes \$474.50 plus applicable sales tax for the venue as well as a refundable deposit of \$125. A Town staff member is present during the rental period at \$15 per hour and is available to the renter if assistance is needed. If a Town employee uses the facility, no Town staff member is present.

² Sec. 2-443(a).

³ Sec. 2-443(b).

Here, the employees of the Town comprise the group who receive the benefit of complimentary use of the Town facilities. Because this benefit is available to every employee, while there is a recognized benefit, it is not considered special under the code.⁴ Simply put, Town employees are all similarly situated because they are all entitled to the same benefit; thus, based on the facts provided, where every employee is afforded the use of Town facilities, there is no prohibition under the Code that precludes you from providing this benefit to them.

Additionally, because there is no Town policy or procedure that makes the the use of Town facilities an employment benefit, the complimentary use granted to employees likely qualifies as a gift to the employees from the Town. Although the Code does not prohibit a municipality from giving gifts to its employees based on the facts provided, each employee may be required to report the gift on a gift disclosure form if the value of the gift exceeds \$100. Based on the facts provided, the Town charges non-Town employees over \$100 use Town facilities. Because, the value of the facility rental exceeds \$100, any employee who receives the complimentary facility use must report the gift from the Town in accordance with the disclosure requirements of the Code. If any of the employees who receive the gifts are state reporting individuals, they must follow state law regarding gift disclosure.

Ideally, were this practice to continue, it would simplify matters if the Town were to officially codify the complimentary use of Town facilities by making it a formal employment benefit. Once that occurs, this practice would no longer be considered a gift and would not need to be reported under the Code.

LEGAL BASIS:

The legal basis for this opinion is found in §2-442, §2-443(a), §2-443(b), and §2-444 of the Code:

Sec. 2-442. Definitions.

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 of these, 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.

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, or attempt to do any of these things, 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 or attempt to 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.

Sec. 2-444. Gift law.

(f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.

(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

⁴ The general line drawn by the COE, and by the Florida Commission on Ethics, is that benefit is not special where the interest of the public official involves 1% or less of the class CEO 78-96; CEO 84-80; CEO 87-18; CEO 87-95; CEO 92-52; CEO 93-12

Statutes, §112.3148, as may be amended, including, but not limited to, the state's definition of gift, exceptions thereto, and gift valuations. The county code of ethics' definition of gift and exceptions thereto shall not be used by reporting individuals to complete and file state gift reporting disclosures. When a state reporting individual files or is required to file a gift report with the state, a copy of each report shall also be filed with the county commission on ethics no later than ten (10) days after the report is filed with the state. Failure to file a State of Florida Quarterly Gift Disclosure Form with the county commission on ethics within the required timeframe shall be a violation of this section.

- (2) All other officials and employees who are not reporting individuals under state law.
 - b. All other gifts. All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics no later than January 31 of each year for the previous calendar year (January 1 through December 31). 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. The county code of ethics' definition of gift and exceptions thereto shall be used by non-state-reporting individuals in completing and filing annual gift disclosure reports required by this section.

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,



Christie E. Kelley,
Executive Director

RG/gal



Honesty - Integrity - Character

Palm Beach County Commission on Ethics

Commissioners

Rodney G. Romano, Chair
Michael H. Kugler, Vice Chair
Peter L. Cruise
Michael S. Kridel
Danielle A. Sherriff

Executive Director

Christie E. Kelley

December 13, 2022

Ms. Tijuana Williams, Executive Director
Atkins Tender Loving Care Preschools
2721 RJ Hendley Avenue
Riviera Beach, FL 33404

Re: RQO 22-028
Conflict of Interest

Dear Ms. Williams,

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 serving as a member of the Palm Beach County Water Utilities Department (PBCWUD) Advisory Board when, in your private capacity, you are the Executive Director for Atkins Tender Loving Care (ATLC), and the students occasionally benefit from scholarships that are funded by Palm Beach County Youth Services (PBCYS).

BRIEF ANSWER:

You are not prohibited from serving on the PBCWUD Advisory Board because the advisory board is purely advisory and does not have any transactional oversight of the scholarship awards to ATLC. However, the existence of the transactional relationship with Palm Beach County must be disclosed at a public meeting of the Palm Beach County Board of County Commissioners (BCC) at the time of your appointment.

FACTS:

In general, you would not be entitled to an advisory opinion because you are not currently under the jurisdiction of the COE as an appointed official. The COE Ordinance states, in relevant part, that only persons who are under the jurisdiction of the Code may request an advisory opinion regarding the interpretation or application of the Code to himself or herself. However, if you accepted appointment to the PBCWUD Advisory Board, you would be considered a county official and would be subject to the Code. Because you are seeking an opinion proactively to avoid any potential issues, the COE will make an exception and provide an opinion.

