



Agenda

February 3, 2011 – 3:00 p.m.
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Palm Beach County
Commission on Ethics
2633 Vista Parkway
West Palm Beach, FL 33411
561.233.0724
FAX: 561.233.0735
Hotline: 877.766.5920
E-mail: ethics@pbcgov.org

Commissioners
Edward Rodgers, Chair
Manuel Farach, Vice Chair
Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director
Alan S. Johnson

Administrative Assistant
Gina A. Levesque

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from January 6, 2011
- V. Executive Session
 - a. C10-006
 - b. C10-007
- VI. Processed Advisory Opinions
 - a. RQO 10-038 OE
 - b. RQO 11-001
- VII. Executive Director Compensation (Commissioner Reinhart)
- VIII. Workshop Items
 - a. Proposed code revision: Sec. 2-444 Gift Law
 - b. Proposed code revision: Public Records Exemption for Initial Complaints §2-260(f)
 - c. Proposed code revision: Mandatory Setting of Public Hearings 2-260(c)
 - d. Rules of Procedure Amendments 4.11 and 4.12 (self-initiated complaints)
 - e. Rules of Procedure Amendments 4.31, 4.32 and 4.33 (advocate conflicts of interest)
- IX. Executive Director Comments
 - a. Referendum Committee Update
 - b. Introduce Staff Counsel, Megan Rogers and PBAU Interns Sean Moody and Elizabeth Sans
- X. Public Comments
- XI. Board Comments

MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS (COE)

I. CALL TO ORDER: January 6, 2011, at 4:03 p.m., in the Commission Chambers, 6th Floor, Governmental Center, West Palm Beach, Florida.

II. ROLL CALL

MEMBERS:

Judge Edward Rodgers, Chair
Manuel Farach, Esq., Vice Chair – Arrived later
Dr. Robin Fiore
Ronald Harbison
Bruce Reinhart, Esq.

STAFF:

Alan S. Johnson, Esq., COE Executive Director
Mark Bannon, COE Investigator
Gina Levesque, COE Administrative Assistant
Barbara Strickland, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Judge Edward Rodgers asked everyone to turn off or silence their cell phones. He stated that Complaint C10-006, item V., would be discussed in an executive session that was closed to the public. He said that those who were present for the meeting were invited to remain in chambers until the commission reconvened.

Alan S. Johnson, Esq., Commission on Ethics (COE) Executive Director (ED), stated that the first four agenda items would be completed prior to the recess.

IV. APPROVAL OF MINUTES FROM DECEMBER 2, 2010

Dr. Robin Fiore stated that:

- On page 14 of the minutes, last paragraph, the comment attributed to her was made by Ronald Harbison.
- On page 24 of the minutes, item 11.b., the comments attributed to her were made by the ED.

IV. - CONTINUED

Mr. Harbison stated that the comment reported on page 14 was, indeed, made by him.

Mr. Johnson stated that the comments reported on page 24, item 11.b., were made by him.

MOTION to approve the minutes of December 2, 2010, with the amendments made by Robin Fiore. Motion by Robin Fiore, seconded by Bruce Reinhart, and carried 4-0. Manuel Farach absent.

(CLERK'S NOTE: See below for further comments on the minutes.)

MOTION to recess the meeting and to reconvene later to complete the work for the regular scheduled meeting. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Manuel Farach absent.

(CLERK'S NOTE: Manuel Farach joined the meeting.)

RECESS

At 3:09 p.m., the COE recessed for an executive session.

V. Executive Session – Complaint C10-006

RECONVENE

At 4:51 p.m., the COE reconvened with Judge Rodgers, Manuel Farach, Robin Fiore, Ronald Harbison, and Bruce Reinhart present.

IV. CONTINUED

Judge Rodgers announced that an additional correction to the minutes was needed.

Mr. Johnson stated that the COE was advised by the minutes supervisor that the tape recording of the meeting confirmed that Dr. Fiore did, in fact, make the comments in the minutes. Dr. Fiore said that she apologized to the commission for her oversight.

VI. PROCESSED ADVISORY OPINIONS

VI.a. Request for Opinion (RQO) 10-032

VI.b. Request for Opinion (RQO) 10-040

Mr. Johnson said that RQO 10-032 and RQO 10-040 would be presented together as the consent agenda.

MOTION to approve the consent agenda. Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 5-0.

VII. PROPOSED ADVISORY OPINIONS

VII.a. RQO 10-036

Mr. Johnson stated that:

- The request involved Maite Reyes-Coles, Coordinator of Independent Living Services for the Coalition for Independent Living Options (CILO), who also served on the Commission for Affordable Housing (CAH).
- The employee asked whether a vendor who had appeared before the CAH was approved to post an advertisement in the CILO newsletter and Web site.
- The cost-free listing was available to any organization offering services to CILO's clientele, and neither the employee nor CILO would benefit from the listing.
- The employee applied for a waiver because CILO had contracts with the County, and if a waiver could not be obtained, she would resign from the CAH.

VII.a. – CONTINUED

- No conflict with the Code of Ethics (Code) was evident.

MOTION to accept RQO 10-036. Motion by Robin Fiore, seconded by Bruce Reinhart, and carried 5-0.

VII.b. RQO 10-038-OE

Mr. Johnson stated that:

- The employment request involved Keith Ellis, an electrician for the City of Boynton Beach (Boynton Beach) and whether he could accept subcontract work for private companies that provided electrical work on various projects for Boynton Beach.
- The Code did not consider a subcontractor as a person with a prohibited contract unless an outside employer or business had a direct contract with the municipality.
- Although Mr. Ellis was not prohibited from entering into such an arrangement under the Code's Section 2-443(c), he was not permitted to use his official position to benefit a customer or client financially. The prime contractor was essentially a client of the subcontractor. If contracts in excess of \$10,000 were in force, Mr. Ellis could not promote that prime contractor by using his official position.
- Judge Rodgers had asked that the item be discussed by the COE.

Judge Rodgers stated that:

- As a sole business owner working as a subcontractor, Mr. Ellis could potentially become a witness in a contract dispute case where the developer or general contractor sued him.
- If the general contractor and the architect placed blame on Mr. Ellis in a lawsuit, he would likely be both prosecuted and defended by Boynton Beach.

VIII.b. – CONTINUED

Mr. Farach stated that:

- Mr. Ellis was chief electrician at the municipality. The opinion letter stated that he could not control the contract; however, his job required that he attend weekly job progress meetings, and approve plans and specifications.
- Mr. Ellis' work relationships seemed too interconnected to avoid conflicts of interest by virtue of his official position with Boynton Beach.

Bruce Reinhart stated that unless a ruling were made that a bona fide subcontractor relationship did not exist, Boynton Beach's city manager or city council should review the matter as a management issue. He added that he concurred with the proposed opinion letter.

Dr. Fiore commented that:

- The letter's statement asserting that Mr. Ellis had no influence over the actual selection of persons who awarded job bids was naïve because he would have had input into the proposal's development.
- The sentence should be adjusted because although Mr. Ellis may have had no influence over the actual selection, that was not reflected in the opinion letter.
- She detected no Code violation.

Ronald Harbison stated that he agreed with Mr. Reinhart and Dr. Fiore and that although no ethics violation may exist, Mr. Ellis should obtain a waiver to work on any Boynton Beach job involving a private contractor.

Mr. Johnson asked whether staff should include language in the opinion letter referring to Mr. Ellis' activities that may not violate the Code but which were related to his job responsibilities. Dr. Fiore suggested that a statement be made concerning his relationship with his employer in the letter's last paragraph. She suggested adding the following wording, ...and this does not absolve you of having to comply with Boynton Beach rules and regulations.

VIII.b. – CONTINUED

Mr. Harbison commented that the COE's position that it did not entirely approve of Mr. Ellis' activities should be clarified in the opinion letter, rather than a statement regarding prohibited actions.

Judge Rodgers stated that his primary concern was that Mr. Ellis would be approving workmanship and paying bills. He said that he would vote against acceptance of the opinion.

Mr. Johnson read the following Code language:

Prohibited Contractual Relationships: No official or employee shall enter into any contract or other transaction for goods or services with the County. This prohibition extends to all contracts or transactions between the County or any person or agency acting for the County and the official or employee; directly or indirectly, or the official of employee's outside employer or business and outside employer is defined as any entity other than the County or State or any regional local municipal government of which the official or employee is a member, officer, director or employee, and from which he or she receives compensation for services rendered or goods sold or produced.

