



Palm Beach County Commission on Ethics

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February 26, 2016

Ms. Kristina Henson, Executive Director
Palm Beach County Criminal Justice Commission
301 N Olive Ave
West Palm Beach, FL 33401

Re: RQO 16-004
Jurisdiction of the COE

Dear Ms. Henson,

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:

Whether and in what context public sector and private sector members of the Palm Beach County Criminal Justice Commission (CJC) are subject to the Palm Beach County Code of Ethics (Code) when they are either appointed or required by law to be a member of the CJC?

ANSWER:

The COE has jurisdiction over all county and municipal officials and employees, including most county or municipal advisory board members. These officials and employees are generally subject to the Palm Beach County Code of Ethics. Under the Code, the definition of an official includes those who serve on volunteer boards and commissions as "members appointed by the county commissioners...to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity."¹ An advisory board is defined as "any advisory or quasi-judicial board created by the board of county commissioners..."²

The CJC is an advisory board created by the board of county commissioners. The CJC is comprised of members who are either appointed to the board by the Palm Beach County Board of County Commissioners (BCC) or are required by ordinance to sit on the board. Therefore, any person appointed by the BCC to serve on that advisory board is considered an official and is subject to the jurisdiction of the COE in his or her capacity as an appointed member of the CJC. This jurisdiction originates from the appointment to the board

¹ §2-442

² Id.

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itself by the BCC. Thus, persons employed in the private sector and persons employed with other agencies who may not normally be within the COE's jurisdiction through their outside employer become subject to the COE's jurisdiction through their appointment to the CJC by the BCC. However, those persons who are required by ordinance to be a member of an advisory board or commission, and are not appointed to the board or commission by either the BCC or a municipal governing body, do not meet the Code's definition of an official. Since those persons are not considered officials, they are not under the jurisdiction of the COE and are not subject to the Code.³

Whether a member of the CJC is subject to the Code of Ethics is determined by whether the member is already under the jurisdiction of the COE based on their public employment or position, whether the member was appointed to the board by the BCC, and whether the member was required by ordinance to be a member of the board.

Based on the information provided, the members of the CJC who are appointed to the CJC by the BCC and because of that appointment are subject to the Palm Beach County Code of Ethics are as follows:

- the 10 private sector individuals nominated by the Palm Beach County Economic Council,
- the clergy member nominated by the CJC,
- the mayor or commissioner of the BCC,
- the Palm Beach County League of Cities member, and
- the West Palm Beach Police Department Chief.

The members of the CJC who are not appointed to the CJC but instead are required by ordinance to be a member of CJC, are not otherwise under COE jurisdiction and thus, are not subject to the Code are as follows:

- the Palm Beach County Sheriff,
- the State Attorney,
- the Public Defender,
- the Clerk of the Palm Beach County Circuit Court,
- the Chief Judge,
- the Juvenile Division Administrative Judge,
- the Supervisory Special Agent of the Federal Bureau of Investigation,
- the Senior Agent of the Drug Enforcement Administration,
- the Palm Beach County School Board member,
- the Palm Beach Association of Criminal Defense Lawyers member,
- the Florida Department of Juvenile Justice District IX Juvenile Justice Manager,
- the Resident Agent in Charge of the Bureau of Alcohol, Tobacco and Firearms,
- the Florida Department of Corrections Circuit Administrator,
- the Florida Department of Law Enforcement Supervisory Special Agent, and
- the United States Attorney or Assistant U.S. Attorney.

³ RQO 11-089 (where a pension plan member was appointed by the pension board itself, and not by a municipal governing body, and the member was not otherwise subject to oversight based upon a status as a municipal employee, those members appointed by the pension board were not subject to the Code. However, the board members who were appointed by the governing body were subject to the Code); RQO 11-107 (where a county-wide board was created through interlocal agreement, members of the board appointed by the county or by a municipal governing body were officials. However, board members who were not appointed by the County or by a municipal governing body were not under the jurisdiction of the COE).