You are the Executive Director of ATLC, which is an early childhood education provider open to children from infancy to adolescence. At times, ATLC receives funding from PBCYS, which is a county department. This funding is part of a program to ensure that qualified children have a safe place to go when school is not in session. ATLC is one of multiple providers who benefit from the Summer Camp Scholarship Program. The family of the scholarship beneficiary enrolls their child in the summer camp provider of their choice. Once the child has attended camp, ATLC will invoice the county. Once attendance has been verified by the PBCYS, ATLC is reimbursed by the county for its services. ATLC does not play a role in how the summer camp funding is allocated, nor in who chooses its facilities for services. While your role is solely that of executive director, your mother is the founder and owner of ATLC.

You are submitting an application to serve on the PBCWUD Advisory Board, which is comprised of 11 member citizens that are representational of the districts served by the PBCWUD. According to the county, the Advisory Board holds public meetings approximately once per month. Their function is to review existing and proposed policies, plans, and programs of the PBCWUD and review existing or proposed rate changes and structures. The PBCWUD Advisory Board does not provide any regulation, oversight, management, or policy-setting recommendations regarding any contract[s] between your outside business and the County.

ANSWER:

As a member of the PBCWUD Advisory Board, you would be considered an official under the Code.¹ As an official, the Code prohibits you from using your official positions as a member of the PBCWUD Advisory Board in any way, including voting on or participating in discussions on a matter, to give a special financial benefit to any of the persons or entities listed in Section 2-443(a)(1-7), which includes yourself, ATLC, and a customer or client of ATLC.² The Code also prohibits you from using your official position as a PBCWUD Advisory Board member to corruptly secure a special benefit of any kind for yourself or others, including ATLC.³ Corruptly is defined as taking some action “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.”⁴

Additionally, Section 2-443(d), Contractual relationships, prohibits your or your outside employer or business from entering into any contract or other transaction for goods or services with the county, unless an exception applies. However, this prohibition does not apply to an advisory board member if certain criteria are met. Here, the contractual relationships prohibition would not apply to you as an advisory board member if the PBCWUD Advisory Board is purely advisory and the Advisory Board does not have any role in the oversight of the subject contract(s). If both criteria are met, then as long as the subject contract is disclosed at a public meeting of the BCC, the contractual relationship prohibition would not apply to you and ATLC.

Here, it must first be determined whether the PBCWUD Advisory Board is purely advisory. A purely advisory board is authorized only to make recommendations to another board or a government administrator. A board with any measure of final decision-making authority is not purely advisory. Based on the limited duties of the PBCWUD Advisory Board, it appears their role is purely advisory.

Next, it must be determined whether the PBCWUD Advisory Board has contract or transactional oversight. A board has contract oversight if it plays any role in the oversight, regulation, management, or policy-setting recommendations regarding the subject contract(s). Based on the facts provided, the PBCWUD Advisory Board does not provide any oversight of the subject contract/transactions between ATLC and PBCYS.

Because the PBCWUD Advisory Board is purely advisory and does not exercise contract oversight, you would not be prohibited from serving as an Advisory Board member as long as the existence of any contracts between ATLC and the county are disclosed at a duly noticed public meeting of the BCC. The disclosure should occur at the time of your appointment to the PBCWUD Advisory Board.

LEGAL BASIS:

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

¹ §2-442, Definitions

² §2-443(a)(1-7), Misuse of public office or employment; §2-443(c), Disclosure of voting conflicts

³ §2-443(b), Corrupt misuse of official position

⁴ Id.

Sec. 2-442. Definitions.

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "official" shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies, and members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi-judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.

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, or attempt to do any of these things, 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 organization of which he or she (or his or her spouse or domestic partner) is an officer or director. However, this subsection shall not apply to any official or employee who is required to serve on the board of directors of any organization solely based on his or her official position (ex-officio), regardless of whether he or she has voting rights on the board, and who receives no financial compensation for such service on the board of directors, and otherwise has no personal ownership interest in the organization.

(b) Corrupt misuse of official position. An official or employee shall not use or attempt to 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.

(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. This

prohibition shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality. This prohibition also shall not apply to officials or employees who purchase goods from the county or municipality on the same terms available to all members of the public. This prohibition shall also not apply to advisory board members provided the subject contract or transaction is disclosed at a duly noticed public meeting of the governing body and the advisory board member's board provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.