Mr. Johnson said that the Code's Section Two defined ownership interest as meaning more than five percent ownership interest in a company doing business in the county. He added that allowance granted to Mr. Ellis could be interpreted by others as legal permission to do the same. In that event, he said that:

- Misuse of his office for a customer or client might come into play if Mr. Ellis performed work for a prime contractor.
- Many consultants did not have contracts with municipalities or counties, and perhaps this item should be tabled for further consideration. A decision to extend permission to a subcontractor would have significant implications on future business dealings.

VIII.b. – CONTINUED

- The prohibited contracts were waivable by governing bodies per the Code's Section 2-443(c).
- Mr. Ellis' request to work did not have to be approved if the Prohibited Contracts provision did not apply. He may be required to obtain merit rule approval for work performed outside of Boynton Beach, but no such waiver existed under the Code.
- Judge Rodgers had requested discussion on this item.

Judge Rodgers expressed concern that if a lawsuit resulted from inadequate performance by Mr. Ellis' electrical company, Mr. Ellis could bolster his defense by claiming that the COE had approved his actions by authorizing his subcontracting work.

Mr. Reinhart stated that the facts as presented probably did violate the Code's Section 2-443(c), and he requested a more specific analysis drafted by Mr. Johnson for the COE's evaluation.

MOTION to table the discussion until more specific analysis could be conducted. Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 4-0. Judge Rodgers opposed.

VII.c. RQO 10-039

Mr. Johnson stated that:

- Connie Roy-Fisher, landscape artist and a member of Friends of the Mounts Botanical Gardens (Friends), which was the volunteer advisory board to Mounts Botanical Gardens (Mounts), requested an advisory opinion as to whether it was permissible for her to submit a bid for contracted improvements to Mounts amounting to \$137,000 of County funds.
- The chair of Friends was on the bid selection committee.

VIII.c. – CONTINUED

- The landscaper was not an official or employee of the County. The Code's Section 2-443(a) (b) and (c) did not apply. No Code violation existed, although there was an appearance of impropriety.
- The proposed summary language was:

Although not prohibited from participating under the Code of Ethics, the Commission on Ethics recommends that in order to avoid the appearance of impropriety, neither the chair nor any other member of Friends participate in the selection process on bids or proposals on which a member of Friends is a bidder or proposer.
- An advisory opinion was requested by the landscape artist out of concern for the appearance of impropriety.

MOTION to accept the advisory opinion as written by the Executive Director (ED) Alan Johnson. Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 5-0.

VII.d. RQO 10-041

Mr. Johnson stated that:

- This request represented the 41st advisory opinion letter that the COE had issued since June 2010. Some commissions at state levels issued fewer than 10 in a year.
- Eric Johnson, an employee of the City of Boynton Beach (Boynton Beach) and member of a Delray Beach church requested advice regarding his proposed candidacy on the church's board of directors.
- The church conducted no business with Boynton Beach, although it was in negotiations to buy property in the municipality.

VII.d. – CONTINUED

- Additional questions involved reimbursement for the requestor's travel on behalf of the church for purposes of mission trips, conference attendance, and solicitations for donations.
- The requestor was not prohibited from joining the church's board of directors, and he was advised in the proposed opinion letter not to use his official position to benefit the church financially.
- The opinion letter contained a reference to Commissioner Burt Aaronson's proposed honor from the synagogue that he attended. Because Commissioner Aaronson was not permitted to appear to solicit on behalf of the synagogue, the proposed honor was deferred.

Dr. Fiore stated that her preference was for a statement to be made in the opinion letter instead of a reference to an opinion concerning Commissioner Aaronson.

Mr. Reinhart said that the letter could cite the reference making it searchable for others seeking information, and that the reasoning behind the opinion should be restated to provide a self-contained letter to the recipient.

Judge Rodgers asked whether the opinion language covered instances of good-will donations made as a result of friendship with the requestor.

Mr. Johnson read the letter's summary as follows:

You may not under any circumstances accept any donations in excess of \$100 directly or indirectly from a lobbyist, principal or employer of a lobbyist who lobbies Boynton Beach.

Judge Rodgers pointed out that politicians and lobbyist donations to churches were commonplace.

Mr. Johnson suggested additional language as follows:

You may not accept a gift for yourself or on behalf of the church.

VII.d. – CONTINUED

Mr. Reinhart suggested the following phrase:

A gift to the church could be construed as an indirect gift to you and, therefore, may fall within...

Mr. Harbison commented that every potential abuse that could occur could not be anticipated. He said that the commission's concern was for the non-church member who attempted to garner favor with the government employee by making a contribution to the church.

Mr. Reinhart said that a blanket statement that the church could not accept any gifts that were tied to the government employee in any manner was insufficient. He asked the ED for clarification that the gift would have to come from a lobbyist, principal or employer of a lobbyist.

Mr. Johnson responded by saying that:

- A gift to the church was not reportable as a gift to the government employee.
- If a gift to the church resulted from a solicitation by or through the County employee, it could not be larger than \$100.
- If the employee indirectly solicited a gift for the church, the lobbyist limitation of \$100 applied.

Mr. Johnson asked whether it would be acceptable to say, "You may not solicit or accept a gift with a value in excess of \$100."

Judge Rodgers said that the Code may already contain that provision.

Mr. Johnson suggested the language, "You may not solicit on behalf of the church or accept a gift of more than \$100 from a lobbyist."

Concerning lobbyist registration requirements, Mr. Johnson said that:

- A jurisdiction issue had arisen because Boynton Beach had adopted the Code but not the lobbyist registration ordinance.

VII.d. – CONTINUED

- Boynton Beach now had lobbyists registered with the municipality but not under the County Code.
- The County’s lobbyist registration ordinance required anyone who lobbied for or against any issue coming before the commission’s advisory board to be registered as a lobbyist.
- The definition of a lobbyist was, “someone who lobbies,” rather than, “someone who is registered to lobby.”
- Anyone who lobbied was under the jurisdiction.

MOTION to accept the opinion as amended by the commission. Motion by Robin Fiore, seconded by Bruce Reinhart, and carried 5-0.

VIII. EXECUTIVE DIRECTOR COMPENSATION

Mr. Reinhart stated that since the last COE meeting, he had gathered facts concerning Mr. Johnson’s compensation for the commission to consider. He distributed lists that he said were excerpted from records provided by the County human resources (HR) staff.

Mr. Reinhart said that the lists entailed:

- Salary levels for the position of director and above in County government, representing medium- to high-level supervisors whose salaries were commensurate with Mr. Johnson’s.
- Pay scales for all County Attorney’s Office employees because Mr. Johnson performed legal services.
- Salary levels for other executive directors of existing County commissions.
- A Rate column that represented the rate per hour for services rendered for 2,080 hours per year, and a Salary column resulted from the rate multiplied by 2,080 using the Excel computer program.

VIII. – CONTINUED

- The hire date was included because HR staff stressed that all jobs showed a broad spectrum of salaries; the strongest determining factor was longevity; and names were omitted from the data.

Mr. Reinhart suggested that the salary issue be added to the next meeting's agenda for thorough discussion.

Mr. Farach inquired about the COE's budget. Mr. Reinhart replied that Mr. Johnson had reported at the last meeting that the last fiscal year showed \$70,000 under budget.

Mr. Harbison requested an e-mail of the Excel files. Mr. Reinhart said that he would send it in exactly the same format that he had received it.

After a brief discussion, the group decided that the ED should conduct the distribution. Mr. Johnson agreed to distribute the lists to each member in a clear trail of communications.

IX. WORKSHOP ITEMS

Dr. Fiore asked whether remaining agenda items could be postponed until the next meeting.

Mr. Johnson replied that he had requested that item IX.c. be postponed because he needed to revise it after conferring with Assistant County Attorney Leonard Berger. He said that the complaint was exempt and confidential per State law.

(CLERK'S NOTE: Mr. Reinhart left the meeting.)

Mr. Johnson stated that the remainder of item IX. consisted of Code revisions to match Code specifications, which the commission had previously tabled. He said that he would present additional Code revisions to the drafting committee and provide an update at the next COE meeting.

