

Agenda

June 2, 2011 – 3:00 p.m.
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Palm Beach County
Commission on Ethics
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Commissioners
Edward Rodgers, Chair
Manuel Farach, Vice Chair

Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director
Alan S. Johnson

Staff Counsel
Megan C. Rogers

Administrative Assistant
Gina A. Levesque

Investigator
Mark E. Bannon

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from May 5, 2011
- V. Public Comment Revision to By-Laws
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 11-025
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Proposed Advisory Opinions
 - a. RQO 11-007
 - b. RQO 11-021
 - c. RQO 11-022
 - d. RQO 11-023
 - e. RQO 11-024
 - f. RQO 11-026
- IX. Annual Report
- X. Social Media Outreach Efforts
- XI. Executive Director Comments
- XII. Public Comments
- XIII. Adjournment

MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS (COE)

I. CALL TO ORDER: May 5, 2011, at 3:03 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 – Absent
Bruce Reinhart, Esq.

STAFF:

Alan Johnson, Esq., COE Executive Director
Gina Levesque, COE Administrative Assistant
Megan Rogers, COE Staff Attorney
Sydone Thompson, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Judge Edward Rodgers asked audience members to silence their cell phones and submit public comment cards to staff, and to indicate the agenda item they intended to address. He said that public comment would be limited to a maximum of three minutes per speaker and that comments should be relevant to the item discussed. He added that the commission's process should be respected.

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

IV. APPROVAL OF MINUTES FROM APRIL 7, 2011

Manuel Farach suggested that changes be made to the April 7, 2011, meeting minutes. He said that on page 3, the first filled bullet point, the word "deposed" should be changed to "sworn."

Judge Rodgers asked that the proper corrections be made to the minutes.

IV. – CONTINUED

Alan Johnson, Esq., Commission on Ethics (COE) Executive Director (ED), stated that he agreed that the suggested change was more appropriate, and he added that he would need to review the recording from the April 7, 2011, COE meeting because he could have used the word “deposed.” He said that as a part of the discovery process, the due process rights of a respondent was to depose witnesses; therefore, he could not say with certainty that he did not use the word “sworn,” which would have also been appropriate. He recommended that staff review the recording from the previous COE meeting and correct the minutes with the proviso that if the minutes needed to be corrected, it would not be necessary to bring the matter back to the COE for approval.

Mr. Farach stated that on page 5, the second “CLERK’S NOTE” which read, At the attempt of disorderly conduct, the chair asked that the security officer be summoned to maintain decorum, should be corrected to read, At the threat of disorderly conduct, the chair asked that the security officer be summoned to maintain decorum.

Dr. Robin Fiore said that she seconded the changes to the minutes’ language as recommended.

Mr. Johnson stated that he agreed with the recommended corrections.

Judge Rodgers said that the changes as discussed would be made to the minutes.

Mr. Farach stated that:

- On page 16, the vote which read, UPON POLLING THE COMMITTEE, the motion CARRIED 3-1. Ronald Harbison and Bruce Reinhart opposed, and Edward Rodgers abstained, should be verified upon reviewing the recording from the April 7, 2011, meeting since the votes carried were mathematically incorrect.
- There could be a typographical error with the votes, but since he was not able to review the recording himself, he asked that the vote be reviewed.

Bruce Reinhart stated that since he made the motion he would not have voted against the item. He said that he recalled the vote as 3-1 with Ronald Harbison opposed. Mr. Farach stated that Mr. Reinhart’s explanation would clarify the discrepancy.

IV. – CONTINUED

Mr. Johnson asked that a provisional vote be made so that a review of the recording from the COE's April meeting could be conducted during today's meeting. He asked that the matter be tabled until the end of the meeting.

Judge Rodgers stated that the corrections to page 16 would be tabled until the end of the meeting by acclamation and without a vote from the commission.

(CLERK'S NOTE: See page 23 for further discussion on item IV.)

Mr. Farach suggested additional changes as follows:

- On page 21, first bullet, the word, he, should be stricken, and the sentence should read: Initially, the need to hire additional staff was circumvented because the workload did not require it.
- On page 24, first paragraph, second sentence that read, He said that the people's work was overshadowed, should be changed to, He said that the people's work was being overshadowed.
- On page 25, the fourth bullet point lacked clarity unless it was a clause or a portion of a sentence. The language stated, Line 370 of the Code addressed whether personal gifts carveouts would exist. It read, Giving a gift in excess of \$100 who is a prospective vendor seeking to do business with the official or the employee's governmental entity.

Remainder of page left blank intentionally.

IV. – CONTINUED

Mr. Johnson read Section 2-444, line 337 of the current COE Code into the record as proposed. He said the language was appropriate where personal gift carveouts existed. The Code language was read as follows:

“a. Personal Gifts. All officials and employees who are not reporting individuals under state law are not required to report gifts in excess of one hundred dollars (\$100.00) so long as those gifts are given to the official or employee by a personal friend or co-worker and the circumstances demonstrate that the motivation for the gift was the personal or social relationship rather than an attempt to obtain the goodwill or otherwise influence the official or employee in the performance of his or her official duties. Factors to be considered in determining whether a gift was motivated by a personal or social relationship may include but shall not be limited to: whether the relationship began before or after the official or employee obtained his or her office or position; the prior history of gift giving between the individuals; whether the gift was given in connection with a holiday or other special occasion; whether the donor personally paid for the gift or sought a tax deduction or business reimbursement; and whether the donor gave similar gifts to other officials or employees at or near the same time. If the personal friend or co-worker is a vendor, lobbyist or principal or employer of a lobbyist that lobbies the county or municipality as applicable, then the official or employee shall not accept a gift in excess of \$100.00 in accordance with subsections (a)(1) and (b)(1).”

Mr. Farach asked Mr. Johnson whether the entire language he read should be added to clarify the record. Mr. Johnson replied that in the abundance of caution, the entire provision should be added to the April 7, 2011, meeting minutes.

MOTION to approve the April 7, 2010, meeting minutes as amended, with the corrections identified by Manuel Farach, and subject to the review of the meeting recording for the proposed corrections to page 16, that were tabled earlier at today’s meeting. Motion by Manuel Farach, seconded by Bruce Reinhart, and carried 4-0. Ronald Harbison absent.

V. PUBLIC COMMENT REVISION TO BY-LAWS

Mr. Johnson stated that:

- Staff recommended that Section 10 of the COE by-laws be created for public comment. The language would read as follows:

“Public comment is permitted on all agenda items with the exception of probable cause proceedings and the adjudicatory portion of final hearings involving complaints before the commission. The chairperson may establish and enforce rules pertaining to the orderly conduct of public comment, including time, manner, and decorum.”

- The staff analysis concluded that:
 - Significant due-process concerns existed regarding the executive session probable-cause hearing and the guilt phase in the final hearing.
 - Valid concerns included members of the audience making irrelevant, prejudicial, or inadmissible statements, which the respondent was not privy to in advance; or witnesses speaking prior to being deposed.
 - The constitutional rights of respondents should outweigh the rights of public commentators until the trial phase concluded.
- Public comment could be permitted after the final hearing if the COE ruled that a respondent had violated the Code and an appropriate sanction or fine was imposed.

Dr. Fiore stated that public comment should be permitted during final hearings after the COE made its ruling.

Mr. Reinhart said that he agreed with Dr. Fiore. He suggested that members of the public communicate with the advocate to convey their information as opposed to allowing the public to make opinions on sentencing.

V. – CONTINUED

Mr. Farach stated that:

- Although he understood the concerns of the commission, it was the public's right to comment on cases prior to the COE handing down a sentence.
- The public should be permitted to make comments irrespective of the COE's final sentence or punishment.
- He recognized the risk of turning the proceeding from one with decorum and professionalism to one without those elements. He was concerned that the public would not be allowed to voice opinions prior to the COE making a decision.
- Had it not been for the chair's ability to control the meeting's decorum, he would not have supported the notion of permitting public comment prior to the sentencing phase.

Dr. Fiore said that in the past, public comment had often been irrelevant to the items discussed. She stated that it was not the COE's role to permit public comment that subjected the respondent deemed guilty of a Code violation to be berated.

Mr. Johnson stated that in drafting the by-laws, the language was likened to a criminal court case in which a harsh sentence would be handed down. Conversely, he added, parties in support of the respondent could also appear to request the commission's leniency. He said that the language could be modified at the direction of the commission.

Mr. Reinhart said that under the commission's current rules, the accused party had a right to offer witnesses in mitigation, just as the advocate, a party to the proceeding, had the right to offer witnesses in aggravation of sentence. He stated that if the matter was not funneled through to the individuals who were the official parties to the proceeding, then the case could be opened up to abuse. He added that by allowing the public's voice through the appointed advocate, the accused party could be safeguarded from unfair treatment.

MOTION to approve the recommendation to exclude adjudicatory actions and hearings from public comment. Motion by Robin Fiore, and seconded by Bruce Reinhart.

V. – CONTINUED

Mr. Reinhart stated that the current by-laws draft stated that the chair could establish and enforce rules pertaining to orderly conduct. He expressed concern about the term, rules, related to a standard set of procedures that would be applied across the board or an inference could be drawn that the chair would have discretion to control the commission's proceedings. He said it was foreseeable that members of the public or parties to a proceeding would voice opposition about impartiality or preferential treatment toward permission to speak at a meeting. He said that since the commission had no established rules in the by-laws if they were redrafted, staff should consider that point.

Mr. Johnson asked for clarification because since the rules permitted three minutes for public comment, and those types of rules as envisioned in the by-laws would be at the discretion of the chair to prohibit a commentator from engaging in personally abusive or tangential behavior, or not speaking to the agenda item. The rules would need to be adhered to across the board to allow for fairness, he stated.

Mr. Reinhart suggested the following by-laws language. The chair shall have discretion to limit public comment as necessary to maintain decorum and save time. He cautioned the commission against enforcing a rule that the commission had not formally promulgated. He said that if staff redrafted the by-laws, then his proposed revision should be considered. Mr. Johnson said that the language could be vetted at today's meeting.

Mr. Reinhart stated that he preferred that a final decision be made when the entire commission was present, especially when there were competing opinions on the matter. He suggested that the matter be tabled until the next meeting.

AMENDED MOTION to table item V., Public Comment Revisions to By-Laws, until the June 2, 2011, Commission on Ethics meeting. Motion by Bruce Reinhart, and seconded by Robin Fiore.

Dr. Fiore asked how the commission would proceed if a hearing was scheduled for the COE's June 2011 meeting. Mr. Reinhart responded that the commission could use existing Code rules.

UPON CALL FOR A VOTE, the motion carried 3-1. Edward Rodgers opposed and Ronald Harbison absent.

VI. VOTING CONFLICTS

VI.a. COMMISSION ON ETHICS REQUEST FOR ADVISORY OPINION FROM ATTORNEY GENERAL'S OFFICE (REQUESTED BY COMMISSIONER FARACH)

Mr. Johnson stated that voting conflicts were present at the April 7, 2011, meeting. He asked that an illegal vote be readdressed since an insufficient number of commissioners were physically present at the time of the vote. He added that State Statute (Statute) 286.012 stipulated that abstention from voting was permissible only when a financial conflict of interest existed.

Dr. Fiore said that she had not voted because of insufficient information. She added that she had a right to abstain instead of being rushed to vote.

Judge Rodgers stated that he had abstained from voting because the case involved his daughter-in-law.

Mr. Johnson said that:

- He reviewed 28 attorney general (AG) letters and that there were 300 mentions that did not allow a non-financial exception, unless the nepotism statute was violated.
- The nepotism statute stipulated that even if a financial interest had not existed, by abstaining from voting, the elected official would have violated the law.
- With regard to the adjudicatory and quasi-judicial functions of a hearing or probable cause determination, staff believed that if a bias against the respondent existed, constitutional issues could be raised that superseded Statute 286.012.
- The first issue was whether staff should send a letter to the Attorney General's Office (AGO) and request an advisory opinion regarding quasi-judicial COE hearings and the conflict that would be raised by a bias relating to due process conflicts within the Florida constitution and the United States Constitution.

VI.a. – CONTINUED

- The second issue was whether carveouts existed for non-adjudicatory and non-quasi-judicial proceedings. After consulting Charles “Chris” Anderson, Florida COE attorney, both staff and Mr. Anderson shared the opinion that those proceedings were not subject to Statute 286.012.
- The Florida COE stipulated that adjudicatory and quasi-judicial issues should be brought to the AG for review.

Judge Rodgers stated that it was unfortunate that committee members could not abstain from voting on an item because they handled a legal matter involving a respondent in a COE case. He said that the rule narrowed the commission’s ability to be fair.

Mr. Johnson stated that the District Court of Appeals (DCA) supported the AG. He said that in one case, there was a physical altercation between a board member and an applicant, and the board member was required to vote because the statute did not provide a leeway to abstain, even in the case of a bias. He added that he would research whether there was a DCA provision that addressed advisory opinions received from the AG that permitted violations of respondents’ due process rights.

Mr. Farach stated that:

- The COE was in the uncomfortable position of either following or intentionally violating the statute.
- Although the intent of Statute 286.012 was to prevent board members from purposely avoiding voting on agenda items, the COE was governed by different standards than most political bodies. As a non-political body, it was required to avoid the appearance of impropriety.
- The way that the COE ordinance and Statute 286.012 were written posed a problem.
- Unless and until he was instructed by the AG to vote on every agenda item, he would abstain from voting when there was an appearance of impropriety. To vote otherwise would denigrate the integrity of the commission.

VI.a. – CONTINUED

Mr. Johnson explained that:

- State law superseded local ordinances, and constitutional laws superseded State statutes.
- The AGO opined that one statute could not be used to violate another.
- There was no penalty for violating the statute, although the statute had references to misfeasance.
- If a committee member opted not to vote, a misfeasance claim could be filed to remove the individual from the committee.

Dr. Fiore stated that she had not intended to trivialize one's conscience, but there were instances in which a board member simply could not vote on an agenda item if the reasons were valid and stemmed from professional, cultural, and personal values. She said ethics commissions should respect the reasoning associated with those principles. She added that her decision to abstain from voting for reasons of information would not waver although she had a better understanding of the statute.

Mr. Farach said that he made the request so that the commission could get some clarification on the matter. He said that he had no doubt that the issue had been extensively researched, but that there could be someone who could shed more light on the issue.

Dr. Fiore proposed that all commission members should vote, even when a conflict existed. She said that the commissioners with the conflicts could vote with the commissioners that voted in the majority, and state that they were making the vote for purposes of procedure since their votes would not influence the motion's passage. She concluded that the dissenting commissioner's vote would be meaningless unless two or more board members made opposing votes, which would then create a procedural dilemma.

Mr. Farach said he had not intended to impose on the discretion of each commissioner when they voted. He reiterated that his concern was to get clarity from the AGO. He added that if the commission were directed to vote on an item even with an appearance of impropriety, he would follow the law.

VI.a. – CONTINUED

Dr. Fiore said that she disagreed that following the statute took precedence. She said that the AG's view would not change her opinion. She added that there was no purpose for the request because the AG would likely direct the COE to follow the law. Mr. Farach responded that he could not presume the AG's response and that he wanted clarity on the issue.