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 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,

A handwritten signature in blue ink, appearing to be "CK", with a long horizontal flourish extending to the right.

Christie E. Kelley
Executive Director

RG/gal

December 22, 2022

Mr. John D'Agostino, Town Manager
Town of Lake Park
535 Park Avenue
Lake Park, FL 33403

Re: RQO 22-029
Gift Law

Dear Mr. D'Agostino,

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 Peter Baytarian, who employs a lobbyist who lobbies the town of Lake Park (Town), from hosting a private party for the Town's outgoing mayor?

BRIEF ANSWER:

No. The Code does not preclude Mr. Baytarian from hosting a party. However, if the per-person cost of the party exceeds \$100, an attendee who is subject to the Code would be prohibited from attending the event. If, however, the per-person cost of the party is \$100 or less, there would be no restrictions or reporting requirements for guests who are subject to the Code.

FACTS:

You are the Town Manager of the town of Lake Park. Peter Baytarian is the managing partner of Forest Development. Forest Development is in the midst of a major construction project taking place in the Town. Mr. Baytarian employs two lobbyists who lobby the Town. The Town's current mayor is leaving office at the end of 2022, and Mr. Baytarian would like to host a party to recognize the mayor. You assume the party would be catered but are not sure what the cost breakdown would be. The party would not be open to the public.

ANSWER:

Under the Code, public employees and officials are prohibited from soliciting or accepting a gift with a value of greater than \$100 in the aggregate for the calendar year from any vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to their municipality or to the county, as applicable.¹ Public officials and employees are also prohibited from accepting a gift of any value in exchange for the past, present and future performance or non-performance of a legal duty or official public action.² The Code also prohibits public officials and employees from soliciting a gift of any value from any person or business entity that the official or employee knows, or should know with the exercise of reasonable care, is a vendor, lobbyist, or any principal or employer of a lobbyist

¹ Sec. 2-444(a)(1)

² Sec. 2-444(e)

who lobbies, sells, or leases to the county or municipality as applicable, where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee.³

Here, Peter Baytarian, the principal or employer of lobbyists who lobby the Town has expressed a desire to host a party for the outgoing mayor; he was not solicited or approached by Town employees or officials about hosting the party. Based on the limited facts provided, Town officials and employees would not be prohibited from attending the event as long as (1) the cost per person does not exceed \$100, (2) those attending the event have not accepted additional gifts from Mr. Baytarian and/or Forest Development totaling, in the aggregate, more than \$100 for the calendar year, and (3) there is no "quid pro quo" or special treatment or privileges given to Mr. Baytarian and/or Forest Development by any Town employee or official in exchange for hosting the event.

To determine the value of the event, Town employees and officials who attend the event should consult Florida Statutes and the Florida Administrative Code, which states that "the value of a gift provided to several Individuals may be attributed on a pro-rata basis among all of the individuals. If the gift is food, beverage, entertainment, or similar items, provided at a function for more than 10 people, the value of the gift to each individual shall be the total value of the items provided divided by the number of persons invited to the function, unless the items are purchased on a per person basis, in which case the value of the gift to each person is the per person cost."⁴

LEGAL BASIS:

The legal basis for this opinion is found in §2-442, §2-444(a)(1), §2-444(c), and §2-444(e) of the Code:

Sec. 2-442. Definitions.

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 of these, 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.

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.

(c) No county commissioner, member of a local governing body, mayor or chief executive officer 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 a gift of any value 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

³ Sec. 2-444(c)

⁴ §112.3148(7)(j), Florida Statutes

municipality as applicable, where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee.

- (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.

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,



Christie E. Kelley,
Executive Director

RG/gal

January 9, 2023

Ms. Fran Nachlas, Council Member
City of Boca Raton
201 West Palmetto Park Road
Boca Raton, Florida 33432

Re: RQO 22-030
Charitable Contributions/Participation

Dear Ms. Nachlas,

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 engaging in volunteer work and/or continuing your involvement with certain charitable organizations?

BRIEF ANSWER:

The Code does not preclude you from attending fundraising events, engaging in volunteer work, or from being involved with charitable organizations as long as the requirements of the Code as described in this advisory opinion are followed.