MOTION to defer discussion of remaining workshop items until the next COE meeting. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

X. EXECUTIVE DIRECTOR COMMENTS

X.a. Referendum Committee Update

Mr. Johnson stated that:

- The COE drafting committee and the inspector general drafting committee had met twice.
- While the COE ordinance remained substantially unchanged, language concerning the municipalities was added.
- A 4-2 vote established that advisory opinions could be withdrawn once entered, but not within 10 days of the next COE meeting. The rationale for it was to preserve County time and money.
- He would bring requests to revise the Code to the commission concerning lobbyist gifts so as to change language to comport with other Code provisions.

Mr. Harbison remarked that he had requested that an item be added to the COE meeting agenda that concerned other parties to transactions that were in violation of the Code.

Judge Rodgers commented that the county contained 10 percent of the total number of municipalities in the state. He asked Mr. Johnson for ideas that would create more efficient handling of advisory opinion requests and generate additional income.

Mr. Johnson said that:

- No taxing authorities had responded to overtures made by the COE.
- An estimate of anticipated work to be done would be calculated following the referendum's effective date in April, May or June 2011.
- The County had pledged to fund the COE.
- A new attorney was anticipated to begin work at the ED's office in February 2011 or sooner. Two to three interns would also join the staff to perform new media and public outreach functions.

X.a. – CONTINUED

- Several potential clients had anticipated the COE's jurisdiction and sought advice now. He sought commission direction regarding procedure.

Mr. Farach stated that this appointed board should be careful so that it would not be viewed as exceeding its jurisdiction.

Mr. Harbison suggested that opinion-seekers should refer to the Code as it existed.

Dr. Fiore said those seeking opinions should be referred to the training materials.

XI. PUBLIC COMMENTS – None

XII. BOARD COMMENTS

XII.a. Manuel Farach, Esq. – None

XII.b. Executive Director Comments

XII.b.1. Hearing Process

Mr. Johnson stated that he intended to collect feedback on the hearing process from each commissioner, and then list discussion as an agenda item.

XII.b.2. Ethics Advertising

Mr. Johnson mentioned that County buses now displayed COE posters and the slogan "Got Ethics?" followed by the COE's Web site address. He said that the County provided the free advertising space.

XII.c. Ronald Harbison

XII.c.1. Grand Jury Report

Mr. Harbison asked for confirmation that the governor of Florida's (State) grand jury report had referred to Palm Beach County and Broward County ethics commissions as State models.

XII.c.1. – CONTINUED

Mr. Johnson responded by saying that the 127-page report singled out Miami-Dade and Palm Beach counties as State models for local and county ordinances. He said that he would post the report on the Web site.

XII.d. Bruce Reinhart, Esq. - None

XII.e. Judge Edward Rodgers

XII.e.1. Suggestions for Hearings

Judge Rodgers suggested that:

- Consideration should be given to today's executive hearing and ideas for making upcoming hearings better.
- Thought should be given toward any hearings mistakes that could be avoided.
- Agenda space should be provided to member contributions.

XIII. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

Mr. Johnson stated that the next meeting would be held on February 3, 2011.

At 6:09 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
Manuel Farach, *Vice Chair*
Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

January 26, 2011

William R. Merkle, Esquire
Woolbright Corporate Center
1901 South Congress Ave., Suite 120
Boynton Beach, FL 33426-6549

RE: RQO 10-038 OE
Prohibited contractual relationship

Dear Mr. Merkle,

The Palm Beach County Commission on Ethics has considered your request for an advisory opinion, and rendered its opinion at a public meeting on January 6, 2010.

YOU ASKED in your letters dated November 10, 2010, and November 16, 2010, whether your client, who is employed by the City of Boynton Beach as a Chief Electrician working for the Utilities Department, may work as an electrical sub-contractor for private companies that provide contracted electrical work on various projects for the City of Boynton Beach Building Department.

IN SUM, based on the facts you have submitted, the commission has determined that even working as a sub-contractor for a company with contracts for electrical services with the City of Boynton Beach creates enough "privity" of contract to establish an indirect contractual relationship with the City. Therefore, such a relationship violates the ethics rules under §2-443(c) *Prohibited contractual relationships*. Based on the facts presented, Mr. Ellis cannot sub-contract for electrical work for the City while he is a Chief Electrician for the City of Boynton Beach.

THE FACTS as we understand them are as follows:

You advised that your client, Keith L. Ellis, is employed by the City of Boynton Beach as a Chief Electrician, working in the Utilities Department. Mr. Ellis is also the sole owner of KE Control and Electrical Service, Inc. (KE). KE will sometimes act as a sub-contractor for other private electrical contractors who you refer to in your letter as "customers." On occasion, these private contractors will enter into contracts to provide services for the City of Boynton Beach through the Building Department. When KE sub-contracts on these projects, payment for this work is made by the private contractor and not by the city. You further advise that the contracts between the City and your client's "customers" are entered into following a competitive bidding process, and that your client has no influence over the persons who award these bids, no enforcement, oversight or administrative responsibilities pertaining to these contracts, and no connection to these projects within his employment with the city.



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Alan S. Johnson

THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics:

The Palm Beach County Code of Ethics Section 2-442, *Definitions* states in relevant part:

Outside employer or business includes:

- (1) Any entity, other than the county, the state, or any other regional, local, or municipal government entity, of which the official or employee is a member, official, director, or employee, and from which he or she receives compensation for services rendered or goods sold or produced, or
- (2) Any entity located in the county or which does business with or is regulated by the county *in which the official or employee has an ownership interest.* (emphasis added)

According to the information you have provided, KE is by definition an outside business owned by your client, Keith L. Ellis, an employee of the City of Boynton Beach. You advised that KE is not the electrical firm entering into the contractual relationship with the City of Boynton Beach, but acts as a sub-contractor on city projects.

Section 2-443, *Prohibited conduct*, states as follows in relevant part:

- (c) *Prohibited contractual relationships.* No official or employee shall enter into any contract with or other transaction for goods or services with the [city]. *This prohibition extends to all contracts or transactions between the [city] or any person or agency acting for the [city], and the official or employee, directly or indirectly, or the official or employee's outside employer or business.* (emphasis added)

The Commission has determined that Mr. Ellis would be in violation of Section 2-443(c) of the code of ethics under the facts you have submitted, as KE has an indirect contractual relationship with the City of Boynton Beach, and that this indirect contractual relationship creates an issue of "privity of contract" with the City of Boynton Beach, thus violating §2-443 of the Code of Ethics. The commission further views the public position of Chief Electrician in the context of the nature of work performed by KE, that is, electrical work, to present an inherent conflict, notwithstanding the fact that the actual contract flows through a third party contractor. The concerns voiced by commissioners include the inevitable fact that his work will be subject to inspection and approval by his counterpart employees at Boynton Beach. In addition, should there be a problem with the work completed; your client is subject to



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lawsuits wherein his public employer may be in the position of suing its own public employee for private work done for the public entity. This not only presents an appearance of potential impropriety, but actual conflicts of interest.

IN SUMMARY, based on the facts and circumstances you submitted, the Commission on Ethics has determined that your client, Keith L. Ellis, is prohibited from using his outside business to sub-contract electrical work on city projects, where he enters into a sub-contractual relationship with a contractor to provide goods and services to the City of Boynton Beach, specifically electrical work. This indirect contractual relationship is prohibited by the code despite your assertion that Mr. Ellis has no enforcement, oversight or administrative responsibilities as a city employee under these contracts, and does not use his position as a city employee to gain any financial benefit for himself, a relative, household member, outside employer or business, customer or client, or non-profit organization of which he is an officer or director.

This opinion construes the Palm Beach County Code of Ethics ordinance, but 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 561-233-0724 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/meb



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Alan S. Johnson

January 20, 2011

Joan Beno, Manager
Desktop Administration and Training Services
Palm Beach County Information Systems Services
301 North Olive Avenue
West Palm Beach, FL 33401

RE: RQO 11-001
Gift law

Dear Ms. Beno,

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

YOU ASKED in your email dated January 3, 2011, whether Palm Beach County, and specifically Information Systems Services, can accept a gift of up to \$2,500.00 in free training and support from Microsoft Corporation, given that Microsoft Corporation is a contracted vendor for Palm Beach County.

IN SUM, based on the facts you have submitted, the free training and support services listed are being offered to Palm Beach County and staff as a governmental entity, and not to any individual employee. The services are for use by the county and its staff in the performance of their official duties as county employees. Therefore, these services are not gifts under Section 2-444, *Gift law*, of the Palm Beach County Code of Ethics.

