



Palm Beach County Commission on Ethics

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August 16, 2013

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

Re: RQO 13-006
Voting Conflicts

Dear Ms. Grub Frieser,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion and tabled the matter for further review on May 2, 2013. The COE rendered its opinion at a public meeting held on August 15, 2013.

YOU ASKED whether an official who owns a property management company that provides services to a condominium association (COA) is prohibited from participating or voting on a matter that may financially benefit an investor whose family and/or business entities own a significant percentage of the property within the COA.

IN SUM, elected officials are prohibited from using their official position, participating or voting on an issue that would give a special financial benefit to themselves, their outside business or a customer or client of their outside business, not shared with similarly situated members of the general public. Where entities are "effectively interchangeable in terms of identity or purpose" an official is prohibited from using their official position to give a special benefit to those entities. However, based on the facts presented there is an insufficient nexus between the Investor, the COA and the issue coming before the City Council for the official to be prohibited from voting on this matter.

THE FACTS as we understand them are as follows:

You are the City Attorney for the City of Boca Raton (the City). An elected official and her husband own a property management company (Management Company) that provides services to a residential community in Broward County (the Property). The overall operation of the Property is the responsibility of a master condominium association (COA), which contracts with the Management Company. The COA is managed by an independent board elected by condo owners. The Property was built in the mid-eighties. The original developer relinquished control of the COA pursuant to F.S. 718.301(4) sometime in the past. The board of directors is responsible for administration of the COA and is elected by the unit owners of the Property. Several years ago a local Investor (Investor) purchased all but 200 of the 1600 units on the Property. The Management Company has provided \$24,000 in service to the COA over the past 24 months.

In addition to the Property, the Investor has extensive real property investments in the City. An unrelated developer may propose a redevelopment project located in the City ("Project"). The Project is unrelated to the COA. The Investor is neither the applicant nor the developer of the Project, but has an interest in the underlying property for the proposed Project. The approval or denial of the Project will result in a financial benefit or loss to the developer and also to the Investor.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Commission on Ethics Ordinance and Code of Ethics, which took effect on June 1, 2011:

Sec. 2-442. Definitions.

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

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;
 - (5) A customer or client of the official or employee's outside employer or business

§2-443(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.

Section 2-443(a) prohibits elected officials from using their official position to take or fail to take any action if they know or should know with the exercise of reasonable care that the action would result in a special financial benefit not shared with similarly situated members of the general public, for certain entities or persons including themselves, their outside business or a customer or client of their outside business. Section 2-443(c) *Disclosure of voting conflicts*, similarly requires an elected official to abstain and not participate in any matter coming before his or her board which would result in a special financial benefit, not shared with similarly situated members of the general public, to a person or entity as described in subsection (a).

The official's outside business has supplied in excess of \$10,000 worth of goods or services to the COA during the previous 24 months. Accordingly, the COA is a customer or client of the elected official's outside business. The secondary question presented to the COE is whether an official is prohibited from voting on a matter that would benefit an investor whose various business entities own a significant percentage of the property within the COA.

Under the facts presented to the COE in complaint C11-027, a member of a municipal advisory board substantially participated in board discussion of an application submitted by a wholly-owned subsidiary of a

customer or client of the board member's outside business. The directors and managing members of the parent company and subsidiary were identical. Based on the relationship between the board member's client and the applicant, the Commission determined that the advisory board member was prohibited from participating or voting on the matter even though he did not directly provide goods or services to the entity seeking board approval. Furthermore, the COE concluded that "where entities are effectively interchangeable in terms of identity or purpose" an official, employee or advisory board member is prohibited from using their official position to give a special financial benefit to those entities.¹

Unlike the scenario presented to the COE in C11-027, there is an insufficient nexus between the COA, the Investor and the proposed project to prohibit your client from voting on this matter. The COA is not involved in any way in the Boca Project and has no interest in the Project. In reaching our conclusion we are mindful that §286.012, Florida Statutes, requires elected officials to vote on matters where there is no evidence of a financial conflict or other misuse of office.

That being said, the official must keep in mind that §2-443(b) *Corrupt misuse of official position* prohibits public officials from using their official position to corruptly secure or attempt to secure a special privilege, benefit or exemption for him or herself or *anyone else*. Similarly, the Code prohibits an official from using their public position to give a special financial benefit to themselves, their spouse or their outside business. Voting on a matter in exchange for future favor or other benefit is prohibited by the Code. Based on the information you have provided there are no additional facts and circumstances provided here to indicate a corrupt misuse or quid pro quo.

IN SUMMARY, Based on the facts you have submitted, the Official is not prohibited from voting or participating in this matter.

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



Steven P. Cullen
Executive Director

Attachments

SPC/mcr/gal

¹C11-027 Letter of Reprimand