FACTS:

You are a newly elected council member in the city of Boca Raton. Prior to being elected, you played a variety of roles in several different charitable organizations. The organizations and your level of involvement are outlined as follows:

1. Empty Bowls Delray Beach – You are an active volunteer and have previously been a sponsor of the event which benefits the Palm Beach County Food Bank. Empty Bowls is a national fundraising event hosted on a local scale where attendees are offered a meal of soup and bread from local restaurants. Local community leaders, restaurants, and volunteers donate their time and food to this event. You were on a committee for this event and helped to organize a “soup to go” table, but you did not solicit any funds for the event.
2. SafeSun, Inc. – You and your husband founded this nonprofit organization more than 10 years ago. In your role at SafeSun, you have raised funds for skin cancer awareness and education, provided assistance for patients who could not afford care, and distributed free sunscreen in local beaches and parks. Prior to being elected, you were on the board of directors but have since resigned that position. However, your spouse has retained his position as a board member. Neither you nor your spouse have ever received any compensation from the board membership or your work with the organization. You want to confirm your spouse’s continued participation is allowed by the Code.
3. The Brain Bowl for Alzheimer’s Research, Boca Raton – You have agreed to be a part of the fashion show portion of an event in February 2023. The theme for the event is “SuperBowl”. You were asked to participate because you were previously a cheerleader for the Miami Dolphins and the fashion show participants are former cheerleaders and football players. You are not soliciting funds for Brain Bowl, and during the fashion show portion, your title or position will not be referenced. However, at the beginning of the event, all of the elected officials in the room will be recognized.

4. Caridad Center - One of the beneficiaries of SafeSun for the last 10 years has been the Caridad Center, Palm Beach County's largest free clinic for the uninsured and underinsured. The Caridad Center has asked if they could honor both you and your spouse at their gala in January. You have accepted the honor and would like to attend the event. The admission to the gala will be provided by the Caridad Center. Your position as a council member does not play any part in their event.

ANSWER:

Section 2-443(a) of the Code prohibits public officials from using their official position or office in any way to give a special financial benefit, not shared with similarly situated members of the general public, to specified persons or entities. Among those specified persons or entities is a non-profit organization of which the official or the official's spouse is an officer or director. According to the facts provided, the only organization that falls into this category is SunSafe, Inc. Thus, because your husband serves as an officer or director of SunSafe, Inc., you would be prohibited from using your official position as a City Council member in any way, including voting on or participating in any matter, to give the organization a special financial benefit.¹ However, as long as you do not use your position as a City Council member in any way to give SunSafe a special financial benefit, this section of the Code would not be violated if your husband continues his board membership and volunteer work with SunSafe.

Based on the facts provided, because you and your spouse are not officers or directors of the remaining organizations and only serve as volunteers, Section 2-443(a) of the Code does not apply to your participation with those organizations. Therefore, you are not prohibited from lending your name and official title as a City Council member to fundraising efforts on behalf of Empty Bowls, The Brain Bowl, or Caridad Center. In addition, your participation in the events for both the Empty Bowls Delray Beach and the Brain Bowl for Alzheimer's Research are not prohibited by the Code.

You are reminded that Section 2-443(b) of the Code also prohibits officials from using their official position or office to corruptly secure a special benefit for others. The Code defines corruptly as acting with a wrongful intent that is inconsistent with the proper performance of one's public duties. Although the Code does not preclude you from philanthropic work, including organizing events and volunteering your time, as a council member, you must ensure that you refrain from improperly using your official position in any way to corruptly secure a special benefit of any kind for anyone during your charitable work.

Although your request did not include facts surrounding your intent to solicit or accept funds on behalf of a non-profit organization, the following information is provided to assist you in the event this issue arises in the future. Section 2-444(a)(1) of the Code specifically prohibits you from soliciting or accepting a gift valued at over \$100 from any vendor of the City or any lobbyist or principal or employer of a lobbyist who lobbies the City. However, the Code has an exception for solicitations or donations on behalf of non-profit charitable organizations. Section 2-444(h), *Solicitation of contributions on behalf of a non-profit charitable organization*, permits you to solicit and accept funds for a non-profit charitable organization from a City vendor or a lobbyist or principal or employer of a lobbyist who lobbies the City provided there is no quid pro quo or other special consideration given in exchange for the donation. In addition, a log of any solicitations or any donations from any City vendor or a lobbyist or principal or employer of a lobbyist who lobbies the City must be maintained and submitted to the COE within 30 days of the event, or if not solicited or donated for an event, then within 30 days of the solicitation or donation. The log (located on our website: www.palmbeachcountyethics.com/pdf/Forms/Solicitation%20Log.pdf) should list the event, the City vendor, lobbyist, or principal or employer of a lobbyist who was solicited, and the amount solicited or donated.

