



Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

300 North Dixie Highway
West Palm Beach, FL 33401
561.355.1915
FAX: 561.355.1904
Hotline: 877.766.5920
E-mail: ethics@pbcgov.org

Commissioners

Michael H. Kugler

Danielle A. Sherriff

Peter L. Cruise

Michael S. Kridel

Rodney G. Romano

Executive Director

Christie Kelley

General Counsel

Rhonda Giger

Intake and Compliance Manager

Gina A. Levesque

Investigator

Mark A. Higgs

Investigator

Abigail Irizarry

Amended Agenda

June 8, 2023 – 1:30 p.m.
Governmental Center,
301 North Olive Avenue. 6th Floor

Meeting will begin at 1:30pm
Executive Session will begin at 1:35pm
Regular Agenda will resume immediately
following Executive Session

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Introductory Remarks
- V. Approval of Minutes from April 13, 2023
- VI. Approval of Minutes from May 4, 2023
- VII. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 23-012
 - b. RQO 23-013
 - c. RQO 23-014
 - d. RQO 23-015
- VIII. Items Pulled from Consent Agenda
 - a.
- IX. Executive Session - C23-002
- X. Executive Director Comments
- XI. Commission Comments
- XII. Public Comments
- XIII. Adjournment

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

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

APRIL 13, 2023

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

**COMMISSION CHAMBERS
WEISMAN GOVERNMENTAL CENTER**

MEMBERS:

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

COUNTY STAFF PRESENT:

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 1:30 p.m.

II. Pledge of Allegiance

Commissioner Cruise led the Pledge of Allegiance.

III. Roll Call

Present: Chair Michael H. Kugler, Vice Chair Danielle A. Sheriff, and
Commissioner Peter L. Cruise

Absent: Commissioner Michael S. Kridel and Commissioner Rodney G.
Romano

IV. Introductory Remarks

No remarks were made.

V. Approval of Minutes

MOTION to approve the March 9, 2023, minutes. Motion by Commissioner Cruise, seconded by Vice Chair Sherriff, and carried 3-0.

VI. Executive Session Re: C23-005

RECESS

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

RECONVENE

At 2:00 p.m., the meeting reconvened with Chair Kugler, Vice Chair Sherriff, and Commissioner Cruise present.

Vice Chair Sherriff read the following Public Report and Final Order of Dismissal:

In Re: Wayne Brandes

Christie Kelley, Executive Director of the Palm Beach County Commission on Ethics {COE}, filed the above-referenced complaint on March 1, 2023, against Respondent, Wayne Brandes, a Palm Beach County Animal Care and Control officer, alleging that Respondent, while on duty and in uniform, used his County vehicle to conduct personal business, in violation of Section 2-443(a) of the Palm Beach County Code of Ethics.

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 April 13, 2023, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the Report of Investigation, and the Probable Cause Recommendation. After hearing oral statements by the Advocate and the Respondent, the Commission issued a Letter of Instruction pursuant to Section 2-260.3 of the Commission on Ethics Ordinance after determining that the violation was unintentional, inadvertent, or insubstantial.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Wayne Brandes, is hereby **DISMISSED** and a Letter of Instruction is issued.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on April 13, 2023.

VII. Processed Advisory Opinions (Consent Agenda)

a. RQO 23-007

b. RQO 23-008

MOTION to approve the consent agenda as published. Motion by Commissioner Cruise, seconded by Vice Chair Sherriff, and carried 3-0.

VIII. Items Pulled from Consent Agenda

No items were pulled from the consent agenda.

IX. Executive Director Comments

Ms. Kelley provided the following updates:

1.

On March 30 and 31, 2023, Ms. Giger and Ms. Levesque attended and presented at the Southwest Florida Ethics conference, and Ms. Kelly shared highlights from that conference.

2.

Since the last meeting, staff had spoken at various municipality meetings within the county.

3.

The Memorandum of Understanding with the Delray Beach Housing Authority was likely to be approved on April 18, 2023, by the Board of County Commissioners.

4.

Ms. Giger was scheduled to conduct an ethics training course with the Palm Beach County Housing Authority and staff on April 20, 2023.