MOTION to send a letter to the Office of the Attorney General as set forth in agenda item VI.a., and seek an opinion as to the portions, times, or situations where State Statute 286.012 either would or would not apply to the Commission on Ethics. Motion by Manuel Farach, and seconded by Bruce Reinhart.

Mr. Johnson stated that:

- The AG would not accept the commission's request unless a majority vote was reached by the commission.
- The two issues at hand pertained to quasi-legislative and quasi-administrative matters, since the COE's advisory opinions were administrative, not judicial in nature.
- The only quasi-judicial functions performed by the commission were code enforcement actions, probable cause hearings, and final hearings.
- There was a possibility that the AG would review the request in terms of the due process rights of the respondent, and the commission could receive a favorable ruling.

Mr. Reinhart said that he was hopeful that legislators would amend Statute 286.012 to excuse public officers with conflicts of interest from being required to vote.

UPON CALL FOR A VOTE, the motion carried 3-1. Robin Fiore opposed and Ronald Harbison absent.

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VII.a. RQO 11-018

VII.b. RQO 11-019 – Pages 12-14

(CLERK'S NOTE: Edward Rodgers passed the gavel to vice chair Manuel Farach.)

MOTION to pull item VII.b. RQO 11-019 from the consent agenda. Motion by Edward Rodgers, seconded by Bruce Reinhart, and carried 4-0. Ronald Harbison absent.

(CLERK'S NOTE: See page 13 for the consent agenda vote on item VII.)

VIII. ITEM PULLED FROM CONSENT AGENDA

VII.b. RQO 11-019

Judge Rodgers said that:

- He disagreed that the COE had not allowed a complaint to be withdrawn at the request of the claimant.
- Penalties could be imposed for a complaint's withdrawal during certain stages of the proceedings.
- It was a violation of the complainant's rights to prosecute or issue an opinion on a case that the complainant withdrew.
- Withdrawn opinions could be placed into a closed file since the mere filing of a case could irreparably damage the claimant.

Mr. Johnson stated that the newly adopted Code permitted a claimant to withdraw an advisory opinion up to 10 days prior to a commission meeting. He said that this opinion was completed based on the prior Code and because of the commission's prior vote.

Judge Rodgers proposed that the opinion should be reconsidered and placed into the "never happened" file.

Mr. Johnson said that the opinion could have been withdrawn since the request to withdraw was made more than 10 days prior to the commission meeting.

VII.b. – CONTINUED

Dr. Fiore asked about the claimant's basis for withdrawal.

Megan Rogers, COE Staff Counsel, stated that:

- Walt Smyser submitted an e-mail to the COE and in response, he was asked to provide additional information.
- In his second email, Mr. Smyser stated that he no longer wanted to pursue the matter and he asked that the request be withdrawn.
- An e-mail was sent to Mr. Smyser from staff informing him that the Code prohibited opinions from being withdrawn and an advisory opinion would be investigated and issued.
- The claimant was not advised on the matter, but he was asked whether he had knowledge that the company identified in the opinion contracted with the City of Lake Worth (Lake Worth).
- Mr. Smyser responded via e-mail that he did not know, and in a follow-up email from the COE, he was asked to contact the city administrator to obtain that information.

Mr. Johnson stated that the rule for withdrawals could be amended by the COE. Mr. Reinhart added that a Florida Sunshine Law conflict could arise if the commission proceeded with voting on items that were not noticed on the meeting agenda. He suggested that the matter be discussed at a future meeting.

Dr. Fiore asked whether the 10-day withdrawal rule could be adopted sooner rather than later, since the new Code reflected the 10-day rule. She suggested that the commission's procedures be amended at the next COE meeting if due notice was given.

Mr. Reinhart stated that the response letter was consistent with the COE's currently existing rules of procedure.

MOTION to approve the opinion on item VII.b., RQO 11-019, as written, and readdress the matter at the next Commission on Ethics meeting on June 2, 2011, upon reconsideration of the Rules of Procedure. Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 3-1. Edward Rodgers opposed and Ronald Harbison absent.

VII.b. – CONTINUED

Mr. Farach noted that in the fourth paragraph of the response letter for RQO 11-019, the word, principle, should be changed to, principal. Mr. Johnson stated that the correction would be made.

(CLERK'S NOTE: Judge Rodgers resumed as chair. The agenda was taken out of sequence and item VII. was voted on at this time.)

VII. – CONTINUED

MOTION to approve the consent agenda, pulling item VII.b., RQO 11-019. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Ronald Harbison absent.

(CLERK'S NOTE: The numerical sequence of the agenda was restored.)

IX. PROPOSED ADVISORY OPINIONS

IX.a. RQO 11-009 (Resubmitted from April 7, 2011)

Mr. Johnson stated that:

- Opinion RQO 11-009 was resubmitted from the April 7, 2011, COE meeting because the vote was flawed since only two commissioners were present when the vote was cast, and no quorum existed.
- Sarah Alsofrom, a non-County employee, had asked if she could accept an awards banquet ticket valued at \$125 from a friend who was employed by a lobbyist.
- The lobbying entity for whom her friend worked had not lobbied the County advisory board, on which she served, or the County department under the committee's authority.
- Staff reviewed Code Section 2-444(b), which did not prohibit gifts of this nature for volunteer advisory board members. However, the gift was reportable since its value exceeded \$100.
- The vote to accept the opinion was carried 3-0 with Mr. Farach and Mr. Harbison abstaining since they served on boards with Ms. Alsofrom.

IX.a. – CONTINUED

- The 3-0 vote was pulled because of the two abstentions, and since Dr. Fiore was not physically present at the time of vote.

Mr. Farach stated that he would continue to abstain from voting on items with conflicts of interest until the AG ruling was handed down. He added that he would be abstaining from voting for the reasons indicated at the April 7, 2011, COE meeting.

MOTION to approve RQO 11-009. Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 3-0. Manuel Farach abstained and Ronald Harbison absent.

IX.b. RQO 11-013 (Resubmitted from April 7, 2011)

Mr. Johnson stated that:

- Advisory opinion RQO 11-013 involved David Schwartz, Project Coordinator for the County's Department of Housing and Community Development (HCD). He had asked whether it was appropriate to offer loan assistance to a grant applicant who was related to the vice-mayor of the municipality having jurisdiction over the application process and post-project code inspection.
- Initially, staff had opined in the proposed advisory letter that there was no Code violation because the scope of its investigation was limited to the County's involvement.
- The commission opined that since it had no jurisdiction over the municipality, it would have been inappropriate to advise the County official as to the appropriateness of the transaction.
- Staff redrafted the response letter for the commission's review to reflect that the COE could not opine with regard to the Code since the opinion was tabled at the April 7, 2011, meeting.

MOTION to approve RQO 11-013 as rewritten by staff. Motion by Manuel Farach, seconded by Bruce Reinhart, and carried 4-0. Ronald Harbison absent.

IX.c. RQO 11-015 (Resubmitted from April 7, 2011)

Mr. Johnson asked the board to rescind the initial advisory opinion for RQO 11-015. He said that:

- The proposed letter was adopted by the commission at the last meeting on April 7, 2011.
- A member of a charitable advisory board had asked whether public employees as board members could solicit sponsors and participants for a fundraising event.
- Although the advisory board was not connected to the County or municipality, several committee members were also government employees.
- The COE voted to make significant changes to the opinion that was submitted by staff regarding indirect solicitation.
- The commission had opined that:
 - Public officials, subject to the jurisdiction of the Code, and serving charitable boards, were prohibited from directly or indirectly soliciting sponsorships or participant donations valued at more than \$100, from persons or entities known to be lobbyists, principals, or employers of a lobbyists, if that person or entity lobbied the governmental body whom they served as an employee.
 - The prohibition extended to solicitations made by other parties, and not on behalf of the individual, but on behalf of the charitable organizations that they served.
- Staff expressed concern that the commission's interpretation could eliminate officials from serving on boards, charitable, or religious organizations that participated in fundraisers.
- The COE further opined that employees or officials who requested that their names should not be used to solicit for the charitable committees they served on were still liable since the term, indirect, applied to anyone involved in the fundraiser, or to anyone who solicited on behalf of the entire committee.

IX.c. – CONTINUED

Dr. Fiore said that:

- Employees were not prohibited from serving on boards, but they were prohibited from soliciting.
- Alternatives to the issue of soliciting existed, such as opting for a leave of absence during the solicitation process, or forming sub-committees that made sponsorship requests.

Judge Rodgers stated that committees could also omit members' official titles and not attract attention to them. He said that depriving officials from serving on boards was rigid as long as the official or employee would not solicit in their official capacities; therefore, officials should be permitted to solicit without using their titles.

Mr. Johnson said that the issue raised by Judge Rodgers was different from a previous advisory opinion involving County Commissioner Burt Aaronson, who was asked by his synagogue to be a dinner honoree. Mr. Aaronson requested the commission's direction because the issue was whether officials could serve on a board of directors if they were making solicitations from lobbyists, principals, or employers of lobbyists.

Dr. Fiore stated that committees whose members included elected public officials could not solicit. She said that corporate entities were held to the same standards, prohibited its employees from soliciting, and required adherence to gift laws.

Mr. Johnson said that:

- He would follow the direction of the commission, but he wanted the opinion's response to reflect the will of the commission.
- His understanding of the issue from the last COE meeting was that officials would be required to leave the board in order to hold fundraisers involving lobbyists, principals, or employers of lobbyists.

Judge Rodgers suggested that officials serving on boards should not use their official titles. He said that it was dangerous if public officials either used, or allowed their official titles to be used to solicit funds for the committee they served.

IX.c. – CONTINUED

Mr. Johnson read the following proposed language for the advisory opinion:

If an official served on a board for a non-profit organization and fundraising was being held, then that official could not solicit; could not allow anyone to solicit on their behalf; and, could not permit their name to be used in connection with the solicitation, if that solicitation involved lobbyists, principals, or employers of lobbyists for gifts valued more than \$100.

Mr. Johnson said that the newly adopted Code permitted transparent and documented direct solicitation.

Dr. Fiore proposed adding language stating that officials could not participate in any form of solicitation such as creating lists or making introductions.

Judge Rodgers commented that violating such conduct was actionable to the point of removing funds solicited in that purpose.

Mr. Johnson asked the commission for direction on drafting the opinion.

MOTION to direct staff to rewrite proposed opinion RQO 11-015 to reflect and explain that under the Code of Ethics there shall be no direct or indirect solicitation, and no use of the County official, employee, or covered person's title. The covered person should not be involved in the act of direct fundraising. Motion by Manuel Farach, seconded by Bruce Reinhart, and carried 4-0. Ronald Harbison absent.

Mr. Farach asked that the word, advertizing be changed to, advertising on the second page, first paragraph of the opinion letter. He added that on the third page, second full paragraph, the language, be not prohibited, should be changed to, are not prohibited.

Mr. Johnson stated that the vote taken on agenda item RQO 11-015 at the April 7, 2011, COE meeting should be rescinded by the commission.

MOTION to rescind the April 7, 2011, vote made by the Commission on Ethics for advisory opinion RQO 11-015. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 4-0. Ronald Harbison absent.

IX.d. RQO 11-020

Mr. Johnson said that:

- Proposed advisory opinion RQO 11-020 involved Clark Bennett, a County vendor, who also served on a non-profit organization's board of directors. He asked whether a conflict of interest existed since he served on a board that applied to and received grant funding from the County.
- Staff had prepared a response letter only in relation to the Code, which had no prohibitions against vendors entering into contracts or transactions with the County through more than one private entity.
- Staff recommended that vendors' inquiries should be directly related to the Code based on Section 2-448 and Section 2-260.9.

MOTION to approve staff's recommendation on RQO 11-020 as written. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 4-0. Ronald Harbison absent.

X. CLARIFICATION OF INFORMATION PROVIDED TO THE PALM BEACH POST BY THE CITY OF RIVIERA BEACH (REQUESTED BY COMMISSIONER RODGERS)

Mr. Johnson said that:

- City of Riviera Beach (Riviera Beach) Attorney Pamala Ryan had contacted him regarding funds that its city council had received from a contracted vendor for use as a discretionary fund.
- He had responded that the COE had no jurisdiction over Riviera Beach and that he could not opine as to whether a violation of the Code had occurred.
- He had forwarded Ms. Ryan relevant pages of the 2009 grand jury report regarding discretionary funds and suggested that she review the document.
- He told Ms. Ryan that the issues contained in her inquiry were Code-related and could become an issue once Riviera Beach came under the jurisdiction of the Code.

X. – CONTINUED

- Approximately one month later, an article was published in the *Palm Beach Post* indicating that the ED had advised Ms. Ryan extensively about the policy.
- The press was contacted, and he believed that the matter would be publicly clarified since he asked that the facts be corrected in a follow-up article.

Judge Rodgers stated that:

- In the *Palm Beach Post* article, Ms. Ryan gave the appearance that Mr. Johnson and the COE had agreed with, provided information relating to, and authorized Riviera Beach's use of its slush fund.
- The article's depiction could cause other municipalities to follow suit by using the publication to justify their actions.
- The reporter was contacted about publishing the ED's statement, and he stated that the publication's content was satisfactory.
- Randy Schultz from the *Palm Beach Post* editorial board was contacted to aid in clarifying the point that the commission would not condone slush funds.

Mr. Johnson said that:

- Staff drafted a letter for the commission's approval and eventual dissemination to Mr. Schultz.
- Prior to speaking with Judge Rodgers about the issue, he e-mailed Ms. Ryan about clarifying the matter at the next Riviera Beach city council meeting.
- He had not followed up with Ms. Ryan to confirm that she had clarified the matter.

X. – CONTINUED

Dr. Fiore said that this scenario exemplified why withdrawals should not be permitted because the commission had no control over how information provided by staff would be interpreted or reproduced.

Mr. Reinhart stated that the issue was in a gray area since the commission's multi-part mission was to educate and interpret the ordinance. He said that it was foreseeable that a municipality could make an inquiry and not ask whether their concern was consistent with the ordinance. He expressed concern that the public record was not clarified, and he asked whether a general public statement would be released to the press and Mr. Schultz, who could choose not to publish the press release.

MOTION to authorize staff to send the letter as drafted by Edward Rodgers and Alan Johnson to Randy Schultz, and to recommend that the letter be issued as a public statement from the Commission on Ethics. Motion by Bruce Reinhart, and seconded by Robin Fiore.

Mr. Farach suggested that the letter also be forwarded to Riviera Beach in the event the letter was not printed or published by the *Palm Beach Post*.

Judge Rodgers reiterated that the record needed to be clarified so that the municipalities were not misinformed about the commission's position about slush funds.

UPON CALL FOR A VOTE, the motion carried 4-0. Ronald Harbison absent.

XI. REVISED CODE OF ETHICS AND COMMISSION ON ETHICS ORDINANCES

XI.a. BCC Agenda Item 4.H.1.

XI.b. BCC Agenda Item 4.H.2.

