

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

MAY 5, 2016

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

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

- I. CALL TO ORDER**
- II. ROLL CALL**

MEMBERS:

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

STAFF:

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

ADMINISTRATIVE STAFF:

Barbara Strickland, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Chair Michael Kridel stated that an executive session and advisory opinions constituted today's meeting.

IV. APPROVAL OF MINUTES FROM APRIL 7, 2016

MOTION to approve the April 7, 2016, minutes as presented. Motion by Clevis Headley, seconded by Sarah Shullman, and carried 4-0. Judy Pierman absent.

RECESS

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

(CLERK'S NOTE: Commissioner Judy Pierman joined the meeting.)

RECONVENE

At 2:16 p.m., the meeting reconvened with Chair Kridel, Vice Chair Headley, and Commissioners Loffredo, Pierman, and Shullman present.

V. EXECUTIVE SESSION

a. C15-024

Vice Chair Headley read the following Public Report Finding No Probable Cause and Order of Dismissal that was discussed during the executive session:

Complainant, Lorne Alter, filed the above referenced complaint on October 16, 2015, alleging that Respondent, Michael Fitzpatrick, former City of Boynton Beach Commissioner, violated §2-443(a), §2-443(b), and §2-443(c) of the Palm Beach County Code of Ethics by failing to abstain from voting on matters that gave an improper special financial benefit to himself and to a charitable entity of which he was closely associated.

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 May 5, 2016, the Commission conducted a hearing and reviewed the Memorandum of Inquiry and Probable Cause Recommendation. After oral statements by the Advocate and Respondent, the Commission concluded no probable cause exists to believe any violation occurred.

V.a. – CONTINUED

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Michael Fitzpatrick, is hereby DISMISSED.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on May 5, 2016.

By: Michael S. Kridel, Chair

(CLERK'S NOTE: The clerk added the language as printed in the Public Report Finding No Probable Cause and Order of Dismissal.)

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA) – None

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. PROPOSED ADVISORY OPINIONS

VIII.a. Request for Opinion (RQO) 16-011

Christie E. Kelley, COE General Counsel, stated that the City of West Palm Beach (City) submitted the following:

QUESTION 1:

Was a City employee, who owned an outside business that offered fire rescue training services, prohibited from contracting with the City to provide that training to the City's fire rescue employees if the City paid directly or indirectly for the training?

ANSWER 1:

Staff submitted the opinion that the Code of Ethics (Code) prohibited the contract, because none of the exceptions to the contractual relationship provision applied.

VIII.a. – CONTINUED

As the owner of the business, the City employee was not eligible to receive an outside employment waiver. The eligibility requirements for this waiver prohibited the employee from being involved with the contract between the business and the City in any way. As the owner of the business, the City employee would not be able to meet this requirement.

QUESTION 2:

Was the employee who worked part-time for a business that offered fire rescue training prohibited from providing that training to City fire rescue employees when that business was owned by another City employee?

ANSWER 2:

Staff submitted the opinion that the arrangement was prohibited because none of the exceptions to the contractual relationship provision applied here as well. The City employee who worked part-time at this business could not receive a part-time employment waiver because the owner of the business was a City employee, and that business would not be able to contract with the City. Therefore, the employee who worked part-time for the business would not be able to get the outside employment waiver.

QUESTION 3:

Was the City employee who worked part-time for a business that was not owned by a City employee, and which offered fire rescue training, prohibited from providing such training to City fire rescue employees?

ANSWER 3:

Staff submitted that the City employee may be eligible for an outside employment waiver under Section 2-443(e)(5) of the Code. To be eligible for the outside employment waiver, the City employee seeking the waiver could not be involved with the contract in any way; could not have helped determine the requirements or award the contract; could not interfere with the employee's public job; must have complied with all the rules regarding outside employment, received written permission from the supervisor, and completed a conflict of interest waiver form.

VIII.a. – CONTINUED

However, under this subsection, the final requirement of the outside employment waiver was that the employee or a relative of the employee may not work in the County or municipal department that enforced, oversaw, or administered the subject contract. However, the Code did not define what “department” meant. Since the COE had the power to interpret the Code, COE staff recommended that for the purposes of Section 2-443(e)(5)(a) the term “department” mean only the persons within the section or division of that public entity that was specifically authorized to enforce, oversee, or administer the subject contract, such as the administrator, managers, supervisors, or other employees who had direct authority over the subject contract.

The rationale for the decision was that most public entities did not have enough personnel in the training department, so they could not provide all of the required first-responder training. They had to rely on private, outside sources who often relied on current first-responders possessing specific training. If the word “department” in this section was defined to mean the entire municipal or county fire department, then none of the those personnel could ever train someone in the same organization or public entity as the municipal or county fire department personnel did, even if they could potentially be eligible for the outside employment waiver.