THE FACTS as we understand them are as follows:

Microsoft Corporation (Microsoft) is a vendor for Palm Beach County, which is substantially invested in Microsoft computer operating systems and software. In the normal course of their business, Microsoft has offered up to \$2,500.00 in free training and support for their existing software entitled, "Architectural Design Readiness & Support." This training and support service is offered to Palm Beach County Information Systems Services as a governmental customer in order to "demonstrate and enhance the benefits of Microsoft products" already purchased and used by the county. These services are offered free of charge to Palm Beach County for employee use in their official duties for the county, and not to any particular individual employee.



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THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics:

The Palm Beach County Code of Ethics Section 2-444(e), *Gift law*, states in relevant part:

- (e) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value whether in the form of money, *service*, loan, travel, entertainment, hospitality, item, promise, or in any other form, without adequate and lawful consideration. (Emphasis added)

However, Section 2-444 (e) (1), states as follows:

- (1) Exceptions. The provisions of subsection (e) *shall not apply* to:

- (e) Gifts solicited by county employees *on behalf of the county in performance of their official duties for use solely by the county in conducting official business*. (Emphasis added)

IN SUMMARY, based on the information you have provided, the services offered in this case are not gifts under the code of ethics, because they are offered to the county for use by county employees in the performance of official duties as county employees, and not to individual employees. As such, they are not considered to be gifts under the code of ethics.

This opinion construes the Palm Beach County Code of Ethics ordinance, but 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 561-233-0724 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson
Executive Director
ASJ/meb

Memorandum

From: Alan Johnson

To: Commission on Ethics

Date: January 28, 2011

Re: COE Budget Assessment

Request for assessment:

At the last meeting a request was made for an assessment of the COE budget as it pertains to available funding. The following is a brief general synopsis of past and current expenditures.

Fiscal 2010 (partial): Initial budget \$180,000.

In 2010 we expended 61% of budgeted salaries, 62% operating and 82% capital. The total budget outlay was 62% which put us 38% under budget.*

*As an attorney and former prosecutor, I was able to handle the initial COE start-up and development without immediately hiring an attorney and investigator. In addition, I have developed a Pro-Bono Advocate Program through the Legal Aid Society, using former prosecutors and public defenders to fill the position of Advocate, saving the county the expense of the Advocate position. The effectiveness of using volunteer advocates will be reviewed. As the work load increases, there may be a need to assign significant cases to staff.

Fiscal 2011: Initial budget \$475,626.

Through January 28, we have expended 22.73% of annual budgeted salaries, 8.39% operating, and 39.86% capital. Total budget outlay of 19.93% for the first four months would project to a 46% reserve for fiscal 2011.

With the addition of municipalities sometime in the spring, we have hired a staff attorney to help handle the anticipated increase in work load. We also anticipate adding an additional investigator. Therefore salary budget outlays will be weighted to the end of the year to meet this added demand. Notwithstanding the addition of a staff attorney and investigator for the remaining budget year, I project the COE to have a significant budget reserve for fiscal 2011.

**Expense Summary as of 11/30/2010
Fiscal Year 2010**

<u>FY</u>	<u>Fund</u>	<u>Dept</u>	<u>Unit</u>	<u>Appr. Unit</u>	<u>Object</u>	<u>Adopted Budget</u>	<u>Cur. Mod. Budget</u>	<u>Preencumb</u>	<u>Encumb</u>	<u>Expended</u>	<u>Available</u>
2010	1484	290	2100	2902100PA	1201 Salaries & Wages Regular	0.00	107,545.00	0.00	0.00	60,384.48	47,160.52
2010	1484	290	2100	2902100PA	1501 Wages-Special-No Frs Contrib	0.00	0.00	0.00	0.00	810.00	-810.00
2010	1484	290	2100	2902100PA	2101 Fica-Taxes	0.00	4,340.00	0.00	0.00	3,781.98	558.02
2010	1484	290	2100	2902100PA	2105 Fica Medicare	0.00	1,015.00	0.00	0.00	884.50	130.50
2010	1484	290	2100	2902100PA	2201 Retirement Contributions-Frs	0.00	9,000.00	0.00	0.00	6,852.39	2,147.61
2010	1484	290	2100	2902100PA	2301 Insurance-Life & Health	0.00	18,200.00	0.00	0.00	12,289.40	5,910.60
					Personal Services	0.00	62% 140,100.00	0.00	0.00	85,002.75	55,097.25
2010	1484	290	2100	2902100OA	3414 Iss Professional Services	0.00	1,000.00	0.00	0.00	0.00	1,000.00
2010	1484	290	2100	2902100OA	4001 Travel And Per Diem	0.00	3,500.00	0.00	0.00	2,346.37	1,153.63
2010	1484	290	2100	2902100OA	4007 Travel-Mileage	0.00	200.00	0.00	0.00	96.37	103.63
2010	1484	290	2100	2902100OA	4008 Travel-Auto Allowance	0.00	2,500.00	0.00	0.00	2,750.00	-250.00
2010	1484	290	2100	2902100OA	4406 Rent-Office Equipment	0.00	2,500.00	0.00	0.00	1,119.38	1,380.62
2010	1484	290	2100	2902100OA	4701 Printing & Binding-Outside	0.00	500.00	0.00	0.00	83.75	416.25
2010	1484	290	2100	2902100OA	4703 Graphics Charges	0.00	0.00	0.00	0.00	0.00	0.00
2010	1484	290	2100	2902100OA	4901 Oth Currnt Chrges & Obligions	0.00	0.00	0.00	0.00	75.00	-75.00
2010	1484	290	2100	2902100OA	4941 Registration Fees	0.00	200.00	0.00	0.00	0.00	200.00
2010	1484	290	2100	2902100OA	5101 Office Supplies	0.00	3,000.00	0.00	0.00	2,817.69	182.31
2010	1484	290	2100	2902100OA	5111 Office Furniture And Equipment	0.00	9,803.00	0.00	0.00	5,776.67	4,026.33
2010	1484	290	2100	2902100OA	5112 Telephone Equipment/Install	0.00	0.00	0.00	0.00	0.00	0.00
2010	1484	290	2100	2902100OA	5121 Data Procssng Sftwre/Accessres	0.00	3,500.00	0.00	0.00	1,200.95	2,299.05
2010	1484	290	2100	2902100OA	5401 Books, Publicatns & Subscrptns	0.00	500.00	0.00	0.00	615.00	-115.00
2010	1484	290	2100	2902100OA	5412 Dues & Memberships	0.00	500.00	0.00	0.00	350.00	150.00
					Operating	0.00	62% 27,703.00	0.00	0.00	17,231.18	10,471.82
2010	1484	290	2100	2902100CA	6401 Machinery & Equipment	0.00	5,697.00	0.00	0.00	1,637.16	4,059.84
2010	1484	290	2100	2902100CA	6405 Data Processing Equipment	0.00	6,500.00	0.00	0.00	8,407.36	-1,907.36
					Capital	0.00	82% 12,197.00	0.00	0.00	10,044.52	2,152.48
				Total for Unit: 2100 Commission on Ethics		0.00	180,000.00	0.00	0.00	112,278.45	67,721.55
Fund	1484			PBC Commission on Ethics		0.00	180,000.00	0.00	0.00	112,278.45	67,721.55
				FY 2010		0.00	62% 180,000.00	0.00	0.00	112,278.45	67,721.55

62%

Revenue Summary

<u>Fund</u>	<u>Dept</u>	<u>Unit</u>	<u>Revenue Source</u>	<u>Adopted Revenue Budget</u>	<u>Current Revenue Budget</u>	<u>Received Revenue</u>	<u>Available</u>
2010							
Fund 1484							
Department 010							
		Unit 0100	Interest Distribution				
1484	010	0100	6110 Pool Investment Income	0.00	0.00	3,048.11	-3,048.11
			Unit 0100	0.00	0.00	3,048.11	-3,048.11
			Department 010	0.00	0.00	3,048.11	-3,048.11
Department 290							
		Unit 2100	Commission on Ethics				
1484	290	2100	8000 Tr Fr General Fund Fd 0001	0.00	180,000.00	180,000.00	0.00
			Unit 2100	0.00	180,000.00	180,000.00	0.00
			Department 290	0.00	180,000.00	180,000.00	0.00
Department 800							
		Unit 2100	County Attorney				
1484	800	2100	8000 Tr Fr General Fund Fd 0001	0.00	0.00	0.00	0.00
			Unit 2100	0.00	0.00	0.00	0.00
			Department 800	0.00	0.00	0.00	0.00
			Fund 1484	0.00	180,000.00	183,048.11	-3,048.11
				0.00	180,000.00	183,048.11	