Mr. Johnson stated that:

- The City of West Palm Beach had recommended several carveouts to the Code.
- The COE drafting committee voted to permit direct solicitation by employees and officials. To promote transparency, it was required that a logbook be created to document the date, official, and contribution.

XI. – CONTINUED

- The log should be submitted to the COE within 30 days of the event, or within 30 days of the solicitation. The information would then be posted on the COE Website.

Judge Rodgers suggested that more efforts would be taken to set the COE apart from the Inspector General (IG) since members of the public often confused each entity as one and the same.

Mr. Johnson said that at speaking engagements throughout the county, he addressed the separation of functions of the IG, whose powers were to probe and issue reports, versus the COE whose powers were to act on ethics violations.

Dr. Fiore stated that:

- Although the funds in the Riviera Beach account were ultimately given to charities, the corrupt potential still existed.
- She was writing professionally about the purification of funds given to charities, and in the near future, a critique of the subject would be published in a journal of business ethics.

Mr. Johnson stated that:

- Any commission amendments to the Code should be submitted in the proper protocol through the referendum.
- The issue of the Code's effective date had not been settled, and he believed that on June 1, 2011, the COE ordinance should be enacted. The League of Cities had suggested October 1, 2011.
- The commission could indicate two proposed dates for the amended Code's enactment so they could be presented to the BCC.
- The IG ordinance enactment date was June 1, 2011. The County had agreed to advance reimbursable funds to that office through fiscal year 2011.

Mr. Reinhart said that he would not support Mr. Johnson's suggestions because since the COE was not an elected body.

XI. – CONTINUED

Judge Rodgers stated that the COE should indicate the ordinance's effective date, since approximately one year was dedicated to its adoption. He said that if the COE allowed further procrastination then an issue of credibility could be created. He added that additional revisions to the Code could be made as the commission proceeded with its duties.

Mr. Farach stated that although it was imperative to enact the Code, the commission was a non-elected, non-political body that should not inject itself into the political process, which could tarnish the COE's integrity.

Mr. Johnson said that he wanted to advocate for a process by which a drafting committee was used to vet amendments to the Code.

Dr. Fiore responded that although she had no objections to Mr. Johnson's proposal about the drafting committee, she did not believe it was the COE's role to instruct the BCC in that regard.

Mr. Farach said the COE's lack of last-minute lobbying stemmed from its intent to interpret the ordinance as drafted.

XII. EXECUTIVE DIRECTOR COMMENTS

XII.a.

Mr. Johnson said that once the amended Code was ratified, 20,000 pocket-sized ordinance guides would be printed and released to every County employee and official.

IV. APPROVAL OF MINUTES FROM APRIL 7, 2011 – CONTINUED

(CLERK'S NOTE: See pages 3-4 for earlier discussion on item IV.)

Administrative Assistant Gina Levesque stated that on page 16 of the April 7, 2011, minutes, the motion carried 3-1 with Ronald Harbison opposed, Edward Rodgers abstained, and Mr. Reinhart voted in favor.

Mr. Johnson stated that the minutes were officially clarified.

XIII. PUBLIC COMMENTS – None

XIV. ADJOURNMENT

At 5:15 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

AGENDA ITEM V PUBLIC COMMENT REVISION TO COE BY-LAWS

Pursuant to COE directive at the meeting of April 7, 2011, and again on May 5, 2011, staff is submitting a proposed change to the Commission on Ethics bylaws, Article VIII-Meetings by adding Section 10: Public Comment.

Staff Analysis:

At the COE meeting of April 7, 2011, staff submitted a Public Comment Review of statutory, executive and judicial authority regarding the appropriateness of public comment during advisory and code enforcement board meetings (attached for reference). On May 5, 2011 the COE discussed the issue and directed staff to revise and re-submit its proposed by-laws changes.

Staff Recommendation:

Staff recommends that the commission revise its by-laws to add Article VIII, section 10 to read as follows:

Section 10: Public Comment

Public comment is permitted on all agenda items with the exception of probable cause proceedings and final hearings involving complaints before the commission. The chairperson shall have the discretion to limit public comment as necessary, based upon time, manner and decorum considerations.

AGENDA ITEM IX – PUBLIC COMMENT REVIEW

(From Agenda on April 7, 2011)

Pursuant to COE directive at the meeting of March 2, 2011, staff has completed a legislative, judicial and executive review regarding the issue of public comment within commission meetings.

Staff Analysis:

§286.011, Florida Statutes (the sunshine law) does not specifically require that public meetings allow for public comment. There are a number of Florida Statutes relating to specific boards and commissions requiring that public testimony or comment be allowed. These statutes pertain to legislative matters or executive functions where due process issues are involved such as the right of a party to be heard in a quasi-judicial hearing before a special master or where a local government entity conducts a duly noticed public hearing. § 163.3215, Florida Statutes.

Florida courts have extended the concept of public meetings to being “a marketplace of ideas, so that the governmental agency may have sufficient input from the citizen who are going to be affected by the subsequent action of the [public agency]”, referring to the “citizen input factor” and stating that public input was an important aspect of public meetings. **Town of Palm Beach v. Gradison, 296 So.2d 473 (Fla. 1974), Krause v. Reno, 366 So.2d 1244 (3rd DCA 1979).**

However, while the right to meaningful public comment is secure within legislative matters, it has not been extended to executive functions. For example, while determining that a public university academic search committee, whose function was to screen and recommend candidates for dean, was a sunshine committee with respect to the open meeting requirements of § 286.011, the court rejected the public’s right to comment or participate. “...nothing in this decision gives the public the right to be more than spectators. The public has no authority to participate in or to interfere with the decision-making process.” **Wood v. Marston, 442 So.2d 934 (Fla. 1983)**

Attorney General Opinions have consistently stated that public participation in open meetings is required only when public comment is either specifically mandated by statute or when the meeting involves a legislative function. “...this office has recognized that when certain committees are carrying out certain executive functions that traditionally have been conducted without public input, the public has the right to attend but may not have the authority to participate. On the other hand, if a committee or board is carrying out legislative functions, this office has advised that the public should be afforded a meaningful opportunity to participate at each stage of the decision-making process.” **AGO Inf. Op. To Honorable John Thrasher, Jan. 27, 1994, AGO Inf. Op. To David G. Conn, May 7, 1987.**

Additionally, notwithstanding the right to public comment in specified public hearings or other legislative matters, “...reasonable rules and policies which ensure the orderly conduct of a public meeting and which require orderly behavior on the part of those persons attending the meeting may be adopted by the board or commission.” **AGO Inf. Op. To Joseph P. Caetano, July 2, 1996.** Several AGO informal opinions quoted a federal appellate court case recognizing that “to deny the presiding officer the authority to regulate irrelevant debate and disruptive behavior at a public meeting would cause such meetings to drag on interminably, and deny others the opportunity to voice their opinions.” **Jones v. Heyman, 888 F. 2d 1328 (11th Cir. 1989).** The **Jones** court acknowledged that the city commission

chair's actions to confine the speaker to the agenda, and to have the speaker removed when his behavior became disruptive constituted a reasonable time, place and manner regulation and did not violate the speaker's first amendment rights.

Several attorneys representing municipalities were canvassed on this issue. All opined that public comment was statutorily required only during noticed public hearings on legislative and quasi-judicial matters of a legislative nature (sworn testimony). Executive functions of a board or commission did not require public hearing. However, even when not required, the board or commission may allow public comment on non-legislative matters at their discretion. In a search of listed county advisory boards and commissions, of the 10 boards with posted agendas or minutes, 5 provided no public comment and 5 provided for public comment at the conclusion of the meeting. A number of advisory boards invite public comment on listed agenda items without noting this on the agenda or providing a formal public comment section.

Staff Recommendation:

Staff recommends that the Commission on Ethics adopt the following policy with regard to public comment:

- 1- A public comment agenda section scheduled after Approval of Minutes (comments may not relate to executive session items on the agenda)
- 2- Public comment be invited related to agenda items involving legislative or rulemaking issues (e.g., recommendation of code revision, changes to rules of procedure, etc.) before a final vote on the agenda issue.
- 3- A final public comment section at or near the conclusion of the scheduled public meeting.

**AGENDA ITEM VI
PROCESSED ADVISORY OPINIONS
(CONSENT AGENDA)**

Synopsis of advisory opinion:

RQO 11-025-OE Ralph DiGiacomo

A municipal employee asked whether, as a software support analyst for a municipality, he could maintain an outside business repairing computers. Among his clients are co-workers. He maintains no contracts or transactions with his municipality and does all outside work during off-duty hours. He sought and obtained merit rule approval from his immediate manager as well as the village manager. So long as he is not a vendor, bidder, proposer or service provider for his municipality, the contractual relationship prohibitions in the code do not apply. At all times, he must be careful not to use his official position to obtain a special financial benefit for himself, his outside business or a customer or client of his business.



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

May 31, 2011

Mr. Ralph DiGiacomo, Software Support Analyst
Village of Royal Palm Beach
1050 Royal Palm Beach Blvd.
Royal Palm Beach, FL 33411

Re: RQO 11-025-OE
Outside Employment

Dear Mr. DiGiacomo,

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

YOU ASKED in your email dated May 25, 2011 whether you, as a Software Support Analyst for Royal Palm Beach, may operate an outside computer repair business, RD3 Technology (RD3), without violating the code of ethics for Palm Beach County. RD3 does not have contracts with Royal Palm Beach and you complete all work for RD3 during non-government time. You indicated that your outside employment has been approved by your direct manager and the Village manager of Royal Palm Beach.

IN SUM, based on the facts you have submitted, as long as your outside business does not enter into any contracts or other transactions for goods or services with the Village of Royal Palm Beach, you are not in violation of §2-443(d), contractual relationships, by operating your business outside of municipal business hours. Notwithstanding, you cannot use your official position as a municipal employee in any way to obtain a financial benefit for yourself, or your outside business or its customers or clients, as defined in §2-444(a) *Misuse of public office or employment*.

THE FACTS you submitted are as follows:

You are a Software Support Analyst for the Village of Royal Palm Beach and owner of RD3 Technology (RD3), a computer repair business. From time to time, Village of Royal Palm Beach co-workers have approached you and asked if you could fix their personal computers. You pick up their computers like any other client, work on their systems outside of non-municipal work hours and then return them to your fellow employees.

You stated that, in accordance with existing Royal Palm Beach Human Resources Policies, you informed your manager of your outside business and both your immediate manager and the Village Manager of Royal Palm Beach approved your outside employment.



Palm Beach County Commission on Ethics

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Executive Director

Alan S. Johnson

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

Section 2-442. Definitions

Outside employer or business includes:

- (1) Any entity other than the county, the state, or any other federal regional, local, or municipal government entity of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced.

As you stated, RD3 technologies is your outside business. It is a non-governmental entity from which you receive compensation from the services you provide. The following section of the Palm Beach County Code of Ethics addresses the restrictions imposed on contracts between an outside employer or business of municipal and county employees and the county or municipal government that they work for.

Section 2-443 (d) *Contractual relationships*:

No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency, or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business.

Section 2-443 (d) prohibits officials and employee from entering into "any contract or other transaction for goods or services with the county" through their outside employer or business. Section 2-443(d) is designed to prohibit public employees or officials from benefiting financially through their employment as public servants. You maintain that the work that you do is personal to the individual and is not a transaction or contract entered into with Royal Palm Beach.

Section 2-443(a) prohibits you, as public employee, from using your official position to obtain a special financial benefit "not shared with similarly situated members of the general public." In addition to a financial benefit to yourself, this prohibition extends to your outside business or employer as well as any customer or client, if you provide over \$10,000 in goods or services to that customer or client over the course of 24 months. Even if there is no prohibited contractual relationship with your municipality, you must take great care not to misuse your office for the financial benefit of your clients or your business.



Palm Beach County Commission on Ethics

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

Executive Director

Alan S. Johnson

IN SUMMARY, based on the information you provided, you are not prohibited from engaging in your business under §2-443(d). Nor are you required to obtain a waiver under the code of ethics since you do not transact business with your municipality. However, you must be careful not to use your official position to gain a special financial benefit, not available to similarly situated members of the general public, either to your business or yourself personally.

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/mcr/gal

AGENDA ITEM VIII – PROPOSED ADVISORY OPINIONS

Synopsis of advisory opinions:

RQO 11-007 Peter B. Elwell

A municipal town manager asked whether public safety employees and town officials could attend an annual appreciation event hosted by a local country club where they would receive lunch and complimentary use of golf and tennis facilities. The host country club is not a vendor, lobbyist or principal or employer of lobbyists with the town. No special treatment is given or other “quid pro quo” in exchange for this event. The code of ethics does not prohibit attendance, however, the value of the meal and use of facilities, if greater than \$100 is a reportable gift. The manner of determining the value of a gift is contained in sec. 2-444(g) which refers to §112.3148, Florida Statutes and the Florida Administrative Code.

RQO 11-021 Sheridan Trusdale

A county employee asked whether she could participate in the Flood and Hurricane Awareness Exposition (Expo), an annual event involving her county department. Her official position with the county requires the organization of public expositions involving the county’s floodplain management program. The Expo features both private and public sector exhibitors and includes subject matter experts from various federal agencies, the media, non-profit and emergency management organizations. Organizing the event involves the solicitation and acceptance of donations from non-profit organizations and community businesses who may be vendors who transact business with the county or local municipalities. The purpose of the donations is to promote public attendance at the Expo. The Expo offers games and prizes relating to flood and hurricane preparedness. Gifts donated would be used exclusively as prizes to members of the public who attend the event. No county or municipal employee involved in the solicitation, their families, household members or relatives would be eligible to receive a prize. Under the Code of Ethics, an exception to the gift law involves “gifts solicited or accepted by county or municipal officials or employees as applicable on behalf of the county or municipality in performance of their official duties for use solely by the county or municipality for a public purpose.” So long as there is no special financial benefit received by the county employee or related persons or entities, the prohibitions against solicitation or acceptance of certain gifts from vendors does not apply under these circumstances.

RQO 11-022 Martha LaVerghetta

An Assistant Airport Properties Manager asked whether certain benefits received by her husband, an employee of an airline that is a tenant of Palm Beach International Airport, were prohibited under the Code of Ethics. As part of its compensation package, standard in the airline industry, pilot’s families may fly stand-by for free. In addition, pursuant to a recent airline merger, employees and their families are invited to an orientation conference. As a tenant of the county facility, the both airlines are vendors of the county. First, the county employee must not use her official position to give a special financial benefit not shared with similarly situated members of the general public for her husband or his employers. Second, insofar as any free airfare for family members is concerned, because it is a

negotiated for benefit that is standard in the industry for airline pilots, it is considered part of her husband's compensation package and not a direct or indirect gift to the county employee. Third, while the flight may be a part of a negotiated employment package, any other expenses related to the conference such as hotel, meals and incidentals would be considered gifts and if in excess of \$100, prohibited. As set out in Florida State Statutes, the county employee may reimburse the airline for expenses in excess of \$100 within 90 days of the expenditure to comply with the Code of Ethics.