The CJC also has certain members who could be subject to the Palm Beach County Code of Ethics, depending on their public employment status. If the member is already under the jurisdiction of the COE and subject to the Code based on his or her public employment, then he or she would still be subject to the Code as a CJC member. The members of the CJC who may be subject to the Code of Ethics under this situation are as follows:

- the Police Chiefs Association representative,
- the Crime Prevention Officers' Association president, and
- the Palm Beach County Legislative Delegation member.

For example, the Police Chiefs Association representative would be subject to the Code if the representative is a municipal police officer since municipal employees are under the jurisdiction of the COE. However, if the representative is employed by the Palm Beach County Sheriff's Office or the Palm Beach County School Board, then the representative would not be subject to the Code because employees of those two agencies are not under the jurisdiction of the COE. Similarly, the Crime Prevention Officers' Association president would be subject to the Code if the president is a municipal police officer since municipal employees are under the jurisdiction of the COE. However, if the president is employed by Palm Beach County Sheriff's Office or the Palm Beach County School Board, then the president's employment would not subject him or her to the Code. Finally, the Palm Beach County Legislative Delegation member would be subject to the Code if he or she is an employee of the county's Legislative Delegation Office since county employees are under the jurisdiction of the COE.

FACTS:

You are the Executive Director of the CJC. You would like clarification on whether certain members of the CJC are subject to the Palm Beach County Commission on Ethics. The CJC is comprised of 21 public sector members representing local, state, and federal criminal justice and governmental agencies, and 12 private sector business leaders representing the Economic Council of Palm Beach County. The public sector membership includes:

- (1) Mayor or Commission member of the Palm Beach County Board of County Commissioners.
- (2) Palm Beach County Sheriff.
- (3) State Attorney, 15th Judicial Circuit
- (4) Public Defender, 15th Judicial Circuit.
- (5) Clerk of the Palm Beach County Circuit Court
- (6) Chief Judge, 15th Judicial Circuit.
- (7) Administrative Judge, Juvenile Division, 15th Judicial Circuit.
- (8) Supervisory Special Agent, Federal Bureau of Investigation, West Palm Beach.
- (9) Senior Agent, Drug Enforcement Administration, West Palm Beach.
- (10) Member, Palm Beach County School Board.
- (11) Member, Palm Beach County Legislative Delegation.
- (12) Member, Palm Beach County League of Cities.
- (13) District IX Juvenile Justice Manager, Florida Department of Juvenile Justice.
- (14) Representative of Police Chiefs Association.
- (15) Resident Agent in Charge, Bureau of Alcohol, Tobacco and Firearms (ATF), West Palm Beach Field Office, U.S. Treasury Department.
- (16) Chief, West Palm Beach Police Department.
- (17) Circuit Administrator, Florida Department of Corrections, 15th Judicial Circuit.
- (18) Supervisory Special Agent, Florida Department of Law Enforcement.
- (19) President, Crime Prevention Officers' Association.

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- (20) United States Attorney, Southern District of Florida or Assistant U.S. Attorney, West Palm Beach.
- (21) Member, Palm Beach Association of Criminal Defense Lawyers.

The private sector membership is made up of 10 persons who are nominated by the Palm Beach County Economic Council, but not necessarily members of the Economic Council. These nominations are then submitted to the Palm Beach County Board of County Commissioners for approval. One at-large member of the local clergy is also nominated by the Criminal Justice Commission and approved by the Board of County Commissioners.

LEGAL BASIS:

The legal basis for this opinion is found in §2-442 of the Code: **Sec. 2-442. Definitions.**

Advisory board shall mean any advisory or quasi-judicial board created by the board of county commissioners, by the local municipal governing bodies, or by the mayors who serve as chief executive officers or by mayors who are not members of local municipal governing bodies.

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "employee" includes but is not limited to all managers, department heads and personnel of the county or the municipalities located within the county. The term also includes contract personnel and contract administrators performing a government function, and chief executive officer who is not part of the local governing body. 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.

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,



Mark E. Bannon
Executive Director
CEK/gal