The rationale behind limiting the manner in which charitable solicitation from vendors, lobbyists, or principals or employers of lobbyists of a public entity may occur is grounded in the desire to increase transparency and to help avoid the appearance that these donations are made to obtain improper access or to gain the good will of public employees or officials. With that in mind, you are reminded that you must take great care that any donations accepted on behalf of any charity does not result in any quid pro quo or other special consideration to the person or entity making the donation. Further, although the Code does not prohibit you

¹ Sec. 2-443(c), *Disclosure of voting conflicts*

from soliciting and accepting donations on behalf of SunSafe, Inc. in your private capacity, lending your name and official title as a council member to fundraising efforts for SunSafe would, per se, constitute using your official position to provide a special financial benefit to an organization of which your spouse is an officer or director. Thus, any participation in fundraising for SunSafe, Inc. would need to be in your personal name only without any reference to your official title or connection to your official position as a City council member. This applies directly to you and to anyone indirectly soliciting donations on your behalf.

When looking at whether you may accept admission to the gala sponsored by Caridad Center, the analysis is a different one.² Section 2-444(a)(1) of the Code prohibits public employees from soliciting or accepting any gifts with a value of greater than \$100, in the aggregate for the calendar year, from a vendor, lobbyist, or any principal or employer of a lobbyist who lobbies, sells, or leases to their government employer. The Code also prohibits public employees from accepting a gift of any value as quid pro quo for any official action, duty performed, or duty violated.³ The Code defines a gift as anything of value without adequate and lawful consideration.⁴

Here, you must first determine the value of admission to the gala. In determining value, the COE consults §112.3148(7), Florida Statutes, and §34-13.500, Florida Administrative Code, which both state that if the gift is provided by the charitable organization benefiting from the contribution, the value of admission to a charitable event is the value expressed on the face of the event ticket minus the portion of the cost which represents a charitable contribution,

Next, you must determine whether Caridad Center is a City vendor, lobbyist, or principal or employer of a lobbyist who lobbies the City. If they are a vendor, lobbyist, or principal or employer of a lobbyist, then the Code prohibits you from accepting any gifts with an aggregate value that exceeds \$100 from the Caridad Center. If they are not a vendor, lobbyist, or principal or employer of a lobbyist, then the Code does not prohibit you from accepting the invitation to be a guest at the event and to be formally recognized for your service, but you must next determine whether you have to disclose the value of the gala on a gift form. As a state reporting individual, state law controls whether you must report your attendance. If the gift of your attendance at the event is reportable, you must use the State of Florida Quarterly Gift Disclosure Form (Form 9).⁵ Further, while state law controls the gift reporting requirements for state reporting individuals, under the Code, any City official or employee who is a state reporting individual, and who is required to file a Form 9, must also file a copy of the Form 9 with the COE within 10 days of filing with the state.⁶

LEGAL BASIS:

The legal basis for this opinion is found in §2-442, §2-443(a), §2-443(b), §2-443(c), §2-444(a)(1), §2-444(e), §2-444(f)(1), and §2-444(h) of the Code:

Sec. 2-442. Definitions.

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 of these, 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.

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, or attempt to do any of these things, in a manner which he or she knows or should know with the exercise of

² RQO 12-008

³ Sec. 2.444(e)

⁴ Sec. 2.442, *Definitions*

⁵ Sec. 112.3148, Florida Statutes

⁶ Sec. 2-444(f)(1), Gift reports for officials and employees identified by state law as reporting individuals.

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:

- (7) A civic group, union, social, charitable, or religious organization, or other organization of which he or she (or his or her spouse or domestic partner) is an officer or director. However, this sub-section shall not apply to any official or employee who is required to serve on the board of directors of any organization solely based on his or her official position (ex-officio), regardless of whether he or she has voting rights on the board, and who receives no financial compensation for such service on the board of directors, and otherwise has no personal ownership interest in the organization.
- (b) **Corrupt misuse of official position.** An official or employee shall not use or attempt to 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 term "participate" as used in this section shall be defined as: "To take any action, or to influence others to take any action, or to attempt to do any of these things, in order to affect the passage or defeat of the specific matter before the voting body in which the official is required to abstain from voting." 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. 2-444. 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.
- (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, including, but not limited to, the state's definition of gift, exceptions thereto, and gift valuations. The county code of ethics' definition of gift and exceptions thereto shall not be used by reporting individuals to complete and file state gift reporting disclosures. When a state reporting individual files or is required to file a gift report with the state, a copy of each report shall also be filed with the county commission on ethics no later than ten (10) days after the report is filed with the state. Failure to file a State of Florida Quarterly Gift Disclosure Form with the county commission on ethics within the required timeframe shall be a violation of this section.

(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.

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,



Christie E. Kelley,
Executive Director

RG/gal