RQO 11-023 Commissioner Burt Aaronson

A Palm Beach County Commissioner asked if he was permitted to raise funds for a political party without violating the Code of Ethics. Political contributions specifically authorized by state or federal law are exempt from the definition of gifts within the code. Based on the fact that the political party is specifically authorized under state law to accept campaign contributions, the code does not prohibit a county official from soliciting or accepting campaign contributions so long as the commissioner does not use his official position to obtain a special financial benefit or otherwise corruptly misuses his public office as set forth in sec. 2-443(a) and (b).

RQO 11-024 Commissioner Burt Aaronson

A Palm Beach County Commissioner asked whether he could accept tickets to a charitable event as an invited guest speaker. The value of the tickets is \$400. The sponsor of the event, a non-profit association, does not employ lobbyists in Palm Beach County. The tickets were offered by the chairman of the charitable event, who is not otherwise a vendor or employer of lobbyists within Palm Beach County. Specifically, the commissioner is not prohibited from attending and accepting the tickets, whether or not the sponsor non-profit organization is a vendor of the county. Pursuant to an exception to the gift law, sec. 2-444(g)(1)i., "a ticket, pass or admission" in connection with a charitable event, furnished by a nonprofit sponsor organization and given by a representative of the sponsor "who is not otherwise a vendor, lobbyist, principal or employer of a lobbyist" is not prohibited, even if the value exceeds \$100. To the extent that the value exceeds \$100, the recipient must report the amount. A county commissioner is a state reporting individual and would need to report the amount as per state statute, with a copy sent to the Palm Beach County Commission on Ethics for retention.

RQO 11-026 Michele Thompson

A municipal employee asked whether, as Director of the city department overseeing management of facility rentals and usage, a conflict arose when a local college where she is a part-time instructor utilizes a city classroom facility. The city has a policy to not charge other agencies for use of its facilities; however, since the use was during non business hours a fee was charged for staffing the classrooms. All rentals and facility usage agreements are coordinated and maintained by other city staff personnel and the director receives no additional compensation for the college usage, either by the city or the college. The Code of Ethics specifically exempts all government entities from the definition of outside employment. Therefore, the college, a state facility, is not an outside employer of the director and the prohibited contractual relationship section of the code does not apply. So long as she does not use her official position to gain a special financial benefit from the arrangement, the use of the city facility by a public college does not violate the code, notwithstanding that she maintains part-time employment with the public college.

June 3, 2011

Peter B. Elwell
Town Manager, Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: RQO 11-007
Gift Law

Dear Mr. Elwell,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on June 2, 2011.

YOU ASKED in your original letter dated February 10, 2011, whether off-duty attendance by town public safety employees and certain town officials at an annual event hosted by the Palm Beach Country Club (PBCC), where they receive lunch and complimentary use of golf and tennis facilities as an expression of appreciation for their work in protecting the residents of Palm Beach, violates the Palm Beach County Code of Ethics. You furnished additional information at a meeting with COE staff on May 18, 2011.

IN SUM, based on your representation that PBCC is not a vendor, lobbyist or principal or employer of lobbyists of the Town of Palm Beach, and that there is no "quid pro quo" or special treatment or privileges given to PBCC in exchange for hosting this event by any public employee or official of the Town of Palm Beach, the Code of Ethics does not prohibit employees or officials from attending. However, while not considered a prohibited gift, attendance at this event may constitute a reportable gift under the code, if the value of such attendance for an employee or official is greater than one hundred dollars (\$100). As such, it must be disclosed in an annual gift report to be filed with Palm Beach County Commission on Ethics (PBCCOE), or in the case of state reporting individuals, a quarterly gift report filed with the State of Florida and copied to the PBCCOE, under Section 2-444(f) (1) or (2) of the ethics code and applicable state law.

THE FACTS as we understand them are as follows:

You are the Town Manager of the Town of Palm Beach. Each year, the Palm Beach Country Club hosts an event where they invite town police officers, firefighters, and selected management staff and town officials to attend. The attendees receive a lunch and

complimentary access to golf and tennis facilities. The purpose of this event is to show appreciation for the work of public safety employees throughout the year.

The Palm Beach County Club (PBCC) is a privately held Florida non-profit corporation. You advised that PBCC does not have contracts for goods or services with the Town of Palm Beach, nor do they have any pending bid proposals or offers to sell goods or services to the town. Additionally, they do not sell or lease real or personal property to or from the town. Therefore, PBCC is not a “vendor” of the Town of Palm Beach as defined in Section 2-442 (Definitions) of the code. Further, you advise that PBCC is not a principal or employer of lobbyists, as defined in Section 2-442.

Finally, you state that there is no “quid pro quo” given to PBCC or its owners or employees and the club receives no special privileges or treatment by employees or officials of the Town of Palm Beach for hosting this event.

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

Sec. 2-444. Gift Law.

- (a)(1) No county commissioner, *member of a local governing body, mayor or chief executive when not a member of the local governing body, 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) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.* (Emphasis added)
- (f) Gift Reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100.00) shall report that gift in accordance with this section.
- (f)(1) *Gift reports for officials and employees identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. *A copy of each report shall be filed with the county commission on ethics.* (Emphasis added)

(f)(2) *All other officials and employees who are not reporting individuals under state law.*

(f)(2)(b) *All other gifts.* All officials and employees who are *not reporting individuals* under state law and who receive *any gift in excess of one hundred dollars (\$100.00), which is not otherwise excluded or prohibited* pursuant to this subsection, *shall complete and submit an annual gift disclosure report with the county commission on ethics* no later than November 1 of each year beginning November 1, 2011, for the period ending September 30 of each year. (Emphasis added)

(g) 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 or promise, or in any other form, *without adequate and lawful consideration...*In determining the value of the gift, the recipient of the gift may consult, among other sources, §112.3148, Florida Statutes and the Florida Administrative Code as may be amended. (Emphasis added)

Florida law provides that “the value of a gift provided to several individuals may be attributed on a pro-rata basis among all of the individuals. If the gift is food, beverage, entertainment, or similar items, provided at a function for more than 10 people, the value of the gift to each individual shall be the total value of the items provided divided by the number of persons invited to the function.”¹

In addition, with respect to the use of the PBCC facilities, valuation would be “the reasonable and customary charge regularly charged for such service in the community in which the service is provided...”² Therefore, the actual cost of the use of the facilities to either a member, guest or the public, whichever is applicable, would constitute the value of that portion of the gift.

IN SUMMARY, based upon the facts submitted, even assuming the value of the individual gift is in excess of \$100, there is no prohibition within the Code of Ethics that prevents invited employees and officials of the Town of Palm Beach from attending the annual public safety appreciation event hosted by the Palm Beach Country Club (PBCC), so long as PBCC is not a

¹ §112.3148(7)(j)

² § 112.3148(7)(a)

vendor for the town, is not a lobbyist or principal or employer of a lobbyist that lobbies the town, and so long as there is no “quid pro quo” or special privilege or treatment given to PBCC by employees, officials or the town based on the hosting of this event. While not a prohibited gift under the code, if the value of the attendance is greater than \$100, attendance at this event is a reportable gift under Section 2-444(f) (1) or (2) of the code or state law, as applicable.

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 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director
Commission on Ethics

ASJ/meb/gal

June 3, 2011

Sheridan Trusdale
PBC Division of Emergency Management
20 South Military Trail
West Palm Beach, FL 33415

Re: RQO 11-021
Gift Law/Public Purpose Exception

Dear Mr. Trusdale,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on June 2, 2011.

YOU ASKED in your e-mail of May 11, 2011 whether, as the PBC Coordinator of the Community Rating System (CRS) under the county's floodplain management program, your participation in the annual Flood & Hurricane Awareness Exposition (Expo) scheduled for June 18, 2011, including the solicitation and acceptance of donations from vendors, violates the Palm Beach County Code of Ethics. Additional information about CRS and the Expo was obtained in follow-up emails on May 17, 2011, as well as brief telephone conversations with a COE staff member.

IN SUM, based upon the facts as submitted, the Palm Beach County Code of Ethics does not prohibit you as Coordinator of CRS from partnering with public or private organizations to organize and hold an annual Flood & Hurricane Awareness Expo. Generally, as an employee of Palm Beach County, the code prohibits the solicitation or acceptance of any gift in excess of one hundred dollars (\$100) from a vendor who transacts business with the county. However, there is an exception in the code for gifts that are solicited or accepted by public employees in performance of their official duties on behalf of the county or municipality to be used solely for a public purpose. Since your official position as Coordinator of CRS requires you to organize public expositions, and the purpose of the donations is to promote public attendance at this Expo, which is itself geared towards the public purpose of providing information on disaster preparedness, any item solicited or accepted for this purpose would not be considered a reportable or prohibited gift.

THE FACTS as we understand them are as follows:

You are a Palm Beach County employee within the Division of Emergency Management and as part of your county employment responsibilities you also serve as the county's coordinator of

the Community Rating System (CRS) within Palm Beach County's Floodplain Management Program. Members of CRS, representing all 38 municipalities within Palm Beach County, organize and hold an annual event known as the Flood & Hurricane Awareness Expo (Expo). You describe this event as a major outreach activity that features both private and public sector exhibitors and includes subject matter experts from various federal agencies, the media, non-profit organizations and emergency management organizations, all of whom offer information to the public on disaster preparedness. You further stated that this program saves residents millions of dollars each year by providing them with disaster preparedness information, as well as access to the services of public and private entities involved in disaster preparedness.

The Expo will be held on June 18, 2011 at the Boynton Beach Mall. In order to attract members of the public to attend this event, the Expo offers games and prizes relating to flood and hurricane preparedness. These prizes are donated by community businesses and non-profit organizations. CRS members, their families, household members or relatives are not eligible to participate. Any other member of the public attending the event will have an equal opportunity to win one of the donated prizes. You further advise that the solicitation of donations for prizes is to be conducted jointly by the Boynton Beach Mall and by members of CRS.

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

Sec. 2-444. Gift Law.

- (a)(1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the local governing body, *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) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.* (Emphasis added)

- (g) 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 or promise, or in any other form, *without adequate and lawful consideration.* (Emphasis added)

(1) Exceptions. The provisions of subsection (g) shall not apply to:

- e. *Gifts solicited or accepted by county or municipal officials or employees as applicable on behalf of the county or municipality in performance of their official duties for use solely by the county or municipality for a public purpose;* (Emphasis added)

IN SUMMARY, based on the information you have submitted, the Code of Ethics does not prohibit you and other CRS members from partnering with vendor businesses and non-profit organizations to conduct the annual Flood & Hurricane Awareness Expo. In addition, donations solicited or accepted by CRS members from vendors, earmarked to be given as prizes to members of the general public as an incentive to boost attendance at the event, which is hosted by the county and whose purpose is to promote disaster preparedness, are not considered prohibited gifts under the Palm Beach County 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 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director
Commission on Ethics

ASJ/meb/gal

June 3, 2011

Martha LaVerghetta
Assistant Airport Properties Manager
Palm Beach County Department of Airports
846 Palm Beach International Airport
West Palm Beach, FL 33406

Re: RQO 11-022
Gift Law

Dear Ms. LaVerghetta,

The Palm Beach County Commission on Ethics has considered your request for an advisory opinion, and rendered its opinion at a public meeting on June 2, 2011.

YOU ASKED in your letter dated May 17, 2011 whether your position as an Assistant Airport Properties Manager of the Palm Beach County Department of Airports created a conflict with certain benefits you may receive from your husband's employer. Your husband is a pilot for AirTran Airways, but due to the purchase of AirTran by Southwest Airlines, he will shortly be an employee of Southwest. Both Southwest and AirTran are county vendors. Specifically, you inquired as to whether you could accept airfare, accommodations and meals at a conference for new employees and their families hosted by Southwest Airlines and, as an immediate family member of an airline employee, whether you could accept flight privileges to destinations served by Southwest and AirTran.

IN SUM, as an employee of Palm Beach County you may not accept anything of value in excess of \$100 from a county vendor. A gift is anything of value given without adequate and lawful consideration. While family flight privileges are a negotiated for benefit of your husband's employment and are not a gift, accommodations and meals at a conference hosted by Southwest Airlines are gifts as defined within the code of ethics. Moreover, you may not accept anything of value because of an "official action taken" or "duty performed." Finally, you may not use your official position to financially benefit your husband's current employer, AirTran Airways, or his future employer, Southwest Airlines.

THE FACTS as we understand them are as follows:

You are currently employed as an Assistant Airport Properties Manager with the Palm Beach County Department of Airports. Your job entails assisting in the development, preparation and monitoring of contracts, leases, and permits at the county's four airports. Moreover, you serve as a point of contact for existing airport tenants and aid in preparing agreements, amendments and resolutions on behalf of the county. You indicated that while you have extensive contact with existing and potential tenants, you do not have any authority or delegated authority to sign agreements with these tenants on behalf of the county.

Your husband is a pilot for AirTran Airways. AirTran was purchased by Southwest Airlines in May of 2011 and both AirTran and Southwest are tenants at the Palm Beach International Airport. As part of the merger between Southwest and AirTran, Southwest will be holding an indoctrination conference for all former AirTran employees and their families in Texas. At this time, you do not have any information on the dates or location of the conference. Southwest will provide flights, hotel accommodations, and meals to all new employees and their families.

In addition, as is standard across the industry, immediate family members of airline employees are entitled to fly free of charge to any destination serviced by the airline. In a follow up phone call on May 23, 2011, you informed commission staff that this benefit is part of employee compensation as negotiated by the collective bargaining association that represents your husband and his co-workers.

THE LEGAL BASIS for this opinion relies on the following sections of the Palm Beach County Code of Ethics.

Sec. 2-444. Gift Law

(a)(1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, 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) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells, or leases to the county or municipality as applicable.

As tenants at Palm Beach International Airport, both AirTran Airways and Southwest Airlines are county vendors. Therefore, as a county employee, you are prohibited from accepting any gift valued at more than one hundred dollars in the aggregate per calendar year, from either AirTran Airways or Southwest Airlines. The code defines "gift" in section 2-444 (g)

(g) 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 or promise, or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single setting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift may consult, among other sources section §112.3148, Florida statutes and the Florida Administrative Code as may be amended.

According to the information you have provided, flight privileges, allowing immediate family members of airline employees to fly for free, space permitting, to any destination serviced by the airline, are a bargained for benefit of your husband's employment contract with AirTran and now, Southwest Airlines. In the context of this situation, flight privileges are part of an airline employees benefit package as much as health insurance or vacation days. Accordingly, free flights on either airline, as accepted in accordance with the terms and conditions as outlined in your husband's employment contract, are not a gift for the purposes of the code of ethics; they are an item of economic value given for adequate and lawful consideration.