X. Commissioner Comments

1.

Commissioner Cruise stated that a week-long leadership and ethics camp for high school students would be held by FAU and the LeRoy Collins Public Ethics Academy the week of June 5, 2023. He also expressed an interest in having his colleagues and staff collaborate on a time and agenda to explain the COE's role to the students.

2.

Chair Kugler requested to move the June 1, 2023, meeting to the week of June 5.

Responding to Chair Kugler, Ms. Levesque stated that she would look into changing the date of the next COE meeting after checking with the Office of Inspector General regarding their meeting schedule.

3.

Chair Kugler spoke about the executive session regarding Wayne Brandes. He reminded County employees that public resources were to be used for the benefit of the public.

XI. Public Comments

No comments were made.

XII. Adjournment

MOTION to adjourn. Motion by Commissioner Cruise, seconded by Vice Chair Sherriff, and carried 3-0.

At 2:09 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

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

MAY 4, 2023

**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
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

(CLERK'S NOTE: Commissioner Kridel acted as chair in the absence of the chair and vice chair.)

I. Call to Order

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

II. Pledge of Allegiance

The commissioners recited the Pledge of Allegiance.

III. Roll Call

Present: Commissioner Peter L. Cruise, Commissioner Michael S. Kridel, and
Commissioner Rodney G. Romano

Absent: Chair Michael H. Kugler and Vice Chair Danielle Sherriff

IV. INTRODUCTORY REMARKS

Commissioner Kridel introduced his daughter and recognized her educational accomplishments.

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

- A. RQO 23-010
- B. RQO 23-011

MOTION to approve the consent agenda. Motion by Peter Cruise, seconded by Rodney Romano, and carried 3-0.

VI. Items Pulled from Consent Agenda

No items were pulled from the consent agenda.

VII. Executive Director Comments

No comments were made.

VIII. Commission Comments

No comments were made.

IX. Public Comments

No comments were made.

X. Adjournment

At 1:33 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



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Palm Beach County Commission on Ethics

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

Executive Director
Christie E. Kelley

May 22, 2023

Tina Travieso, Chief Information Security Officer
Palm Beach County Information Systems Services
301 N Olive Ave., 8th Floor
West Palm Beach, FL 33401

Re: RQO 23-012
Possible Advisory Board Conflict

Dear Ms. Travieso,

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

QUESTION:

Does a conflict of interest arise for you as an employee of Palm Beach County (County) if you were to become an advisory board member for Palm Beach State College (PBSC), which is a County vendor?

BRIEF ANSWER:

You are not prohibited from being a member of PBSC's advisory board as long as you carefully follow the guidance in this advisory opinion.

FACTS:

You are employed by the County as a Chief Information Security Officer in the Information Systems Services department. PBSC recently approached you about joining their advisory board. Your membership on PBSC's advisory board will encompass a variety of different roles including meeting attendance, guest speaking, and providing student feedback. The position on PBSC's board is unpaid.

While PBSC is a county vendor, you have no role in the negotiation of County contracts or transactions involving PBSC. Additionally, you have no current connections to PBSC either personally or professionally.¹ Your advisory board appointment will be made by a representative of PBSC.

ANSWER:

The Code prohibits you from using your official position as a County employee, or influencing others to take or fail to take any action, to give a special financial benefit to specified persons or entities, which includes your outside employer or any organization of which you or your spouse serve as an officer or director.² Here, PBSC is not considered your outside employer because

¹ You previously attended PBSC and obtained a bachelor's degree.

² Sec. 2-443(a)(1-7)

the position on the PBSC advisory board is not one for which you will receive compensation. You will also not be serving as an officer or director of the organization, merely as a member of the PBSC advisory board. Because you are not an officer or director of PBSC, and PBSC is not your outside employer, under the facts you have presented, Section 2-443(a) does not apply to you; only 2-443(b) of the Prohibited Conduct section applies to you.