Expense Summary as of 1/28/2011

<u>Fun</u>	<u>Dept</u>	<u>Unit</u>	<u>Appropriation</u>	<u>Object</u>	<u>Adopted Budget</u>	<u>Current Modified Budget</u>	<u>Encumbered</u>	<u>Expended</u>	<u>Available</u>	<u>% Used</u>	
<u>Fiscal Year</u>	<u>2011</u>										
1484	290	2100	2902100PA	1201	Salaries & Wages Regular	286,250.00	286,250.00	0.00	62,364.64	223,885.36	21.79 %
1484	290	2100	2902100PA	1301	Sal & Wages Non-Frs Employe	0.00	0.00	0.00	836.50	-836.50	0.00 %
1484	290	2100	2902100PA	1501	Wages-Special-No Frs Contrib	0.00	0.00	0.00	510.00	-510.00	0.00 %
1484	290	2100	2902100PA	2101	Fica-Taxes	16,929.00	16,929.00	0.00	3,853.61	13,075.39	22.76 %
1484	290	2100	2902100PA	2105	Fica Medicare	4,151.00	4,151.00	0.00	901.24	3,249.76	21.71 %
1484	290	2100	2902100PA	2201	Retirement Contributions-Frs	37,378.00	37,378.00	0.00	8,778.26	28,599.74	23.49 %
1484	290	2100	2902100PA	2301	Insurance-Life & Health	34,125.00	34,125.00	0.00	8,872.98	25,252.02	26.00 %
					Personal Services	378,833.00	378,833.00	0.00	86,117.23	292,715.77	22.73 %
1484	290	2100	2902100OA	3161	Audio/Visual Services Ch. 20	10,000.00	10,000.00	0.00	0.00	10,000.00	0.00 %
1484	290	2100	2902100OA	3301	Court Reporter Services *	2,000.00	2,000.00	0.00	0.00	2,000.00	0.00 %
1484	290	2100	2902100OA	3401	Other Contractual Services *	5,000.00	5,000.00	0.00	0.00	5,000.00	0.00 %
1484	290	2100	2902100OA	3414	Iss Professional Services	5,000.00	5,000.00	0.00	0.00	5,000.00	0.00 %
1484	290	2100	2902100OA	4001	Travel And Per Diem	5,000.00	5,000.00	0.00	0.00	5,000.00	0.00 %
1484	290	2100	2902100OA	4007	Travel-Mileage	1,000.00	1,000.00	0.00	205.63	794.37	20.56 %
1484	290	2100	2902100OA	4008	Travel-Auto Allowance	9,600.00	9,600.00	0.00	1,500.00	8,100.00	15.63 %
1484	290	2100	2902100OA	4406	Rent-Office Equipment	0.00	0.00	0.00	586.43	-586.43	0.00 %
1484	290	2100	2902100OA	4701	Printing & Binding-Outside	15,000.00	15,000.00	0.00	0.00	15,000.00	0.00 %
1484	290	2100	2902100OA	4703	Graphics Charges	5,000.00	5,000.00	0.00	0.00	5,000.00	0.00 %
1484	290	2100	2902100OA	4941	Registration Fees	5,000.00	5,000.00	0.00	0.00	5,000.00	0.00 %
1484	290	2100	2902100OA	4945	Advertising	0.00	0.00	0.00	1,308.75	-1,308.75	0.00 %
1484	290	2100	2902100OA	4946	Advertising Including Legal	0.00	0.00	0.00	0.00	0.00	0.00 %
1484	290	2100	2902100OA	5101	Office Supplies	2,000.00	2,000.00	271.19	717.06	1,011.75	49.41 %
1484	290	2100	2902100OA	5111	Office Furniture And Equipme	3,000.00	3,000.00	480.00	0.00	2,520.00	16.00 %
1484	290	2100	2902100OA	5121	Data Procsssng Sftwre/Accessre	9,693.00	9,693.00	0.00	253.17	9,439.83	2.61 %
1484	290	2100	2902100OA	5201	Materials/Supplies Operating	5,000.00	5,000.00	0.00	0.00	5,000.00	0.00 %
1484	290	2100	2902100OA	5401	Books, Publicatns & Subscrptn	3,000.00	3,000.00	300.00	1,957.41	742.59	75.25 %
1484	290	2100	2902100OA	5412	Dues & Memberships	5,000.00	5,000.00	0.00	0.00	5,000.00	0.00 %
					Operating	90,293.00	90,293.00	1,051.19	6,528.45	82,713.36	8.39 %
1484	290	2100	2902100CA	6401	Machinery & Equipment	0.00	0.00	437.91	4.99	-442.90	0.00 %
1484	290	2100	2902100CA	6405	Data Processing Equipment	6,500.00	6,500.00	0.00	2,148.18	4,351.82	33.05 %
					Capital	6,500.00	6,500.00	437.91	2,153.17	3,908.92	39.86 %
						475,626.00	475,626.00	1,489.10	94,798.85	379,338.05	19.93%
						475,626.00	475,626.00	1,489.10	94,798.85	379,338.05	

Expense Summary as of 1/3/2011
Fiscal Year 2011

<u>FY</u>	<u>Fund</u>	<u>Dent</u>	<u>Unit</u>	<u>Appr. Unit</u>	<u>Objct</u>	<u>Adopted Budget</u>	<u>Mod. Budget</u>	<u>Preencumb</u>	<u>Encumb</u>	<u>Expended</u>	<u>Available</u>
2011	1484	290	2100	2902100PA	1201 Salaries & Wages Regular	286,250.00	286,250.00	0.00	0.00	45,116.84	241,133.16
2011	1484	290	2100	2902100PA	1301 Sal & Wages Non-Frs Employees	0.00	0.00	0.00	0.00	182.00	-182.00
2011	1484	290	2100	2902100PA	1501 Wages-Special-No Frs Contrib	0.00	0.00	0.00	0.00	300.00	-300.00
2011	1484	290	2100	2902100PA	2101 Fica-Taxes	16,929.00	16,929.00	0.00	0.00	2,758.45	14,170.55
2011	1484	290	2100	2902100PA	2105 Fica Medicare	4,151.00	4,151.00	0.00	0.00	645.11	3,505.89
2011	1484	290	2100	2902100PA	2201 Retirement Contributions-Frs	37,378.00	37,378.00	0.00	0.00	6,583.98	30,794.02
2011	1484	290	2100	2902100PA	2301 Insurance-Life & Health	34,125.00	34,125.00	0.00	0.00	6,181.66	27,943.34
					Personal Services	16% 378,833.00	378,833.00	0.00	0.00	61,768.04	317,064.96
2011	1484	290	2100	2902100OA	3161 Audio/Visual Services Ch. 20	10,000.00	10,000.00	0.00	0.00	0.00	10,000.00
2011	1484	290	2100	2902100OA	3301 Court Reporter Services *	2,000.00	2,000.00	0.00	0.00	0.00	2,000.00
2011	1484	290	2100	2902100OA	3401 Other Contractual Services *	5,000.00	5,000.00	0.00	0.00	0.00	5,000.00
2011	1484	290	2100	2902100OA	3414 Iss Professional Services	5,000.00	5,000.00	0.00	0.00	0.00	5,000.00
2011	1484	290	2100	2902100OA	4001 Travel And Per Diem	5,000.00	5,000.00	0.00	0.00	0.00	5,000.00
2011	1484	290	2100	2902100OA	4007 Travel-Mileage	1,000.00	1,000.00	0.00	0.00	152.68	847.32
2011	1484	290	2100	2902100OA	4008 Travel-Auto Allowance	9,600.00	9,600.00	0.00	0.00	1,000.00	8,600.00
2011	1484	290	2100	2902100OA	4406 Rent-Office Equipment	0.00	0.00	0.00	0.00	436.80	-436.80
2011	1484	290	2100	2902100OA	4701 Printing & Binding-Outside	15,000.00	15,000.00	0.00	0.00	0.00	15,000.00
2011	1484	290	2100	2902100OA	4703 Graphics Charges	5,000.00	5,000.00	0.00	0.00	0.00	5,000.00
2011	1484	290	2100	2902100OA	4941 Registration Fees	5,000.00	5,000.00	0.00	0.00	0.00	5,000.00
2011	1484	290	2100	2902100OA	4945 Advertising	0.00	0.00	0.00	0.00	608.75	-608.75
2011	1484	290	2100	2902100OA	4946 Advertising Including Legal	0.00	0.00	0.00	0.00	0.00	0.00
2011	1484	290	2100	2902100OA	5101 Office Supplies	2,000.00	2,000.00	0.00	96.46	519.37	1,384.17
2011	1484	290	2100	2902100OA	5111 Office Furniture And Equipment	3,000.00	3,000.00	0.00	0.00	0.00	3,000.00
2011	1484	290	2100	2902100OA	5121 Data Procsgng Sftwre/Accessres	9,693.00	9,693.00	0.00	0.00	253.17	9,439.83
2011	1484	290	2100	2902100OA	5201 Materials/Supplies Operating	5,000.00	5,000.00	0.00	0.00	0.00	5,000.00
2011	1484	290	2100	2902100OA	5401 Books, Publicatns & Subscrptns	3,000.00	3,000.00	0.00	357.95	1,538.86	1,103.19
2011	1484	290	2100	2902100OA	5412 Dues & Memberships	5,000.00	5,000.00	0.00	0.00	0.00	5,000.00
					Operating	5% 90,293.00	90,293.00	0.00	454.41	4,509.63	85,328.96
2011	1484	290	2100	2902100CA	6401 Machinery & Equipment	0.00	0.00	0.00	437.91	4.99	-442.90
2011	1484	290	2100	2902100CA	6405 Data Processing Equipment	6,500.00	6,500.00	0.00	0.00	0.00	6,500.00
					Capital	<1% 6,500.00	6,500.00	0.00	437.91	4.99	6,057.10
					Total for Unit: 2100 Commission on Ethics	475,626.00	475,626.00	0.00	892.32	66,282.66	408,451.02
Fund	1484				PBC Commission on Ethics	475,626.00	475,626.00	0.00	892.32	66,282.66	408,451.02
					FY 2011	14% 475,626.00	475,626.00	0.00	892.32	66,282.66	408,451.02