Alternatively, your attendance at the employee indoctrination event in Texas is an indirect gift from a county vendor. While attendance at the employee event in Texas may be related to your husband's employment with the company, it is not a part of his benefit package. As such, you may not accept more than \$100.00 from Southwest Airlines. That being said, you may still attend the conference. The ethics commission has previously addressed valuation issues and has determined that for purposes of valuation, §112.3148 is relevant¹. As of June 1, 2011, the revised code of ethics specifically references §112.3148 in §2-444(f) Gift reports. In addressing valuation of gifts, Florida Statute §112.3148(7) states:

- (a) The value of a gift provided to a reporting individual or procurement employee shall be determined using actual cost to the donor, less taxes and gratuities.
- (b) Compensation provided by the donee to the donor, if provided within 90 days after receipt of the gift, shall be deducted from the value of the gift in determining the value of the gift.
- (e) Lodging provided on consecutive days is considered a single gift.

For example, a family of four, one of the family members being a county employee, attends a vendor conference for fictional airline "Palm Beach Air." The best available rate listed on the conference hotel website is \$100 per night and the conference lasts for four days. Each family member receives \$20 for food and beverage per day and the family flies at no cost according to the standard airline employee benefit package. Following the standards outlined by Florida Statutes §112.3148(7) the county employee would calculate the value of the gift from the county vendor as summarized below.

| Gifted Item | Cost to Palm Beach Air | Total Gift Value to County Employee (4 days) |
|--------------------|-------------------------------|---|
| Hotel (4 nights) | \$100/night/family of 4 | \$100/person (total room cost divided by occupancy) |
| Food and Beverage | \$20/day/person | \$80/person |
| Total | \$720/family | \$180/person |

Based upon the hypothetical provided above, the county employee received an indirect gift of \$180 from Palm Beach Air, a county vendor. In order to comply with the Palm Beach County Code of Ethics, the County employee must reimburse Palm Beach Air \$80 for the gift in excess of \$100 within 90 days of receipt of that gift. You must take great care to reimburse Southwest for any other gift received in order to stay within the \$100 limit, in the aggregate, for the calendar year. That being said, a county employee may not accept a gift of *any amount* for "an official action taken" or "duty performed."²

Finally, because you have regular, direct contact in your official position with your husband's employer, an additional section of the code is implicated.

¹ RQO 10-005, RQO 10-024, RQO 11-017

² Section 2-444(e)

Sec. 2-243. 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:

(2) His or her spouse or domestic partner, household member or persons claimed as dependants on the official or employee's latest individual federal income tax return, *or the employer or business of any of these people.* (emphasis added)

You must be very careful not to use your position as Assistant Airport Properties Manager to financially benefit your spouse's employer. This provision of the code is of special importance because your county position requires you to have ongoing contact with PBI vendors, AirTran and Southwest. For example, if Southwest or AirTran were to renegotiate their leases at PBIA, any use of your official position or office, any action that you make take or influence you may exert that would financially benefit either airline in a manner "not shared with similarly situated members of the general public" would violate the misuse of office section of the code.

IN SUMMARY, based on the facts and circumstances you have submitted, the Palm Beach County Code of Ethics does not prohibit you from attending the Southwest Airlines conference. However, you may not accept any gift in excess of \$100 from Southwest, a county vendor. Any gift in excess of \$100 must be remitted to Southwest Airlines within 90 days. Flight privileges obtained through your husband's employment contract are not gifts for purposes of the code of ethics and may be accepted in accordance with the terms of his contract. You must take great care not to give Southwest or AirTran a special financial benefit. Finally, you may not accept anything of value because of an "official action taken" or "duty performed."

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 should you have any questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/mcr/gal

June 3, 2011

Burt Aaronson
Palm Beach County Commissioner, District 5
301 N. Olive Avenue
West Palm Beach, FL 33401

Re: RQO 11-023
Gift Law, Misuse of Office

Dear Commissioner Aaronson,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on June 2, 2011.

YOU ASKED in your letter dated May 19, 2011, whether it is a violation of the Palm Beach County Code of Ethics for you to raise funds on behalf of the Florida Democratic Party.

IN SUM, based on the fact that the Florida Democratic Party is specifically authorized under state law to accept campaign contributions¹, you are not prohibited under the Palm Beach County Code of Ethics from engaging in fundraising activities for the Florida Democratic Party, so long as such solicitation of funds is not done in a manner that violates Section 2-443 (a), Prohibited conduct, or (b), Corrupt misuse of official position.

THE FACTS as we understand them are as follows:

You are the elected Palm Beach County Commissioner for District 5. The Florida Democratic Party has requested that you assist them by raising funds on their behalf. You are a member of the Democratic Party of Florida, but are not an officer or director. Scott Arceneaux, Executive Director of the Florida Democratic Party, advised you in a letter dated March 24, 2011, that their legal counsel has stated that there is no legal impediment to you raising money for the Florida Democratic Party. You attached a copy of this letter to your request for an advisory opinion.

¹ Florida Statutes (2010, §103.091, Political Parties, and §106.03, Registration of Political Committees Electioneering Communication Organizations, §106.08, Contributions; limitations on, and §106.11, Definitions.

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

Sec. 2-444. Gift law.

(a)(1) No *county commissioner*, member of a local governing body, mayor or chief executive when not a member of the governing body, 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) in the aggregate for the calendar year from any person or business entity *that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist* who lobbies, sells or leases to the county or municipality as applicable. (Emphasis added)

(g) 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 or promise, or in any other form, without adequate and lawful consideration.

(1) Exceptions. The provisions of subsection (g) *shall not apply* to: (Emphasis added)

a. Political contributions specifically authorized by state or federal law;

Under Section 2-444(g) (1) of the Code of Ethics, political contributions are specifically exempted from the definition of "gift." Therefore, solicitation of donations for political parties do not fall within the gift prohibition portion of the Code, even when solicited from vendors, lobbyists, or principals and employers of lobbyists.

However, under Section 2-443(a), Misuse of office, and (b) Corrupt misuse of official position, you are prohibited from using your official position to give a special financial benefit to yourself, a relative, household member, spouse or domestic partner, or any of their employers, an outside employer or business of yours or your spouse or domestic partner or someone you know works for one of these entities, creditor or debtor, customer or client of your outside business, or a non-profit organization if you or your spouse are a director or officer of that organization . In addition, you may not corruptly use your official position to obtain a special benefit for anyone in exchange for a political donation.

THE RATIONALE for exempting campaign contributions from the gift laws can be found in both State and Federal law. It is well established that supporting a political candidate financially is

speech, and represents political expression at the core of the electoral process.² Any law that burdens the right of association and free speech may be upheld only if it serves a compelling government interest and is narrowly tailored to serve that interest.³

The above sections of the Code of Ethics are narrowly tailored to prevent any *quid pro quo* or other corrupt use of an official or employee's position to gain a special financial benefit for that employee or official, or for any other person, entity or organization. As such, they do not prohibit you from engaging in political fundraising, so long as you do not use the authority of your office to grant any "special benefit" to those who choose to donate to the Democratic Party of Florida.

IN SUMMARY, you are not prohibited under the Palm Beach County Code of Ethics from engaging in fundraising activities for the Florida Democratic Party, so long as the solicitation of funds is not done in a manner that violates Section 2-443 (a) Misuse of public office, or (b) Corrupt misuse of official position.

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 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director
Commission on Ethics

ASJ/meb/gal

² *State v. Dodd*, 561 So.2d 263 (Fla.1990) (citing *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 110 S.Ct. 1391, 108 L.Ed.2d 652 (1990)).

³ *State by Butterworth v. Republican Party of Florida*, 604 So. 2d 477 (Fla. 1992) (citing *EU v. San Francisco County Central Democratic Committee*), 489 U.S. 214 (1989).

June 3, 2011

Burt Aaronson
Palm Beach County Commissioner, District 5
301 N. Olive Avenue
West Palm Beach, FL 33401

Re: RQO 11-024
Gift Law

Dear Commissioner Aaronson,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on June 2, 2011.

YOU ASKED in your letter dated May 19, 2011, whether it is “appropriate” for you and you wife to attend, and for you to speak as an invited guest, at the Pre-Tournament Gala of the Seminole Region Club Managers Association Charity Golf Tournament, scheduled for June 12, 2011.

IN SUM, you are not prohibited under the Code of Ethics from attending this Pre-Tournament Gala with your wife as invited guests, provided that the Seminole Region Club Managers Association is not a vendor, lobbyist, principal or employer of a lobbyist for Palm Beach County. The value of the tickets to the Gala (\$400) is a reportable gift under Section 2-444(f)(1) of the Gift Law portion of the Palm Beach County Code of Ethics, and pursuant to applicable Florida Statutes.

THE FACTS as we understand them are as follows:

You are the elected Palm Beach County Commissioner for District 5. You are also an “honorary committee member” of the Seminole Region Club Managers Charity Golf Tournament. The Seminole Region of the Club Managers Association of Florida (SRCMA) puts on a yearly charity golf tournament to fund various charitable causes and groups. This year, the tournament is being held at the Boca West Golf Club. A Pre-Tournament Gala is being held at the clubhouse on June 12, 2011, and you have been invited to attend and speak at this event. The tickets to the Gala are valued at \$200 each and you were given two tickets to allow you to attend with your wife. The total value of your attendance at this Gala is \$400. You advised that the Club Managers Association of America does not employ lobbyists, nor does the Tournament Committee Chairman, who actually provided you with the tickets.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics (revised effective June 1, 2011):

Sec. 2-444. Gift law.

(a)(1) No *county commissioner*, member of a local governing body, mayor or chief executive when not a member of the governing body, 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) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.* (Emphasis added)

(2) No lobbyist, vendor or principal or employer of a lobbyist that lobbies the county or a municipality *shall knowingly give, directly or indirectly, any gift with a value greater than one hundred dollars (\$100) in the aggregate for the calendar year to a person who the vendor, lobbyist, or principal knows is an official or employee of that county or municipality.* For the purposes of this subsection 2-444(a)(2), the term vendor also includes any person or entity that, because of the nature of their business, may respond to an invitation to bid, request for proposal or other procurement opportunity that has been published by the county or a municipality. (Emphasis added)

(f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100.00) shall report that gift in accordance with this section.

(1) *Gift reports for officials and employees identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. A copy of each report shall be filed with the county commission on ethics.

(g) 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* or promise, or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single setting or a meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift. (Emphasis added)

Under the current Code of Ethics, the prohibition against accepting gifts of a value of greater than \$100 extends only to lobbyists, and principals and employers of lobbyists. However, as of June 1, 2011, the revised Code of Ethics will be in effect. Because the event is scheduled for June 12, 2011, the revised code will govern your attendance at this event. Under the revised code, it is prohibited for you to accept a gift valued at greater than \$100 from any **vendor** of Palm Beach County, as well as any lobbyist, or principal or employer of any lobbyist who lobbies the county. COE staff checked county records and determined that SRCMA was not a vendor of the county.

IN SUMMARY, you are not prohibited from attending the Pre-Tournament Gala for the Seminole Region Club Managers Charity Golf Tournament or from accepting two complimentary tickets with a value of \$400, as long as they are not given to you by a vendor of Palm Beach County, or by a lobbyist, principal or employer of a lobbyist that lobbies Palm Beach County. However, under the Code of Ethics and state law, since the value of these tickets is greater than \$100, they are a reportable gift under the Palm Beach County Code of Ethics and applicable state law.

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 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director
Commission on Ethics

ASJ/meb/gal

June 3, 2011

Michele Thompson
Leisure Services Director, City of Greenacres
525 Swain Blvd.
Greenacres, FL 33463

Re: RQO 11-026
Prohibited Contracts

Dear Ms. Thompson,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on June 2, 2011.

YOU ASKED in your email dated May 25, 2011, whether, as the Director of the City of Greenacres Leisure Services Department, allowing Palm Beach State College to use city-owned classroom facilities under the management of your department presents a conflict of interest where you are also employed as a part-time adjunct instructor at the college. COE staff received additional information pertaining to this issue during telephone conversations with you and with City Manager Wadie Atallah.

IN SUM, based on the facts you have submitted, you are not prohibited from allowing Palm Beach State College (PBSC), a government entity, to use classrooms owned by the City of Greenacres which are under the supervision and control of the Leisure Services Department, even where you, as the department director, also work part-time as an adjunct instructor for the College. However, as an employee of Greenacres, you may not benefit financially from this arrangement in a manner not shared by similarly situated members of the general public.

THE FACTS as we understand them are as follows:

You are employed as the Director of Leisure Services for the City of Greenacres (Greenacres). Since 2002, you have also been employed as a part-time adjunct instructor for Palm Beach State College. Starting in 2009, Palm Beach State College has used classrooms owned by the City of Greenacres, under the supervision and control of the Leisure Services Department, as a testing center on Saturdays during the summer term when their Lake Worth campus is closed. You advised that while the city does not charge the college any rent for this usage, it does charge a fee for staffing the classroom after hours where necessary. Not charging an additional fee for use by another public entity is standard policy for Greenacres. Since September 2009, the college has paid the City of Greenacres \$2,670 under this use agreement. You further advised that a member of your staff at Leisure Services coordinates all rentals and facility usage, including the arrangement with PBSC. Finally, you advised that you receive no additional compensation for this usage under the agreement, from either Greenacres or PBSC, and that

your department uses part-time recreational aides to staff the facility on Saturdays when PBSC is using the classrooms.

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

Sec. 2-442. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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.* (Emphasis added)

Outside employer or business includes:

Any entity, other than the county, the state, or any other federal regional, local, or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced. (Emphasis added)

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:* (Emphasis added)

(1) *Himself or herself;* (Emphasis added)

(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; (Note: As stated earlier, under Section 2-442, PBSC is not considered an outside employer or business under this Section)

You are an employee of a Palm Beach County municipality, and therefore subject to the jurisdiction of the Palm Beach County Code of Ethics under Section 2-442.

As discussed in an earlier advisory opinion, Palm Beach State College is included in the Florida College System and established by state statute as a part of the executive branch of state government. The code of ethics prohibits contracts between municipal employees or their outside

employer or business and the employing municipality. Specifically, Section 2-442 exempts other governmental entities from the definition of outside employer or business.¹

Because PBSC is specifically exempted from the definition of outside employer or business under the Code of Ethics, the arrangement between Greenacres and PBSC to use city classrooms under your control as Director of Leisure Services is not prohibited, even though you work part-time for PBSC as an adjunct instructor. However, under Section 2-443(a)(1), as the Director of Leisure Services, you may not use your official position to benefit yourself. Therefore, while the City of Greenacres may enter into an agreement to allow PBSC to utilize their classrooms and staff, as the Director of the department who maintains control over those classrooms, you may not personally receive additional payment for staffing this facility during this use. Because of your position as Director and your control over the staff members who coordinate use of these facilities, this would constitute an improper “special financial benefit” to you, and would violate this section of the Code of Ethics.

IN SUMMARY, based on the information provided, because Section 2-442 of the Code of Ethics specifically exempts other governmental entities from the definition of “outside employer or business,” and as part of the executive branch of state government, Palm Beach State College by statute falls within this definition, the City of Greenacres is not prohibited by the code of ethics from allowing the college to use or lease city-owned classrooms, even where the classrooms are under the direction and control of the Leisure Services Department, and you, as the Director of this department, are also employed as an adjunct instructor by the college. Notwithstanding, you may not use your public position to obtain a special financial benefit through this arrangement.