Section 2-443(b) of the Code prohibits you from using your position with the County to corruptly secure a special benefit for any person or entity, including PBSC.³ Corruptly is defined as an act that is done with a wrongful intent and inconsistent with the proper performance of your public duties.⁴ Additionally, you are reminded that the Code prohibits you from accepting anything of value, directly or indirectly, in exchange for the past, present, or future performance of your job with the County or as quid pro quo in exchange for any action by you.⁵

Based on the facts presented, you may accept an appointment to the PBSC advisory board without violating the Code. Although your membership on PBSC's advisory board does not present a conflict under the Code, you must ensure that you do not use your employment position with the County to improperly give any special privilege, benefit, or exemption to PBSC. Further, although a per se conflict would not exist for you, you should be mindful about participating in discussions as a County employee that could affect PBSC since PBSC is a vendor of the County, as an appearance of impropriety may exist.

LEGAL BASIS:

The legal basis for this opinion can be found in following relevant 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:
- (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

³ Sec. 2-443(b)

⁴ Id.

⁵ Sec. 2-444(e)

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 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.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted but assumes they are true for purposes of this advisory opinion. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

Sincerely,



Christie E. Kelley,
Executive Director

RG/gal



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Palm Beach County Commission on Ethics

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

Executive Director
Christie E. Kelley

June 2, 2023

Archibald Satchell, Chief Information Officer
Palm Beach County Information Systems Services
301 N Olive Ave., 8th Floor
West Palm Beach, FL 33401

Re: RQO 23-013
Possible Advisory Board Conflict

Dear Mr. Satchell,

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

QUESTION:

Does a conflict of interest arise for you as an employee of Palm Beach County (County) if you were to become an advisory board member for Palm Beach State College (PBSC), which is a County vendor?

BRIEF ANSWER:

You are not prohibited from being a member of PBSC's advisory board as long as you carefully follow the guidance in this advisory opinion.

FACTS:

You are employed by the County as a Chief Information Officer in the Information Systems Services department. PBSC recently approached you about joining their advisory board. Your membership on PBSC's advisory board will encompass a variety of different roles including meeting attendance, guest speaking, and providing student feedback. The position on PBSC's board is unpaid.

While PBSC is a County vendor, you have no role in the negotiation of County contracts or transactions involving PBSC. Additionally, you have no current connections to PBSC either personally or professionally. Your advisory board appointment will be made by a representative of PBSC.

ANSWER:

The Code prohibits you from using your official position as a County employee, or influencing others to take or fail to take any action, to give a special financial benefit to specified persons or entities, which includes your outside employer or any organization of which you or your spouse serve as an officer or director.¹ Here, PBSC is not considered your outside employer because the position on the PBSC advisory board is not one for which you will receive compensation. You

¹ Sec. 2-443(a)(1-7)

will also not be serving as an officer or director of the organization, merely as a member of the PBSC advisory board. Because you are not an officer or director of PBSC, and PBSC is not your outside employer, under the facts you have presented, Section 2-443(a) does not apply to you; only 2-443(b) of the Prohibited Conduct section applies to you.

Section 2-443(b) of the Code prohibits you from using your position with the County to corruptly secure a special benefit for any person or entity, including PBSC.² Corruptly is defined as an act that is done with a wrongful intent and inconsistent with the proper performance of your public duties.³ Additionally, you are reminded that the Code prohibits you from accepting anything of value, directly or indirectly, in exchange for the past, present, or future performance of your job with the County or as quid pro quo in exchange for any action by you.⁴

Based on the facts presented, you may accept an appointment to the PBSC advisory board without violating the Code. Although your membership on PBSC's advisory board does not present a conflict under the Code, you must ensure that you do not use your employment position with the County to improperly give any special privilege, benefit, or exemption to PBSC. Further, although a per se conflict would not exist for you, you should be mindful about participating in discussions as a County employee that could affect PBSC since PBSC is a vendor of the County, as an appearance of impropriety may exist.

LEGAL BASIS:

The legal basis for this opinion can be found in following relevant 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:
- (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.

² Sec. 2-443(b)

³ Id.