JOB_TITLE_DESC	RATE	HIRE DATE	Salary
ASSISTANT COUNTY ATTORNEY I	33.901	08/15/2005	\$70,514.08
ASSISTANT COUNTY ATTORNEY I	36.201	10/12/2004	\$75,298.08
ASSISTANT COUNTY ATTORNEY II	41.447	11/20/2002	\$86,209.76
ASSISTANT COUNTY ATTORNEY II	41.785	11/22/1999	\$86,912.80
ASSISTANT COUNTY ATTORNEY II	43.674	07/18/2005	\$90,841.92
ASSISTANT COUNTY ATTORNEY III	48.499	05/29/2001	\$100,877.92
ASSISTANT COUNTY ATTORNEY III	51.164	05/18/1998	\$106,421.12
ASSISTANT COUNTY ATTORNEY III	51.164	10/23/2000	\$106,421.12
ASSISTANT COUNTY ATTORNEY III	51.164	03/05/2001	\$106,421.12
ASSISTANT COUNTY ATTORNEY III	51.272	04/12/2006	\$106,645.76
ASSISTANT COUNTY ATTORNEY III	60.026	09/27/1999	\$124,854.08
SENIOR ASSISTANT COUNTY ATTORNEY	63.621	06/21/1993	\$132,331.68
SENIOR ASSISTANT COUNTY ATTORNEY	65.021	09/09/1996	\$135,243.68
SENIOR ASSISTANT COUNTY ATTORNEY	65.847	10/21/1996	\$136,961.76
SENIOR ASSISTANT COUNTY ATTORNEY	67.458	08/28/1989	\$140,312.64
SENIOR ASSISTANT COUNTY ATTORNEY	67.844	01/05/1998	\$141,115.52
SENIOR ASSISTANT COUNTY ATTORNEY	69.440	08/28/1989	\$144,435.20
SENIOR ASSISTANT COUNTY ATTORNEY	70.350	03/31/1993	\$146,328.00
SENIOR ASSISTANT COUNTY ATTORNEY	70.649	03/13/1991	\$146,949.92
SENIOR ASSISTANT COUNTY ATTORNEY	74.858	06/11/1990	\$155,704.64
SENIOR ASSISTANT COUNTY ATTORNEY	76.910	02/13/1989	\$159,972.80
CHIEF ASSISTANT COUNTY ATTORNEY	85.952	01/22/1996	\$178,780.16
CHIEF ASSISTANT COUNTY ATTORNEY	85.952	01/16/1996	\$178,780.16
CHIEF ASSISTANT COUNTY ATTORNEY	85.952	08/13/1984	\$178,780.16
COUNTY ATTORNEY	95.920	11/06/1986	\$199,513.60

JOB_TITLE_DESC	RATE	HIRE DATE	Salary
DIRECTOR COUNTY EXTENSION SERVICE	20.514	09/10/1979	\$42,669.12
DIRECTOR ADMINISTRATIVE SERVICES	36.689	06/05/2000	\$76,313.12
DIRECTOR OF AIRPORTS OPERATIONS	38.661	09/30/1996	\$80,414.88
DIRECTOR ECONOMIC DEVELOPMENT	39.257	11/20/1995	\$81,654.56
DIRECTOR JUSTICE SERVICES	40.238	12/13/2007	\$83,695.04
DIRECTOR SENIOR SERVICES	41.837	01/13/2003	\$87,020.96
DIRECTOR PLANNING, ZONING & BUILDING ADMINISTRATION	45.147	02/01/2005	\$93,905.76
DIRECTOR HUMAN SERVICES	45.147	11/28/2005	\$93,905.76
DIRECTOR AIRPORTS MAINTENANCE	45.270	01/02/1991	\$94,161.60
EXECUTIVE DIRECTOR GLADES UTILITY AUTHORITY	45.704	06/18/2007	\$95,064.32
EXECUTIVE DIRECTOR CRIMINAL JUSTICE COMMISSION	46.067	12/06/1999	\$95,819.36
DIRECTOR ENGINEERING SERVICES	46.210	04/13/2009	\$96,116.80
DIRECTOR OFFICE OF COMMUNITY REVITALIZATION	47.086	03/31/2007	\$97,938.88
DIRECTOR PLANT OPERATIONS & MAINTENANCE	47.529	05/02/2005	\$98,860.32
DIRECTOR AIRPORTS PROPERTIES	48.042	01/10/2005	\$99,927.36
DIRECTOR FIRE RESCUE FLEET MAINTENANCE	48.688	02/26/2007	\$101,271.04
DIRECTOR AIRPORTS PLANNING	48.819	01/10/2005	\$101,543.52
DIRECTOR ELECTRONIC SERVICES & SECURITY	49.440	07/31/2000	\$102,835.20
DIRECTOR PARKS FINANCIAL & SUPPORT SERVICES	50.782	11/01/1988	\$105,626.56
DIRECTOR MOSQUITO CONTROL	51.012	03/31/1986	\$106,104.96
DIRECTOR EMERGENCY MANAGEMENT	51.443	04/26/2010	\$107,001.44
DIRECTOR CONSTRUCTION COORDINATION	52.139	03/23/1982	\$108,449.12
DIRECTOR FINANCIAL MANAGEMENT	52.885	10/27/2008	\$110,000.80
DIRECTOR PUBLIC AFFAIRS	52.905	06/01/1981	\$110,042.40
DIRECTOR YOUTH AFFAIRS	55.398	10/26/1996	\$115,227.84
DIRECTOR ANIMAL CARE & CONTROL	55.608	08/26/2002	\$115,664.64
DIRECTOR HOUSING & COMMUNITY DEVELOPMENT	56.037	05/08/1995	\$116,556.96
DIRECTOR PARKS OPERATIONS	56.205	06/14/1980	\$116,906.40
DIRECTOR CONTRACT DEVELOPMENT & CONTROL	56.357	07/30/1984	\$117,222.56
DIRECTOR EQUAL OPPORTUNITY	56.437	11/12/1996	\$117,388.96
DIRECTOR RISK MANAGEMENT	56.537	05/24/2004	\$117,596.96
DIRECTOR UTILITIES ENGINEERING	56.671	12/10/2007	\$117,875.68
EXECUTIVE DIRECTOR COMMISSION ON ETHICS	56.740	05/17/2010	\$118,019.20
DIRECTOR AQUATICS	56.857	09/26/1978	\$118,262.56
DIRECTOR LINE OPERATIONS & MAINTENANCE	58.211	07/30/2007	\$121,078.88
DIRECTOR FACILITIES MANAGEMENT	58.873	09/24/1979	\$122,455.84
DIRECTOR LEGISLATIVE AFFAIRS	60.685	06/01/1999	\$126,224.80
DIRECTOR BUDGET	60.876	09/22/1997	\$126,622.08
DIRECTOR FINANCE & ADMINISTRATION	61.544	08/27/1984	\$128,011.52
DIRECTOR CONTRACTORS CERTIFICATION	61.551	10/12/1978	\$128,026.08
DIRECTOR PLANNING	61.752	07/22/2002	\$128,444.16
DIRECTOR ZONING	62.366	12/01/1986	\$129,721.28
DIRECTOR FINANCE & PLANNING	62.881	02/22/1988	\$130,792.48
DIRECTOR BUILDING	63.518	10/20/1987	\$132,117.44
DIRECTOR ROAD & BRIDGE	63.635	08/05/2008	\$132,360.80
DIRECTOR SPECIAL FACILITIES & BEACHES	63.635	12/12/1981	\$132,360.80
DIRECTOR CONSUMER AFFAIRS	63.635	10/02/1974	\$132,360.80
DIRECTOR REGULATORY COMPLIANCE	64.169	01/25/1982	\$133,471.52
DIRECTOR FACILITIES OPERATIONS	64.590	04/12/2004	\$134,347.20
DIRECTOR FACILITIES SERVICES	64.791	02/03/1986	\$134,765.28
DIRECTOR TOURIST DEVELOPMENT	64.904	05/11/2009	\$135,000.32
DIRECTOR HUMAN RESOURCES	65.018	06/25/1984	\$135,237.44
DIRECTOR LIBRARY	65.404	04/17/2006	\$136,040.32
DIRECTOR PALM TRAN	65.406	03/15/2004	\$136,044.48
EXECUTIVE DIRECTOR HOUSING FINANCE AUTHORITY	65.804	01/05/2009	\$136,872.32
DIRECTOR COMMUNITY SERVICES	66.109	07/13/2009	\$137,506.72
DIRECTOR PROPERTY & REAL ESTATE MANAGEMENT	69.448	02/21/1990	\$144,451.84
DIRECTOR FLEET MANAGEMENT	69.448	11/14/1990	\$144,451.84
DIRECTOR ROADWAY PRODUCTION	69.832	12/15/1986	\$145,250.56
DIRECTOR TRAFFIC ENGINEERING	70.006	05/01/1990	\$145,612.48
INTERNAL AUDITOR	70.196	06/06/1983	\$146,007.68