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 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director
Commission on Ethics

ASJ/meb/gal

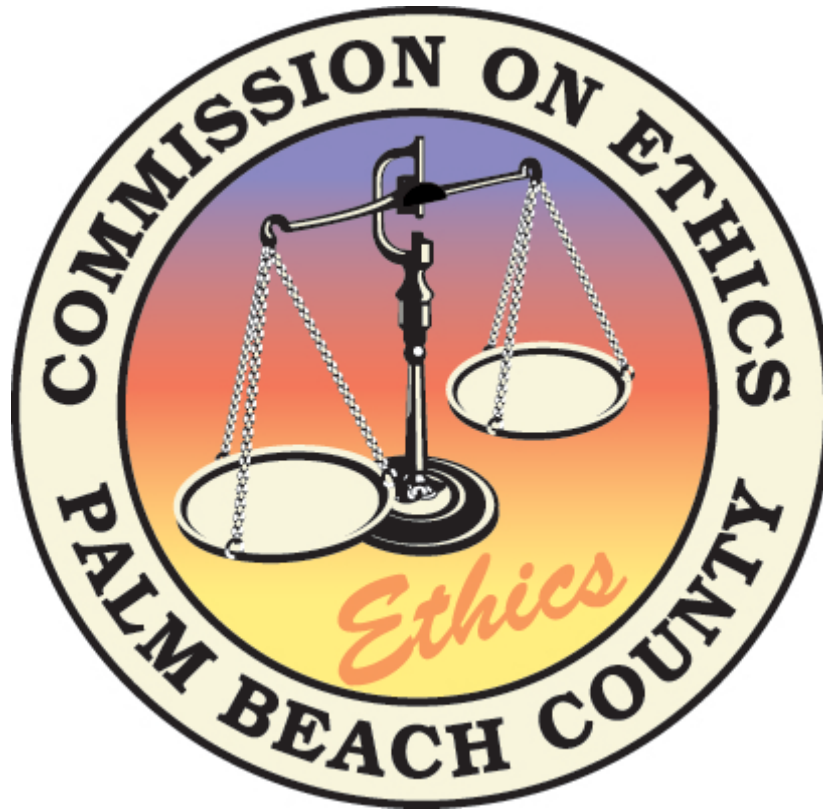
¹ RQO 10-037 OE



**Palm Beach County
Commission on Ethics
2010-2011
Annual Report**

PALM BEACH COUNTY COMMISSION ON ETHICS

2010-2011 ANNUAL REPORT



2633 VISTA PARKWAY
WEST PALM BEACH,
FLORIDA 33411



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

June 1, 2011

Chairman Edward Rodgers
Palm Beach County Commission on Ethics
2633 Vista Parkway
West Palm Beach, FL 33411

Dear Chairman Rodgers,

The Commission on Ethics and Code of Ethics Ordinances became effective May 1, 2010. Since that time, the commission has presided over the birth of a new process within Palm Beach County. The COE has been delegated the authority to review, interpret, render advisory opinions and enforce the Code of Ethics, Post-employment and Lobbyist Registration Ordinances. Additional duties include ongoing training and community outreach. In November, 2010, 72% of Palm Beach County voters approved a referendum extending the jurisdiction of the Commission on Ethics and Code of Ethics to all 38 municipalities within the county.

With these duties and mandates in mind I am pleased to present the 2010-2011 annual report to the Palm Beach County Commission on Ethics.

The first year of operation began with the start-up process of putting an ethics office together. Rules of Procedure and By-Laws were written and adopted. An office, hot-line and website were established with the assistance of county administration staff. We began processing advisory opinions and complaints. By April 30, 2011, the Commission on Ethics had processed 61 advisory opinions, 20 complaints and 15 inquiries based upon information received by staff.

Regarding staff, in May 2010 you appointed me as your Executive Director as provided by the Commission on Ethics Ordinance. In June, I hired an administrative assistant followed by an investigator in October and a part-time research assistant in December. Staff counsel was retained in early 2011, and I have projected the need for an additional investigator once the 38 municipalities are fully integrated into the process.

In an effort to save tax dollars, we have instituted a volunteer advocate program in conjunction with the Legal Aid Society of Palm Beach County. Fifteen former prosecutors and public defenders, now in private practice, have volunteered to process complaints before the ethics commission on a pro-bono basis. Attorneys in the program work closely with commission staff and follow each case through the complaint process, including probable cause and final hearings involving alleged ethics violations. By utilizing cost saving programs, careful stewardship regarding staff and procurement, and developing working relationships with existing county departments to reduce operating costs, we have been able to achieve a \$67,000 operating reserve in the 2009-2010 fiscal budget (partial year), and I predict a similar reserve will be achieved during the 2010-2011 fiscal year.

Community collaborations, training and outreach were a critical component of the first year of our operation. Staff has participated in more than 80 presentations, trainings, forums, workshops and other community events before civic and social organizations, professional associations and county and municipal employees and officials.

In order to provide effective outreach, training and transparency, setting up a vibrant and viable web presence is of paramount importance. The COE website provides a vehicle for training, advice and transparency. All advisory opinions, legally sufficient complaints and COE public reports are available and issues may be searched with a recently developed and user friendly search engine. Databases which include gift reports, non-profit fundraiser solicitation logs, voting conflict reports and outside employment waivers are or will be available for public scrutiny. The web site also includes links to additional databases such as county registered lobbyists and their principal employers. Visits to our website average almost 1000 per day.

Staff has partnered with local area colleges to develop an internship program. Currently, interns from Palm Beach Atlantic University have been working with staff to develop an interactive training program. Students from the Palm Beach State College Graphics Department will be working on interactive animation programs during the upcoming fall semester.

Legislatively, early on, the Commission on Ethics urged the County Commission to adopt several revisions to the Code of Ethics. Among the changes adopted was to allow the Inspector General, State Attorney and Executive Director of the COE to self-initiate complaints when there is legal sufficiency based upon sworn statements of material witnesses to a violation. Pursuant to the 2010 Ethics Referendum, a drafting committee was established to develop county-wide Code of Ethics and Commission on Ethics Ordinances. This committee consisted of members appointed by the Board of County Commissioners, the League of Cities, their respective legal counsel and the COE Executive Director. The drafting committee worked diligently to develop appropriate ethics ordinances, which will expand the COE jurisdiction to all 38 municipalities within the county. Through this collaboration, a number of revisions were made to the codes. Final reading and adoption of these revised codes occurred on May 17, 2011 to become effective on June 1, 2011. In anticipation of this expansion, staff has already begun the process of training municipal employees and officials and re-training within county government.

As our first year of operation comes to a close, it has been our goal not only to set up an efficient and effective working office, but through training and outreach, to increase both awareness and compliance with the Code of Ethics.

It has been my pleasure and a distinct honor to have worked with you and your fellow commissioners over the past year. As always, I appreciate the hard work and diligence exhibited by the commission in promoting the highest standard of public service within local government.


Sincerely,

Alan S. Johnson
Executive Director

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MISSION STATEMENT

The mission of the Palm Beach County Commission on Ethics is to foster integrity in public services, to promote the public's trust and confidence in that service, and to prevent conflicts between private interests and public duties.

We strive to accomplish this mission by conducting ongoing educational programs, community outreach, providing clear and timely advice, and fairly and impartially interpreting and enforcing the conflict of interest and financial disclosure laws. In doing so, the commission is guided by principles of fairness, clarity, and common sense.

HISTORY

This publication is intended to inform local governments and the general public of the Palm Beach County Commission on Ethics' work during the past year. Foremost among the goals of the code of ethics is to promote public trust in government. The code is intended to ensure that public officials, employees and advisory board members conduct themselves independently and impartially, not using their offices for private gain other than the compensation provided to them by law.

Palm Beach County has a current population of 1.3 million residents and has grown significantly in the past decade in terms of size and diversity. The county has 6,000 full and part-time employees and approximately 1,000 volunteer officials staffing 95 committees and boards. There are 38 municipalities within Palm Beach County with a total workforce of 9,000 full and part-time employees, 258 municipal boards and committees with 1,800 volunteer officials, and 194 elected officials in the aggregate.

In 2009, Palm Beach County turned 100, but the county's centennial celebration was marred by the high-profile convictions of long-serving city and county commissioners. These federal convictions culminated during a particularly hard time for the county amidst plummeting real estate values, a soaring foreclosure rate and sinking tourism dollars. A unique blend of citizen and business groups began a grassroots campaign to reverse an ethical slide that resulted in our being derisively referred to as "Corruption County." That same year the State Attorney convened a grand jury for an *Investigation of Palm Beach County Governance and Public Corruption Issues*. In response to the 2009 grand jury report the Board of County Commissioners established an independent Commission on Ethics, Code of Ethics and Inspector General. In May of 2010, these ordinances went into effect.

Designed to encourage transparency in local government and promote renewed public trust and confidence in elected officials and employees, the Commission on Ethics (COE) and Code of Ethics Ordinances enable the COE to oversee ethics compliance. However, while the commission has statutory license to punish offenders, commission staff strives not only to enforce the code but to educate employees and public officials on how the new rules will affect governance and implementation of policy throughout the county.

Looking forward, the Palm Beach Commission on Ethics is faced with a new challenge; incorporating, monitoring and enforcing the code of ethics in 38 municipalities within the county's borders. As recommended by a 2010 grand jury convened to monitor the progress of the new ethics measures, a county-wide referendum was included on the November 2010 ballot. Three municipalities, Lantana, Lake Worth and Boynton Beach adopted the code prior to the ballot measure. Voters overwhelmingly supported the measure to place both the Commission on Ethics and Inspector General provisions into the county charter, expanding the jurisdiction of the ethics commission to all local governments. Commission staff stands ready to inform citizen groups, county and municipal governments alike about the services and benefits of the Commission on Ethics and Code of Ethics initiatives.

AN INDEPENDENT ETHICS INSTITUTION

The Palm Beach County Commission on Ethics is responsible for the following: monitoring, administering and enforcing the county's governmental ethics laws; providing advisory opinions to employees, officials and vendors who fall within the jurisdiction of the commission; providing training and outreach for the benefit of employees and officials, vendors and contractors, nonprofit corporations and other entities that transact business with or are regulated by the county, and; proposing governmental ethics law reform.

The key to our ethics commission is independence. In fact, by definition both the Commission on Ethics and the Inspector General are independent offices. Ethics commissioners cannot be removed or otherwise influenced by the County Commission and are appointed by various civic, educational and professional non-political organizations. Appointees may not participate in or contribute to a candidate for state or local office or allow his or her name to be used in support of or against a candidate or ballot issue. Appointees may not participate in or contribute to political action committees, campaign for office or referenda, and may not hold office in a political party or committee.

The Ethics Commission currently has jurisdiction over Palm Beach County government¹ provided the subject matter falls within one of the following ordinances under its authority:

Code of Ethics Ordinance
Lobbyist Registration Ordinance
Post-Employment Ordinance

Our specific statutory authority is derived from Palm Beach County Code 2-254. This ordinance grants the Ethics Commission the power to review, interpret, enforce and render opinions regarding the above-mentioned County ordinances.

Aside from enforcing the code of ethics through the complaint and hearing process, commission staff investigates complaints, issues advisory opinions, and provides information and training to officials, employees, vendors, civic and professional groups throughout Palm Beach County.

¹ On June 1, 2011, the jurisdiction of the Commission on Ethics will extend county-wide to all 38 municipalities within Palm Beach County for the Code of Ethics.

ABOUT THE COMMISSION

The Commission on Ethics is composed of five volunteer members who serve staggered terms of four years each. Each member of the commission on ethics must also have an outstanding reputation for integrity, responsibility, and commitment to serving the community. Moreover, as representatives of Palm Beach County, appointments are made with an eye towards the racial, gender and ethnic make-up of the community.

Members are appointed by the following individuals or institutions:

- **President of the Palm Beach County Association of Chiefs of Police**- one appointment with the following qualifications: A former law enforcement official with experience in investigating white collar crime or public corruption.
- **President of the Hispanic Bar Association of Palm Beach County, the President of the F. Malcolm Cunningham, Sr. Bar Association, and the President of the Palm Beach County Bar Association** – one shared appointment with the following qualifications: An attorney with experience in ethics regulation of public officials and employees.
- **President of Florida Atlantic University (FAU)** - one appointment with the following qualifications: A faculty member who teaches at an institution of higher education with a campus located in the county and who has taught a course in professional legal ethics or has published or performed services in the field of professional legal ethics.
- **President of the Palm Beach Chapter of the Florida Institute of Certified Public Accountants** – one appointment with the following qualifications: A member with at least five (5) years experience as a certified public accountant with forensic audit experience.
- **Palm Beach County League of Cities** - one appointment with the following qualifications: A person who has served as a former elected official for a governmental entity in the county.

THE COMMISSION ON ETHICS

Judge Edward Rodgers (Ret), Chair

Judge Rodgers served as a Judge in Palm Beach County for 22 years in the Civil, Criminal and Probate Courts. His judicial tenure includes roles as Chief Judge for the Fifteenth Judicial Circuit and Administrative Judge in County and Circuit Court. Judge Rodgers has lectured extensively on many topics before lawyers and judges. He has received over fifty public awards and tributes, including the prestigious Jefferson Award in honor of the weekend drug court that he established.



Since retiring from the law in 1995, Judge Rodgers has received other awards and served on special commissions. In Riviera Beach, where he lives and served as city councilman, the U.S. Post Office was renamed for Edward Rodgers in 2004.

Judge Rodgers graduated from Howard University with a Bachelor of Arts, and subsequently obtained his Juris Doctorate from Florida A&M University College of Law.

Manuel Farach, Esq. Vice-Chair

Mr. Farach is a real estate and business lawyer practicing in West Palm Beach. Mr. Farach counsels businesses and individuals in complex transactions as part of his practice, and his experience advising businesses includes time spent as outside general counsel for a savings and loan association.



He is Board Certified by The Florida Bar in both Real Estate Law and Business Litigation. Mr. Farach has served as an arbitrator for the American Arbitration Association for over twenty years and has significant FINRA (formerly the NASD) arbitration experience.

Mr. Farach has also served in different capacities regarding the ethical practice of law, including Chair of the Fourth District Court of Appeal Judicial Nominating Commission, President of the Craig S. Barnard Inn of Court, President of the Palm Beach County Bar Association, and as an expert witness for The Florida Bar in lawyer disciplinary matters.

Mr. Farach graduated the Florida State University College of Law *cum laude*. He graduated from Stetson University in 1981 with a dual major in English and Business.

Bruce Reinhart, Esq.

Mr. Reinhart is an attorney in private practice in West Palm Beach. He also has 20 years of experience in the federal criminal justice system. He served as an Assistant United States Attorney in West Palm Beach, investigating and prosecuting public corruption, tax evasion and financial fraud. He was a Senior Policy Advisor to the Under Secretary of the Treasury for Enforcement, developing and implementing law enforcement policies for the Bureau of Alcohol, Tobacco and Firearms; U.S. Customs; Secret Service and IRS. He also served in the Department of Justice's Criminal Division, Public Integrity Section.