⁴ Sec. 2-444(e)

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.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted but assumes they are true for purposes of this advisory opinion. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

Sincerely,



Christie E. Kelley,
Executive Director

RG/gal



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Palm Beach County Commission on Ethics

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

Executive Director
Christie E. Kelley

May 26, 2023

Mr. Thomas Turkin, Vice Mayor
City of Boynton Beach City Commission
100 E. Ocean Avenue
Boynton Beach, Florida 33435

Re: RQO 23-014
Voting conflict

Dear Mr. Turkin,

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 participating in discussions or voting on matters before the Boynton Beach City Commission (BBCC) concerning a proposed ordinance regarding regulations for short-term rentals (STR) within the city limits of Boynton Beach (City)?

BRIEF ANSWER:

You are not prohibited from participating in discussions or voting on issues surrounding this ordinance because any economic benefit or loss from the proposed ordinance affects a class large enough so as to remove any prohibited individual financial benefit to you.

FACTS:

You are a member of the BBCC and are the current Vice Mayor. Prior to your election, you operated a STR within the City; however, you discontinued the operation after your election to the BBCC in April of 2022. Despite the fact you are not currently operating your STR, you have kept your licensing requirements current. You may or may not resume the operation of your STR sometime in the future. You researched STRs within the City, and determined that there are approximately 392 active listings.

Although the City's ability to regulate STRs is somewhat limited by state law, the City is considering an ordinance that will codify local restrictions and regulations applicable to STRs. The BBCC will engage in a first reading of this proposed ordinance in the near future.

ANSWER:

The Code prohibits public officials from using or attempting to use their official position in any manner that would result in a special financial benefit, not shared with similarly situated members of the general public, to certain persons or entities, including to themselves.¹ Similarly, the Code also prohibits public officials from voting on an issue or participating in any matter coming before their board that would result in a special financial benefit to themselves.²

¹ Section 2-443(a), Misuse of official position or employment.

² Section 2-443(c), Disclosure of voting conflicts.

Whether a matter rises to the level of a prohibited conflict of interest depends on whether the official will receive any special financial benefit. The COE has previously opined that "financial benefit" constitutes economic gain or loss.³ In evaluating whether a conflict of interest exists, the COE considers the number of persons who stand to gain or lose financially from a decision and whether the gain or loss is remote and speculative.

As the COE has previously opined, there is no bright line in determining the number of individuals who would need to be similarly affected to transform a personal gain into a gain or loss shared with similarly situated members of the general public.⁴ The determination of whether a measure will result in a financial benefit that is not shared with similarly situated members of the general public depends on the size of the class of persons who stand to benefit from the measure.⁵ Where the size of the class is large, a prohibited financial gain would result only if there are circumstances unique to the official that would enable his or her property to benefit more than the other members within the class. However, where the class of persons who stand to gain or lose from a decision is small, it is more likely that an official will have a conflict.⁶ The general line drawn by the COE, and by the Florida Commission on Ethics, is that no voting conflict is present in situations where the interest of the public official involves 1% or less of the class, in other words, where 100 or more persons are affected.⁷ While the "1% Rule" may be an arbitrary cutoff point, it provides certainty and guidance in an area of the law that otherwise lacks clarity.

Here, while the number of STR properties available is somewhat fluid, at the time of the request, there were close to 400 active listings. Thus, your interest in the measured class is far below 1%. Further, there is nothing to indicate that your STR property provides a unique situation wherein your personal gain or loss as related to any potential ordinance would exceed significantly that of other owners of STR properties in the City.⁸ Therefore, because any economic benefit or loss surrounding the possibility of a new ordinance affects a class large enough to remove any prohibited individual financial benefit, you are not prohibited from voting on or participating in discussions related to the implementation of an ordinance to regulate STRs within the City.

LEGAL BASIS:

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

Sec. 2-443. Prohibited conduct.

- (a) Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, or attempt to do any of 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;

- (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

³ RQO 10-013 (For the purpose of ordinance construction, the commission finds that a financial benefit includes either a private gain or loss).

⁴ Id.

⁵ RQO 14-036

⁶ CEO 92-37 (two percent or eight percent of the property to be affected 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).

⁷ CEO 78-96; CEO 84-80; CEO 87-18; CEO 87-95; CEO 92-52; CEO 93-12

⁸ According to Palm Beach County property records, there is nothing to indicate the property is uniquely situated.