INSPECTOR GENERAL	72.116	06/28/2010	\$150,001.28
DIRECTOR OFFICE OF FINANCIAL MANAGEMENT AND BUDGET	72.347	03/24/1997	\$150,481.76
DIRECTOR PURCHASING	72.353	12/01/1989	\$150,494.24
DIRECTOR METROPOLITAN PLANNING & ORGANIZATION	72.827	01/07/1975	\$151,480.16
DIRECTOR CAPITAL IMPROVEMENTS	73.528	06/12/2000	\$152,938.24
DIRECTOR PARKS & RECREATION	74.895	02/20/1984	\$155,781.60
DIRECTOR PLANNING, ZONING & BUILDING	81.795	03/06/1989	\$170,133.60
DIRECTOR ENVIRONMENTAL RESOURCES MANAGEMENT	82.530	10/26/1987	\$171,662.40
DIRECTOR PUBLIC SAFETY	83.797	08/01/2006	\$174,297.76
FIRE RESCUE ADMINISTRATOR	86.252	01/09/1978	\$179,404.16
DIRECTOR INFORMATION SYSTEMS SERVICES	88.862	08/15/1988	\$184,832.96
DIRECTOR WATER UTILITIES	89.198	12/31/2003	\$185,531.84
DIRECTOR FACILITIES DEVELOPMENT & OPERATIONS	94.365	01/04/1988	\$196,279.20
DIRECTOR AIRPORTS	95.030	03/01/2010	\$197,662.40
COUNTY ENGINEER	95.496	11/26/1984	\$198,631.68
COUNTY ATTORNEY	95.920	11/06/1986	\$199,513.60
MEDICAL EXAMINER	115.299	03/01/2005	\$239,821.92

JOB_TITLE_DESC	RATE	HIRE DATE	Salary
EXECUTIVE DIRECTOR PBC LEGIS DELEGATION/LEGIS AFF LIAISON	31.066	09/07/2010	\$64,617.28
EXECUTIVE DIRECTOR GLADES UTILITY AUTHORITY	45.704	06/18/2007	\$95,064.32
EXECUTIVE DIRECTOR CRIMINAL JUSTICE COMMISSION	46.067	12/06/1999	\$95,819.36
EXECUTIVE DIRECTOR COMMISSION ON ETHICS	56.740	05/17/2010	\$118,019.20
EXECUTIVE DIRECTOR HOUSING FINANCE AUTHORITY	65.804	01/05/2009	\$136,872.32

AGENDA ITEM VIII(a) – GIFT LAW REVISION

Staff analysis:

Currently, §2-444, *Gift Law*, of the Code of Ethics reads as follows:

- (a) No county commissioner or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100.00) from any person or business entity *that the recipient knows* is a lobbyist or any principal or employer of a lobbyist. (Emphasis added)

To sustain a violation of the code of ethics, each violation must be proven by “clear and convincing” evidence. As written, an official or employee who receives a prohibited gift must know that the donor is a lobbyist, or principal or employer of a lobbyist.

- 1- While circumstantial evidence may be sufficient to prove actual knowledge, §2-444(a) does not require any effort on the part of an official or employee to use reasonable efforts to discover the prohibited relationship, including asking the donor or reviewing the county list of lobbyists, principals and employers of lobbyists. The fact that the donor is a vendor or service provider may not, by itself, support a finding by clear and convincing evidence that the violator knows the vendor employs a lobbyist. Negligence or “willful blindness”, while it may have the appearance of culpability, may not always, by itself, support even an inadvertent violation.

The code of ethics currently has an appropriate standard as contained in §2-443(a) that may be used to clarify and invoke a minimal requirement of due care in accepting gifts from vendors who may employ lobbyists. The standard for “Misuse of public office or employment” is the use of that office “...in a manner which he or she knows **or should know with the exercise of reasonable care** will result in a financial benefit...” By adding a standard that already appears elsewhere in the code, the prohibition on accepting gifts from lobbyists, their principals or employers would not be thwarted by negligence or “willful blindness” defenses, even if the COE were to ultimately find the violation inadvertent.

- 2- The Second concern involves accountability on the part of the lobbyist, principal or employer. Currently, the prohibited conduct applies only to the recipient of the gift. There are other sections of the code that apply to persons other than officials or employees. For example, § 2-443(f) prohibits “any person” from obtaining a contingency fee based upon action or inaction of the BCC, advisory board or county administrator. Section 2-443(g) prohibits a “person” from submitting false documents to obtain county employment or a county contract. Lobbyists or vendors who employ lobbyists have direct knowledge of their status and therefore should have some duty to not induce an official or employee of government to violate the law by offering a prohibited gift.
- 3- Lastly, § 112.3148(3), Florida Statutes, prohibits a reporting individual from soliciting *any gift* from a lobbyist, employer or principal, “where such gift is for the personal benefit of a reporting individual...”, or an immediate family member. Florida Ethics Statutes require that local ordinances adhere to state law. Since the state prohibition against solicitation of any gift (not just over \$100.00) supersedes the county code, the code should reflect the more stringent prohibition for reporting individuals.

Staff Recommendation:

That § 2-444 be amended as follows:

- (a) (1) No county commissioner, ~~elected municipal official~~, ~~or~~ county or municipal employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100.00) from any person or business that the recipient knows, or should know with the exercise of reasonable care, is a lobbyist or any principal or employer of a lobbyist.