Mr. Reinhart holds a B.S.E. in Civil Engineering, with honors, from Princeton University and a J.D. from the University of Pennsylvania Law School.

Robin N. Fiore, Ph.D.

Dr. Fiore joined the University of Miami Ethics Program at the University Of Miami Miller School Of Medicine in 2010. Previously, she served as the Adelaide R. Snyder Professor of Ethics at Florida Atlantic University. Dr. Fiore specializes in biomedical ethics and professional ethics. She has served as an ethics consultant or ethics advisory committee member for a number of governmental agencies, including the Florida Public Service Commission, Florida Department of Health, Florida Department of Corrections Bioethics Committee, Florida Department of Children and Families and Florida Developmental Disabilities Council.



Dr. Fiore earned her Doctorate in Philosophy from Georgetown University in Washington, DC, after post-baccalaureate studies in religion and ethics at Drew University Graduate and Theological School in Madison, New Jersey. From 1977 through 1990, she enjoyed a corporate career in employee benefits consulting.

Ronald E. Harbison, CPA

Mr. Harbison is the founder of Valuation Analysts, LLC; a business valuation and financial forensics firm, focusing on estate and gift, commercial litigation and family law. In addition, Mr. Harbison has provided forensic accounting services, been a consultant on mergers and acquisitions, and has served as an Agent for the United States Internal Revenue Service, where he conducted tax examinations of corporations, partnerships and high net worth individuals. He also has served as an Adjunct Professor of Accounting for Palm Beach Atlantic University and is currently the Chairman of the Ethics and Disciplinary Committee of the Institute of Business Appraisers.



Mr. Harbison graduated from Florida State University with a Bachelor of Arts in Government/Pre-Law, and earned a Master of Science in Management/Accounting from Rollins College.

COMMISSION STAFF

Alan S. Johnson, Executive Director

Prior to his selection as Executive Director, Mr. Johnson was a 17 year state prosecutor for the 15th Judicial Circuit in Palm Beach County. As an Assistant State Attorney Mr. Johnson has tried over 100 serious felony cases and in 2001 became Chief of the Felony Division. In 2005 Mr. Johnson took over the role of Chief Assistant State Attorney until 2009 when he became Senior Counsel for a newly established State Attorney Public Integrity Unit.

Mr. Johnson has also served in various capacities as a member and chairman of the Florida Bar Grievance Committee and the Unlicensed Practice of Law Committee as well as serving as a volunteer youth court judge. Since 2000, Mr. Johnson has been a frequent instructor for the Florida Prosecuting Attorneys Association in areas including ethics for prosecutors, victim rights, homicide prosecution, evidence and jury selection.

Mr. Johnson graduated from Columbia University in 1973 and obtained his law degree from Georgetown University Law Center in 1976.



Gina A. Levesque, Administrative Specialist

Ms. Levesque is a former certified law enforcement officer and worked at the Broward County Sheriff's Office for 4 years. In addition to her law enforcement experience, Ms. Levesque served as a legal secretary in the Office of the State Attorney, 15th Judicial Circuit from 1999-2010. Her duties included victim/witness coordination, expungement processing, attorney/witness travel facilitation, case file management and maintaining trial statistics.

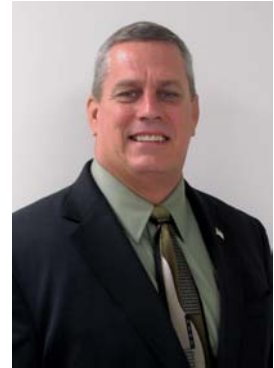
Ms. Levesque graduated with a degree in education from Southern Illinois University at Edwardsville in 1988.



Mark E. Bannon, Investigator

A U.S Army veteran, Mr. Bannon spent nearly 25 years serving as a deputy sheriff, supervisor and Commander with the Palm Beach County Sheriff's Office where he worked in patrol, investigative and community support assignments before retiring from policing in 2005.

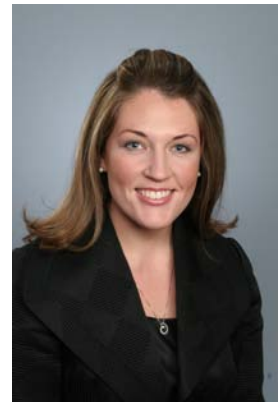
He is a graduate of Florida Atlantic University, and holds a Master of Public Administration degree from Nova Southeastern University. Mr. Bannon attended law school at the University of Miami, and was admitted to the Florida Bar in 2005. He is also a former Assistant State Attorney who prosecuted criminal cases in the 15th Judicial Circuit before entering private law practice.



Mr. Bannon authored a book on criminal procedure for law enforcement officers, which was published in 2003 and has taught criminal justice courses to both police officers and undergraduate students. He brings a unique blend of law enforcement and legal education and experience to the Commission.

Megan C. Rogers, Staff Counsel

Ms. Rogers joins the Commission on Ethics after clerking for The Honorable William Robbins of the Colorado District Court. In addition, Ms. Rogers worked as an age-discrimination associate in the national office of AARP Foundation in Washington, D.C. and as a Research Associate with Legal Writing Pro, an advanced legal writing training firm. A 2008 graduate of the University of Denver-Sturm College of Law, Ms. Rogers served as the Training Editor of the Denver Journal of International Law and Policy. During law school, she interned for the Colorado Office of the Attorney General and the Colorado Division of Civil Rights. In these positions, she worked on cases involving federal and state discrimination statutes. Ms. Rogers is admitted to practice in Florida, Colorado and the District of Columbia.



Benjamin Evans, Research Assistant

Mr. Evans is a lifelong resident of Palm Beach County. He is a graduate of Cardinal Newman High School in West Palm Beach and the University of Florida where he received a B.A. degree in history in December, 2009.



FISCAL REPORT

In 2010, the COE expended sixty-one percent of budgeted salaries, sixty-two percent of budgeted operations expenses and eighty-two percent of its budgeted capital. The total capital outlay was sixty-two percent of budgeted expenditures. Based upon the COE's current spending rate during the 2011 fiscal year, the COE will expend eighty-five percent of its budgeted salaries, twenty-nine percent of budgeted operations expenses, and fifty-six percent of budgeted capital. The projected total capital outlay for the 2011 fiscal year is seventy-four percent of budgeted expenditures, putting the COE on track to maintain a budget reserve in excess of one hundred thousand (\$100,000) dollars.

PALM BEACH COUNTY COMMISSION ON ETHICS
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES

Budget and Actual- General Revenue Funds
May 1, 2010 to September 30, 2010

REVENUES:

| | | <u>Budget</u> | <u>Actual</u> | <u>Variance-Favorable</u> <u>(Unfavorable)</u> |
|--------------------------|-----------------------|----------------|----------------|---|
| Released General Revenue | Appropriations | 180,000 | 180,000 | 0 |
| Fines | | <u>0</u> | <u>0</u> | <u>0</u> |
| | Total Revenues | 180,000 | 180,000 | 0 |

EXPENDITURES:

| | | <u>Budget</u> | <u>Actual</u> | <u>Variance-Favorable</u> |
|-------------------------------|---------------------------|----------------|-------------------|---------------------------|
| Salaries and Related Benefits | | 140,000 | 85,002.75 | 54,997.25 |
| Other Personal Services | | 27,703 | 17,231.18 | 10,471.82 |
| Capital | | <u>12,197</u> | <u>10,044.53</u> | <u>2,152.47</u> |
| | Total Expenditures | 180,000 | 112,278.28 | 67,621.54 |

| | <u>Budget</u> | <u>Actual</u> | <u>Variance-Favorable</u> <u>(Unfavorable)</u> |
|---------------------------------------|---------------|---------------|---|
| Excess Revenues over Expenditures | 0 | 67,621.54 | 67,621.54 |
| Budgetary Fund Balance Sept. 30, 2010 | | 67,621.54 | |

PALM BEACH COUNTY COMMISSION ON ETHICS
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES

Budget and Actual- General Revenue Funds
October 1, 2010 to September 30, 2011

REVENUES:

| | | <u>Budget</u> | <u>Actual</u> | <u>Variance-Favorable</u> <u>(Unfavorable)</u> |
|---|--|-------------------|-------------------|---|
| Released General Revenue Appropriations | | 475,626.00 | 475,626.00 | 0 |
| Fines | | <u>0</u> | <u>0</u> | <u>0</u> |
| Total Revenues | | 475,626.00 | 475,626.00 | 0 |

EXPENDITURES:

| | <u>Budget</u> | Actual <u>(May 2011)</u> | Projected <u>Variance-Favorable</u> |
|-------------------------------|-------------------|-----------------------------|--|
| Salaries and Related Benefits | 378,833.00 | 188,920.45 | 54,969.37 |
| Other Personal Services | 90,293.00 | 15,104.75 | 64,399.14 |
| Capital | <u>6,500.00</u> | <u>2,153.17</u> | <u>2,808.92</u> |
| Total Expenditures | 475,626.00 | 206,178.37 | 122,177.43 |

| | <u>Budget</u> | <u>Projected</u> | <u>Projected</u> <u>Variance-Favorable</u> |
|---|---------------|------------------|---|
| Projected Excess Revenues over Expenditures | 0 | 122,177.43 | 122,177.43 |
| Projected Budgetary Fund Balance Sept. 30, 2011 | | 122,177.43 | |

TRAINING AND OUTREACH

The Commission on Ethics staff is responsible for providing in-person and/or video training to county and municipal elected officials, employees and advisory board members. In conjunction with the Commission's mission to promote the public's trust in their public servants, the major focus of the COE for the 2010 -2011 year was training and outreach. The Commission and its staff seek to be proactive at all times in its outreach efforts and its relationship with the community in order to increase citizen understanding and participation in government accountability efforts. Over the course of the last year Commission staff has conducted over 80 in-person trainings.

During each training session, employees and officials are provided with the core ethics concepts including conflict of interest, prohibited contractual relationships, misuse of public office and gift law prohibitions and reporting requirements. During each live session attendees have the opportunity to ask questions about the general provisions of the code. These sessions are designed to raise awareness about our new ethics laws and to emphasize that employees, vendors, officials, lobbyists and the public should always seek advice from the ethics commission to avoid violations. Whenever possible, Commission staff conducts live training; however, a full copy of our training is available on DVD and streaming video via our website.

Specifically, Commission staff arranged to educate the following municipal and county officials and employees with in-person ethics training and overview presentations:

| | |
|---|-----------------------------|
| City of Atlantis | Town of Ocean Ridge |
| City of Belle Glade | Town of Palm Beach |
| City of Boca Raton | Town of South Palm Beach |
| City of Boynton Beach | Village of North Palm Beach |
| City of Delray Beach | Village of Royal Palm Beach |
| City of Greenacres | Village of Tequesta |
| City of Lake Worth | Village of Wellington |
| City of Pahokee | |
| City of Palm Beach Gardens | |
| City of Riviera Beach | |
| City of South Bay | |
| City of West Palm Beach | |
| Palm Beach County Advisory Board | |
| Palm Beach County Board of County Commissioners | |
| Palm Beach County Staff | |
| Town of Cloud Lake | |
| Town of Gulf Stream | |
| Town of Haverhill | |
| Town of Hypoluxo | |
| Town of Juno Beach | |
| Town of Jupiter | |
| Town of Lake Clark Shores | |
| Town of Lantana | |
| Town of Magnolia Park | |
| Town of Manalapan | |

In addition, commission staff presented educational programs to a diverse range of civic associations and entities:

African American League
Association of Fundraising Professionals
Boynton Beach Jewish Center
Co-op Extension Service
Cypress Lakes Democratic Club
Economic Counsel of Palm Beach County
Florida Engineering Society
Investment Policy Committee – Palm Beach County Constitutional Clerk and Comptroller
Jewish Federation Forum
Lake Worth Chamber of Commerce
Leadership Palm Beach
Loxahatchee Groves Land Owners Association
Media Co-op Presentation
Northwood University
Palm Beach Atlantic University
Palm Beach Chapter of the Florida Institute of Certified Public Accountants
Palm Beach County Bar Association – Environmental and Land Use Committee
Palm Beach County City Management Association
Palm Beach County League of Cities
Palm Beach County Workforce Alliance
Property and Real Estate Management Training
Rotary Club- Boca Raton
Small Business Administration Advisory Committee
Tourist Development Council
Tri Rail Commission
Western Communities Council
Wilkes Honors College, Florida Atlantic University

The largest expansion in our ethics training is yet to come with the development of an online ethics-training/quiz module. We are working to develop an online ethics quiz that will provide employees, officials and the public with an additional resource. Available on our website, the quiz will address scenarios that have come before the commission as requests for advisory opinions or frequently asked questions.

WEBSITE

Last year staff launched the Commission on Ethics website and has continued to receive positive feedback regarding the quality, user-friendliness and accessibility of commission documents and information. The website is designed to enhance transparency, outreach efforts and provide public access to all relevant forms, documents, advisory opinions and investigations. In April 2011 alone, the Commission on Ethics site was visited 29,194 times, nearing 1,000 visits per day.

Multimedia

One click on our multimedia tab and employees, officials and the public can view all commission meetings, drafting committee meetings and channel 20 programs. Click over to the meeting schedule/minutes tab and you will find upcoming meeting times, agendas and updated minutes, providing community members with up to date status reports of all commission action.

Training

As discussed previously, commission staff provides both in-person and video trainings. At our training tab employees, officials and the public can view staff and advisory board training videos from their home or office. Under our training tab you will also find a full text copy of the code of ethics and our guides to the code of ethics for public employees and advisory board members. These plain language guides are designed to give employees and advisory board members the must-know essentials of our code. Employees, officials and advisory board members can always access their training acknowledgment forms via our website. Finally, for those employees and officials who have additional reporting requirements under state law, we have included a guide to the Florida code of ethics.

Searchable Databases

The commission website currently maintains a gift reporting database. This feature allows the public to view gift forms currently on file with the Commission on Ethics. In the near future, the public will be able to view not only gift reports, but outside employment waivers and elected and advisory board voting conflict forms. An additional feature soon to be integrated into the site is the ability to research existing advisory opinions and complaints by search term. Finally, as part of the revisions to the code of ethics completed by the drafting committee, officials and employees who personally solicit gifts for charitable organizations will be required to keep a log of all solicitations they make on behalf of an organization and submit that information to the Commission on Ethics within 30 days. Once received, this information will be available on our website.

Other Information

Serving as a gateway to information on ethics both locally and nationwide, the Commission on Ethics website provides users with access and links to the inspector general, the state attorney's office, the Palm Beach County lobbyist registration database as well as municipal and county vendor information when available. The public, employees and officials will always be able to access up-to- date information on the code of ethics, applicable forms and other resources on our site, including our frequently asked questions tab.