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 Palm Beach County Commission on Ethics 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

CEK/gal



Honesty - Integrity - Character

Palm Beach County Commission on Ethics

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

Executive Director
Christie E. Kelley

June 1, 2023

Mr. Marc Wigder, Councilmember
City of Boca Raton City Commission
201 Palmetto Park Road
Boca Raton, FL 33432

Re: RQO 23-015
Voting conflict

Dear Mr. Wigder,

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 participating in discussions or voting on matters before the Boca Raton City Council (BRCC) concerning a proposed "text amendment" to the City of Boca Raton (City) zoning code that will apply only to a single parcel?

BRIEF ANSWER:

You are not prohibited from participating in discussions or voting on issues surrounding this proposed amendment because, even though you own property with the same zoning designation, this particular "text amendment" has a discrete application to only the parcel in question and will not modify the zoning designations of any other parcels within the City.

FACTS:

You are a City councilmember. You own two separate commercial properties within the City; both are zoned "Professional, Office and Institutional District" (POI). Neither of your properties are located within "Planned Mobility Development" (PMD) areas currently contemplated in the City's "Future Land Use Map."

In the near future, the BRCC will be considering a proposal to amend the zoning designation of a particular parcel from POI to that of PMD. In order for that parcel to qualify for a zoning modification to PMD, several criteria must be satisfied. Most importantly, the parcel must be in an area identified as "Planned Mobility" on the City's "Future Land Use Map." The application coming before the BRCC requests a "text amendment" to the current zoning code that will effectively change the parcel's zoning designation from POI to PMD.

According to the facts provided, the contemplated "text amendment" to the zoning code will only apply to the parcel included in the application. In other words, this "text amendment" does not impact any other parcels currently zoned POI. Thus, whether the proposed "text amendment" passes or fails, no other parcels within the City (including yours) will be directly impacted, either positively or negatively.

ANSWER:

As an elected official, the Code prohibits you from using your official position on the BRCC to give a special financial benefit to specified persons and entities. Among those specified persons or entities are yourself and your outside business.¹ Additionally, you must abstain from voting on and participating in any matter that would give a special financial benefit to any of those same persons or entities.²

Financial benefit, in the context of the Code, constitutes economic gain or loss.³ In determining whether an action would result in a special financial benefit being given to a person or entity, the COE has held that any such financial benefit must be direct and immediate, rather than remote and speculative.⁴ Similarly, the Florida Commission on Ethics has also determined that where there is uncertainty at the time of a vote as to whether a measure directly affects a person or entity, any private gain or loss based on the vote is remote and speculative, and thus the official is not be precluded from casting such vote.⁵

Because your two properties are not located in an area that is currently contemplated by the zoning code as eligible for PMD zoning, it is remote and speculative that your vote on this matter will result in any special financial benefit being given to a prohibited person or entity. There does not seem to be any direct link between your vote on the proposed "text amendment" and any potential economic gain or loss being received by you or your outside business. Therefore, considering the facts as provided, the Code does not prohibit you from voting on or participating in discussions involving the proposed amendment to the City's zoning code as long as your vote or participation does not result in a special financial benefit to any of the other prohibited persons or entities listed in Section 2-443(a).

Finally, while the Code does not restrict your participation and vote as long as the guidance in this opinion is followed, you must be mindful that as a public official, no quid pro quo or other benefit may be given for an official act or the past, present, or future performance of a public duty.⁶ Additionally, you are reminded that the Code prohibits you from using your official position to corruptly secure a special benefit of any kind for anyone, including yourself.⁷

LEGAL BASIS:

The legal basis for this opinion is found in Sec. 2-443 and Sec. 2-444 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, 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;
 - (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;

¹ Sec. 2-443(a)

² Sec. 2-443(c)

³ RQO 10-013

⁴ RQO 12-063

⁵ CEO 85-77CEO 05-15; CEO 91-61; CEO 12-19

⁶ Sec. 2-444(e)

⁷ Sec. 2-443(b)

- (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.

- (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 Palm Beach County Commission on Ethics 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

CEK/rg/gal