(2) No lobbyist or any principal or employer of a lobbyist, shall knowingly give, directly or indirectly, any gift with a value of greater than one hundred dollars (\$100.00) to any person that the donor knows, or should know with the exercise of reasonable care, is a county commissioner, elected municipal official, or county or municipal employee. For the purpose of this subsection, a principal or employer shall include any officer, partner or director of the principal entity, or any employee of a principal who is not an officer, partner or director, provided such employee knows that the principal employs a lobbyist.

- (b) (1) No advisory board member, or any other person on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100.00) from any lobbyist, or any principal or employer of a lobbyist, who lobbies the recipient's advisory board, or any county or municipal department that is subject in any way to the advisory board's authority

(2) No lobbyist or any principal or employer of a lobbyist who lobbies an advisory board or any county or municipal department that is subject in any way to the advisory board's authority, shall knowingly give, directly or indirectly, any gift with a value of greater than one hundred dollars (\$100.00) to a member of that advisory board. For the purpose of this subsection, a principal or employer shall include any officer, partner or director of the principal entity, or any employee of a principal who is not an officer, partner or director, provided such employee knows that the principal employs a lobbyist.

- (c) Officials and employees required to report gifts pursuant to state law as provided for in Florida Statutes, § 112.3148 are prohibited from soliciting any gift from a lobbyist who lobbies the official or employee's county or other local or municipal government, or any principal or employer of such lobbyist, where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee.

AGENDA ITEM VIII(b): PUBLIC RECORDS STATUS OF COMPLAINT

Currently, Florida Statutes exempt both the initial complaint and investigation from public records disclosure prior to a probable cause determination by the COE. The Palm Beach County Commission on Ethics code exempts the investigation but not the initial complaint.

§ 112.324(2)(a) and (3), Florida Statutes, state as follows:

“2(a) The complaint and records relating to the complaint or to any preliminary investigation held by...any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements...are confidential and exempt from the provisions of § 119.07(1) and § 24(a), Art. I of the State Constitution.” (emphasis added)

“(3) ...If, upon completion of the preliminary investigation, the commission finds no probable cause to believe that this part has been violated..., the commission shall dismiss the complaint...At that time, the complaint and all materials relating to the complaint shall become a matter of public record. If the commission finds...probable cause...it shall notify the complainant and the alleged violator in writing. Such notification and all documents made or received in the disposition of the complaint shall then become public records.”

§ 2-260(f), Palm Beach County Code of Ethics, states as follows:

“Public records exemption...With the exception of the initial complaint filed in a matter, all records held by the commission on ethics are confidential and exempt from disclosure in a manner consistent with the provisions in Florida Statutes, § 112.3188(2).”

Staff analysis and recommendation

The provisions of the Palm Beach County Commission on Ethics code are in conflict with state statutes. Apparently, § 112.324(2)(a) and (3), Florida Statutes, were amended to exempt the complaints from public records after the code of ethics was drafted in late 2009 thus creating the conflict (see attached memo from Assistant County Attorney Leonard Berger). Therefore, in order to bring the code into compliance with state statutes, staff recommends the code be amended as follows:

§ 2-260(f) Public records exemption. The commission on ethics and its staff shall be considered “an appropriate local official” for the purposes of whistleblower protection provided for in Florida Statutes, § 112.3188(1). ~~With the exception of the initial complaint filed in a matter, all~~ The complaint and all records held by the commission on ethics and its staff related to an active preliminary investigation are confidential and exempt from disclosure in a manner consistent with the provisions in Florida Statutes, § 112.324(2)(a) and (3) and § 112.3188(2). In addition, any proceeding conducted by the commission on ethics pursuant to a complaint or preliminary investigation is exempt from the provisions of § 286.011, Florida Statutes, and Article I, § 24(b), Florida Constitution, as set forth in § 112.324(2)(a) and (3), Florida Statutes. Once a preliminary investigation is complete and a probable cause determination made, all other proceedings conducted pursuant to this subsection shall be public meetings within the meaning of Florida Statutes, ch. 286, and all other documents made or received by the commission on ethics shall be public records within the meaning of Florida Statutes, ch. 119, subject to whistleblower confidentiality as provided for in Florida Statutes, § 112.3188(1).

AGENDA ITEM VIII(c) – SETTING FINAL HEARINGS 2-260(C)

Staff analysis:

At the January 19 drafting committee meeting an issue was raised regarding complaints where probable cause is found but no hearing is requested. At some point the matter will need to be addressed in a public hearing to determine whether or not the respondent violated the code and if a violation is found, imposition of penalty. The consensus was to require a final hearing be set in all cases where probable cause is found. The case may still be resolved prior to the hearing.

Staff recommendation:

That the code be amended as follows:

(c) *Preliminary investigation and public hearing.* A preliminary investigation shall be undertaken by the commission on ethics of each legally sufficient complaint over which the commission on ethics has jurisdiction to determine whether there is probable cause to believe that a violation has occurred. If, upon completion of the preliminary investigation, the commission on ethics finds no probable cause to believe that a violation has been committed, the commission on ethics shall dismiss the complaint with the issuance of a report to the complainant and the respondent. If the commission on ethics finds from the preliminary investigation probable cause to believe that a violation has been committed, it shall set the matter for a public hearing and notify complainant and respondent via certified mail, hand delivery, or courier, ~~informing the person of his or her right to request a hearing within thirty (30) days of receipt of the notice. Upon request submitted to the commission on ethics in writing, any person who the commission on ethics finds probable cause to believe has committed a violation of a provision within its jurisdiction shall be entitled to a public hearing. Such person shall be deemed to have waived the right to a public hearing if the request is not received within thirty (30) days following receipt of the probable cause notification required by this subsection.~~ The commission on ethics ~~may on its own motion require a public hearing,~~ may conduct such further investigation as it deems necessary, and may enter into such stipulations and settlements as it finds to be just and in the best interest of the citizens of the county. The public hearing provided for in this section shall be held within one hundred twenty (120) days of the probable cause determination unless extended by the commission on ethics for good cause based on the request of a party or on its own initiative.

AGENDA ITEM VIII(d) – RULES OF PROCEDURE AMENDMENTS

The COE rules of procedure have not been amended to reflect the adoption of changes to Art. V, sec. 2-260(b), allowing self-initiated complaints. In order to carry out the processing of a self-initiated complaint, staff must have the ability to inquire into, and obtain facts and circumstances to make a legal sufficiency determination. Staff recommends adoption of the following rules of procedure to allow for staff to obtain this information. Once complete, an inquiry will either be closed as without merit, or filed as legally sufficient at which time a case will be opened and the normal complaint process will be followed.

Staff recommends the following rule of procedure amendments:

4.11 Self-Initiated Complaints

The Inspector General, Executive Director of the Commission on Ethics or the State Attorney may initiate a sworn written complaint with the Commission on Ethics. Such complaint will be deemed legally sufficient.

4.12 Preliminary Inquiry of Commission on Ethics

In determining whether or not legal sufficiency exists to support a self-initiated complaint the Commission on Ethics may undertake a preliminary inquiry into the facts and circumstances involving a possible violation of an ordinance within its jurisdiction. A preliminary inquiry is not subject to public records disclosure.

4.12 Preliminary Inquiry Protocols

- a. Upon receipt of information which may form the basis of a violation, staff may review documents and conduct interviews prior to a finding of legal sufficiency.
- b. After conducting an inquiry, if no legal sufficiency is found, staff will prepare a memorandum of inquiry stating the facts and circumstances supporting its finding. A finding of no legal sufficiency after inquiry is thereafter subject to public records disclosure.
- c. Upon a finding of legal sufficiency, the matter under inquiry will be processed in accordance with Sections C and D as contained herein.

AGENDA ITEM VIII(e) – AMENDMENT TO RULES OF PROCEDURE ADDING 4.31 ADVOCATE CONFLICT OF INTEREST

4.31 Advocate Conflict of Interest

At all times during the investigation and presentation of a legally sufficient complaint, the Advocate has an ongoing duty to seek justice without predisposition or bias. In that regard there is an ongoing duty to disclose to the Executive Director any financial, personal or professional interest in the proceedings immediately upon discovery of the conflict.

4.32 Replacement of Advocate upon Disclosure of Conflict

Upon disclosure of a conflict, the Executive Director shall immediately replace the Advocate and notify the Respondent.

4.33 Applicability of Florida Bar Rules of Professional Conduct

The Advocate shall be governed by *Chapter 4. Rules of Professional Conduct* as promulgated by the Florida Bar.