



*Honesty - Integrity - Character*

# Palm Beach County Commission on Ethics

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Christie E. Kelley

April 25, 2022

Diana Grub Frieser, City Attorney  
City of Boca Raton  
201 West Palmetto Park Road  
Boca Raton, FL 33432

Re: RQO 22-005  
Voting conflict

Dear Ms. Grub Frieser,

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 two City of Boca Rotan (City) council members from participating in discussions or voting on a resolution authorizing the reimbursement of the City deputy mayor's legal fees when the legal fees were incurred defending a complaint that involved the City deputy mayor's endorsement of the two council members' reelection campaigns?

### **FACTS:**

You are the City Attorney and are requesting an advisory opinion on behalf of Council Members Monica Mayotte and Yvette Drucker. On February 8, 2021, in anticipation of an upcoming election for two council member seats, Deputy Mayor Andrea Levine O'Rourke endorsed candidates Mayotte and Drucker, and both were reelected. The deputy mayor communicated her endorsement through an email she sent to certain City residents through her personal email account and identified herself as the deputy Mayor in the email. On March 1, 2021, a complaint was filed with the Florida Elections Commission against the deputy mayor related to the endorsements in the email. The deputy mayor retained legal counsel to represent her with respect to the complaint and on January 27, 2022, the Florida Elections Commission found the complaint legally insufficient and closed the matter.

Based on the finding of legal insufficiency, the deputy mayor is seeking reimbursement from the City of the legal expenses she incurred, and a resolution authorizing the reimbursement will come before the City Council.

### **ANSWER:**

The Code prohibits public officials from using their official positions in any manner which 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.<sup>1</sup> Similarly, the Code also prohibits public officials from voting on an issue or participating in any matter coming before their board which would result in a special financial benefit to any of the persons or entities specified in Section 2-443(a)(1-7), including to themselves.<sup>2</sup>

<sup>1</sup> Section 2-443(a), *Misuse of official position or employment.*

<sup>2</sup> Section 2-443(c), *Disclosure of voting conflicts.*

As the COE previously held in RQO 13-022, the recipient of the financial benefit is the determining factor regarding whether an official is prohibited from participation and voting. The plain language of Section 2-443(a) and Section 2-443(c) make it clear that for an official to be required to abstain from participating in discussions or voting on an issue, the official must be in a position where his or her action would result in a "special financial benefit" being given to himself or herself, or one of the other persons or entities listed under Section 2-443(a)(1-7). In other words, participation and voting is only prohibited if the recipient of the financial benefit is a person or entity listed in Section 2-443(a)(1-7).

Based on the facts provided, Council Members Mayotte and Drucker are not prohibited from voting on the reimbursement resolution coming before the City Council, because the resolution does not give either one of them a special financial benefit; the deputy mayor will be receiving the financial benefit.

#### **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, 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.

(c) ***Disclosure of voting conflicts.*** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in

violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

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