Therefore, staff submitted that as long as the City employee met all the waiver requirements as set forth in Section 2-443(e)(5), including not working directly within the section or division of the City fire rescue department or any other City department that was specifically authorized to enforce, oversee, or administer the contract, then the City employee who worked part-time for a business that was not owned by another City employee was not prohibited from providing that training.

Ms. Kelley added that:

- The opinion helped employees who, on their days off, worked for the outside employer.
- The training division was prohibited from obtaining the outside employment waiver because it typically chose the vendors that provided the training.

Mark E. Bannon, COE Executive Director, said that training division personnel included overall administration staff of the fire chief, assistants, and anyone with decision-making authority towards contractors.

VIII.a. – CONTINUED

Ms. Kelley said that small departments with contract oversight provided by the entire staff were not eligible for the outside employment waiver. Under the COE's definition of department, the individual would be able to work for an outside vendor as long as she or he did not have a conflict in cases where the department oversaw the contract, or had any input into the contract, she said.

Mr. Bannon said that:

- Although an assistant fire chief did not work within the training division, he was still under the prohibition because of his ability to approve or move forward any contracts.
- If the COE board preferred different Code language, it could be rewritten today or brought back at upcoming meetings.
- The purpose of the outside-employment waiver prohibition was to prevent someone possessing power over the contract from working within the contract.

Following general discussion about revisions to the Code language relating to segregation of duties and fraud prevention among small departments with few staff, Chair Kridel commented that Code language could limit interpretation to fire rescue alone.

Commissioner Sarah Shullman stated that she did not agree with a limited interpretation applicable to fire rescue alone.

MOTION to defer discussion until the next meeting. Motion by Judy Pierman, seconded by Clevis Headley, and carried 5-0.

VIII.b. Request for Opinion (RQO) 16-014

Ms. Kelley stated that Ms. Virginia Walton, Town Clerk for the Town of Loxahatchee Groves (Town) submitted the following:

QUESTION:

Did the Code prohibit her from providing consulting services as an independent contractor to the City of Riviera Beach (Riviera Beach) while she was employed by the Town, when the Town had no contracts to provide goods or services to Riviera Beach?

VIII.b. – CONTINUED

ANSWER:

Staff submitted that Section 2-442 of the Code specifically exempted other governmental entities from the definition of an outside employer. Based on the facts provided, Riviera Beach did not meet the definition of an outside employer and had no contract to provide goods or services to the Town, so a conflict of interest did not arise for Ms. Walton in her work as an independent contractor for Riviera Beach. Therefore, she was not prohibited from accepting part-time employment with Riviera Beach.

MOTION to accept RQO 16-014 as proposed. Motion by Clevis Headley, seconded by Sarah Shullman, and carried 5-0.

IX. EXECUTIVE DIRECTOR COMMENTS

Mr. Bannon stated that:

- He and Miami-Dade County COE Executive Director Joseph Centorino met for discussion about their assignments and responsibilities.
- He and Ms. Kelley attended an Ethics Partnership Council meeting at Palm Beach State College on April 28, 2016.
- He and Inspector General John Carey made a brief presentation at a Palm Beach County (County) League of Cities function on April 27, 2016.
- He and staff attended April 2016 council meetings at the City of Boynton Beach, the Towns of Palm Beach, Palm Beach Shores, and Loxahatchee Groves, and the Village of Tequesta. Meetings in May 2016 were scheduled for the Villages of Royal Palm Beach and Wellington, the Towns of Jupiter Inlet Colony, Lake Clarke Shores, and Haverhill. He was scheduled to attend a June 2016 City of Lake Worth Community Redevelopment Agency meeting.
- He conducted ethics training for Town of Manalapan officials on April 5, 2016, and for Riviera Beach officials on April 30, 2016.
- Ms. Kelley conducted gift law training for members of the Coalition of Boynton West Residential Association on April 13, 2016, and gave an overview presentation of the COE to the Municipal Clerks' Association on April 28, 2016.

IX. – CONTINUED

- The COE's Intake and Compliance Manager, Gina Levesque, was presented with the Fire Rescue Professional Partnership Award for her work with the all-hazards incident team at an April 29, 2016, ceremony held at the County convention center.
- The Top Ten Ethics Rules were updated on pocket guides. Changes to pocket handbooks were underway.

X. COMMISSION COMMENTS – None

XI. PUBLIC COMMENTS

XI.a. DISCUSSED: League of Cities Workshop.

Richard Radcliffe, County League of Cities Executive Director, commented that Mr. Bannon's appearance at the April 2016 workshop, along with Inspector General Carey, was appreciated.

XI.b. DISCUSSED: Commendation.

Commissioner Michael Loffredo offered congratulations to Ms. Levesque on her award for excellence as compliance manager for fire rescue personnel.

XII. ADJOURNMENT

At 2:49 p.m., the chair declared the meeting adjourned.

APPROVED:



Chair/Vice Chair