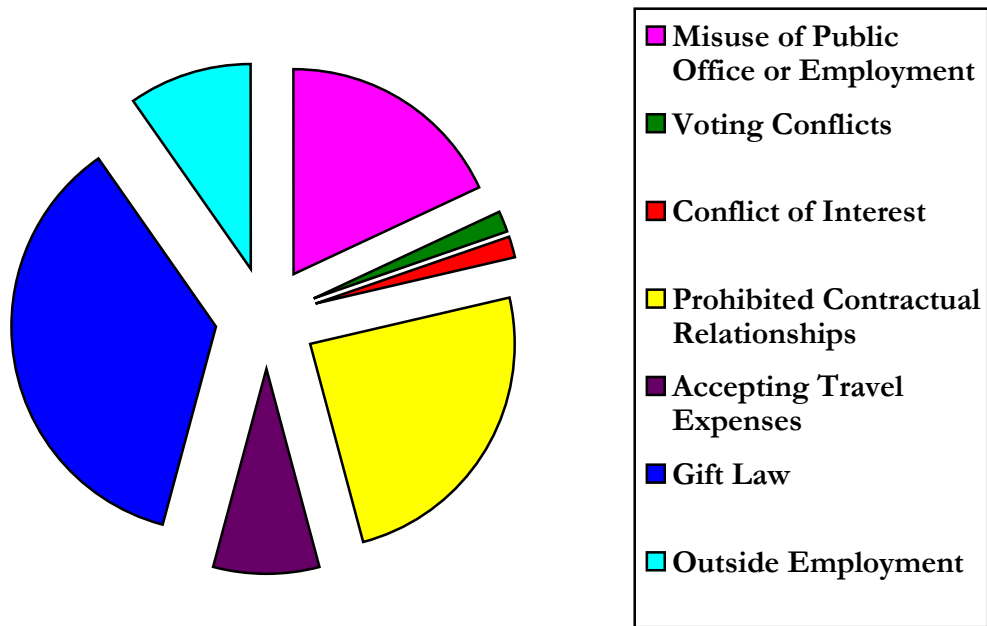
Social Media

In the coming year, the commission will launch Twitter and Facebook pages. Our twitter feed at *PBCEthics* will allow our followers to receive updates via text message on their mobile phones. Make sure to follow *PBCEthicsIntern* for an inside look at our office and meetings from an intern's perspective. Our Facebook page will provide an additional point of access for community members and will feature our calendar and discussion of governmental ethics related issues.

ADVISORY OPINIONS: ASK FIRST, ACT LATER

In 2010-2011, the Commission on Ethics issued 61 advisory opinions. Advisory opinions are designed to assist employees, officials and advisory board members and any other persons or entities subject to the Code of Ethics or related ordinances in understanding their obligations under the code. When in doubt about the applicability or interpretation of the ethics codes, employees, officials and advisory board members may submit the facts of their particular situation to the Commission on Ethics in writing and request an advisory opinion. As long as the facts submitted to the commission are complete and accurate the requesting party may rely on the commission's response.

Advisory Opinions by Topic

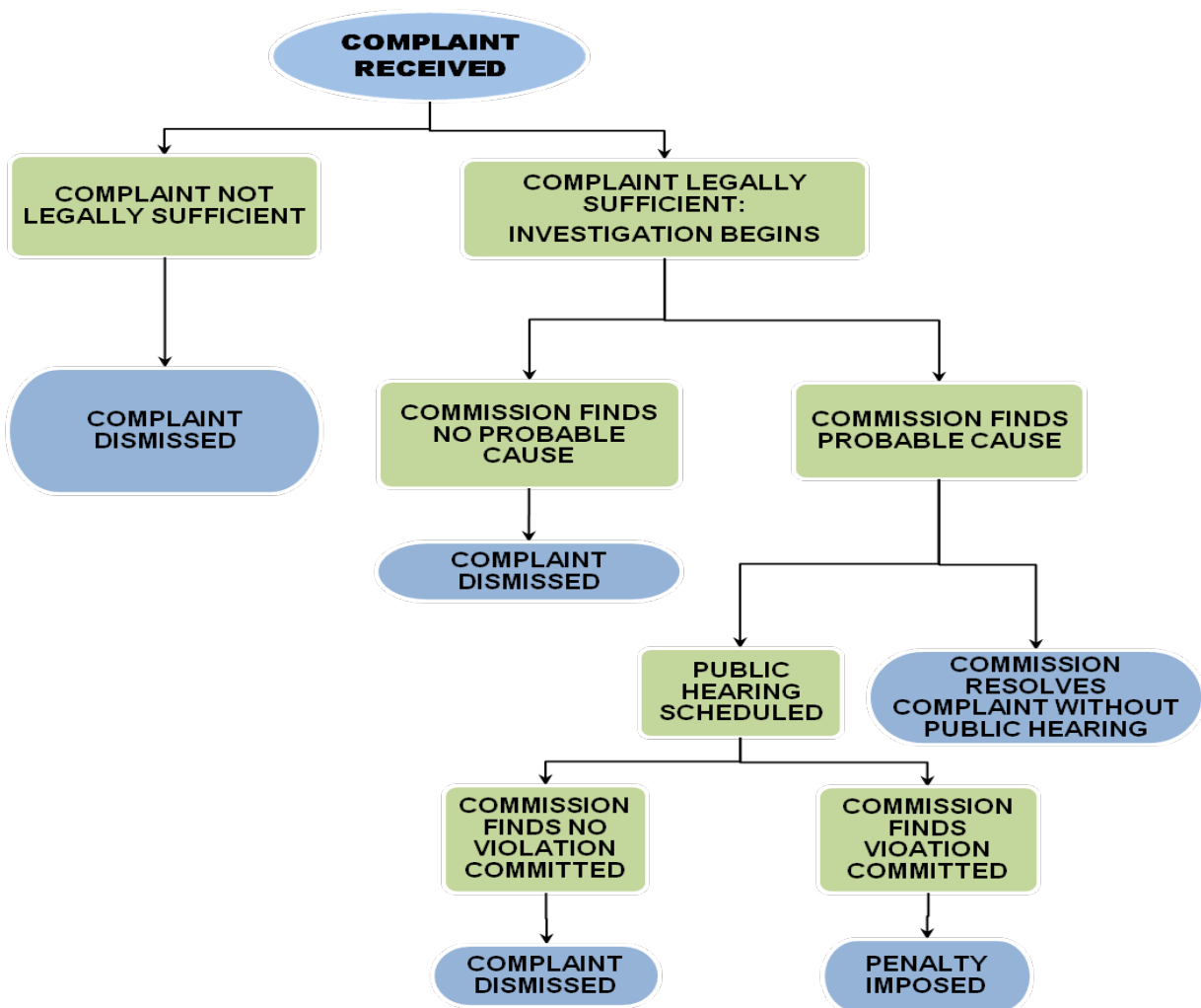


All advisory opinions are available on the commission website at www.palmbeachcountyethics.com. You may request a copy of any commission opinion in writing via U.S. mail at 2633 Vista Parkway, West Palm Beach, Florida 33411.

THE COMPLAINT PROCESS

Any person can file a complaint with the Commission on Ethics by submitting a written notarized complaint executed on the approved form available by mail or on our website (www.palmbeachcountyethics.com). The complaint must allege a violation of the code of ethics, lobbyist registration or post-employment ordinance, be based substantially upon personal knowledge and be signed under oath or affirmation by the complaining person. The commission maintains a searchable library of public reports and final orders regarding the disposition of all legally sufficient filed complaints. You may request a copy of a complaint form or visit our website.

In addition, citizens can leave information and tips anonymously on the Commission on Ethics hotline at 877.766.5920. If your contact is anonymous, you must be sure to give specific, detailed information sufficient to support an inquiry into the allegation.



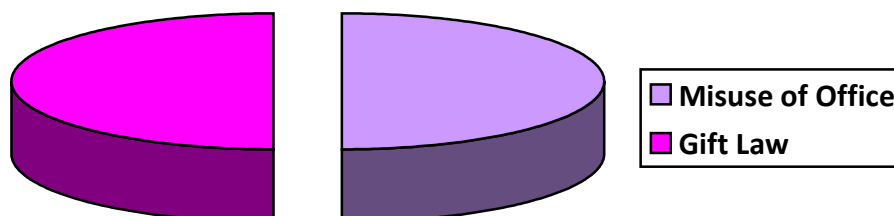
COMPLAINTS

STATISTICAL SUMMARY OF COMPLAINTS FILED MAY 1, 2010 THROUGH APRIL 30, 2011

Of the 20 Complaints received since May 2010, 4 were found to be legally sufficient and were the subject of a formal investigation; 16 were dismissed for lack of legal sufficiency; and no cases were pending determination as of May 1, 2011. A breakdown of the allegations made in legally sufficient complaints is illustrated below. Of the 4 cases found to be legally sufficient, all were dismissed at a probable cause hearing. Two cases resulted in a letter of instruction being issued to the Respondent by the Commission on Ethics.

In addition to handling the 20 complaints received in 2010-2011 staff began inquiries into 15 matters based upon information received other than by formal complaint. Of these inquiries, 13 were closed as not legally sufficient and 2 became the basis for a self-initiated complaint.

Legally Sufficient Complaints 2010-2012



LEGISLATIVE ACTIVITIES AND INITIATIVES

The Commission on Ethics is charged with reviewing statutes and ordinances relating to ethics in government and making policy recommendations to the Board of County Commissioners. Prior to the 2010 ballot referendum extending the jurisdiction of the Commission on Ethics to the municipalities the COE was active in recommending appropriate changes to the codes. Pre-referendum revisions adopted by the Board of County Commissioners include: self-initiated complaints by the Inspector General, State Attorney or Executive Director of the COE; creation of waiver conditions for employee outside employment; and increasing the criminal penalty for willful violations of the code to first degree misdemeanors, punishable by up to one year in jail, one thousand (\$1,000) dollar fine, or both.

After the 2010 referendum, drafting committees were set up to review and revise the Inspector General, Commission on Ethics and Code of Ethics Ordinances. The Commission, through the Executive Director, was actively involved in developing and revising the code of ethics to include municipal governments. The work of the Ethics and Inspector General Drafting Committees is now complete. Final drafts of the county-wide Commission on Ethics, Code of Ethics and Inspector General Ordinances are currently in the approval process. Once adopted into the county charter, all 38 municipalities will be under the jurisdiction of the Ethics Commission and Inspector General.²

The revised code of ethics contains a number of substantive changes to the gift law, the most notable of which is the inclusion of vendors in those sections dealing with prohibited gifts. Employees and officials may not accept a gift over one hundred (\$100) dollars annually in the aggregate from a vendor, lobbyist, principal or employer of a lobbyist. In addition, vendors and lobbyists have a duty under the revised code not to offer a prohibited gift to someone they know is a public employee or official if they transact business with their government, or in the case of volunteer board members, their board or a department within the board's authority. Holding vendors responsible for knowing violations of the gift law sends a strong message to the business community that the giving of prohibited gifts is equally actionable under the law. Other gift law revisions include charitable solicitation which is permitted so long as a detailed log is maintained and submitted to the Commission on Ethics. The code likewise expands exemptions for charitable public events and expenditures made in connection with non-profit organizations, funded by tax dollars, whose primary function is to attract business and tourism to Palm Beach County.

Additional code revisions include: streamlining the process for volunteer advisory board members to obtain waivers through transparent disclosure of potential conflicts; expanding misuse of office prohibitions to include non-financial corrupt acts; expanding anti-nepotism laws, and; creating a transparent and less bureaucratic process whereby public employees can obtain permission for outside employment so long as it does not conflict with their public duties.

The drafting committee took a common sense approach to correcting unintended flaws in the original code while strengthening the core requirements necessary for compliance, transparency and accountability of those who work for and transact business with government.

² At the time of this printing, the Board of County Commissioners has approved the ordinances and has set an effective date of June 1, 2011.

A LOOK FORWARD

In the coming year, Commission on Ethics staff will continue to meet with and train local leaders, employees, volunteers, civic and business groups. In accordance with our training mission, we intend to make our website more interactive, accessible and to integrate social media into our online presence. To assist us in this task we will build on our existing internship program. Moreover, this November staff intends to establish and host the first ever *Palm Beach County Ethics Awareness Day*. In conjunction with this event, over the next several months we will give students and citizens the opportunity to participate in raising ethics awareness through writing and art programs for our local high school students.

Internships

This year the Commission on Ethics has been delighted to partner with Palm Beach Atlantic University and the University Of Miami School Of Law. PBAU interns worked closely with commission staff to research and develop our upcoming interactive ethics quizzes and events for a *Palm Beach County Ethics Awareness Day* (November 2011). They researched such diverse topics as; how federal agencies have integrated twitter into their outreach efforts and, evaluation methods for an ethics writing competition. In collaborating with the University of Miami Legal Corps program, commission staff will work with recent law graduates. Legal Corps fellows assist staff in researching legal issues and prepare memorandum of law for commission meetings.

In the coming year, we look forward to having interns from PBAU and University of Miami as well as new graphic design students from Palm Beach State College. As part of the college's rigorous two-year graphic design curriculum students have the opportunity to intern for credit with local government agencies and businesses. Students are required to complete over 200 hours of internship time over the course of the semester. We look forward to working with our interns to develop and improve our website.

All interns and supervising staff sign our service learning agreement. In it, commission staff pledges to provide interns with real world on the job training. Interns at the Commission on Ethics will not find themselves in the copy room or on coffee runs, but heavily engaged in developing outreach, training, and creating new interactive web elements.

Ethics Day

As part of our community outreach and training mission, this year the Commission on Ethics intends to host the first annual *Palm Beach County Ethics Awareness Day* in November. Here, the public will have the opportunity to hear speakers on local ethics issues, meet the commissioners and attend live trainings by commission staff. Staff will be available to answer questions and tell you more about the work that they do.

FREQUENTLY ASKED QUESTIONS

These questions pertain only to the new ethics rules for Palm Beach County and the municipalities therein.

What is the Palm Beach County Commission on Ethics?

The Ethics Commission reviews, interprets, renders advisory opinions and enforces the Palm Beach County Code of Ethics, Lobbyist Registration and Post Employment Ordinances. The Code of Ethics is more restrictive than the State ethics laws and is designed to foster renewed public trust in local government. The Palm Beach Commission on Ethics only enforces local governmental ethics laws. It does not enforce any other laws, *even those that may involve ethical issues*. For example, the commission does not enforce state law. For violations of the state Code of Ethics, please contact the Florida Commission on Ethics <http://www.ethics.state.fl.us/>.

Who does the Code of Ethics apply to?

The Code of Ethics applies to all elected and appointed county and municipal employees and officials, including advisory board members within Palm Beach County. In some cases it also applies to vendors and lobbyists doing business with local government. It does not apply to constitutional offices such as the Sheriff, Property Appraiser, Tax Collector, State Attorney, Public Defender or Clerk and Comptroller.

What laws do the Commission on Ethics enforce?

The Ethics Commission has jurisdiction throughout Palm Beach County, including the 38 municipalities within its borders, provided the subject matter falls within one of the following ordinances under its authority:

Code of Ethics Ordinance (county and municipalities)

Lobbyist Registration Ordinance (county only)

Post-Employment Ordinance (county only)

Our specific statutory authority is derived from Article V, Division 8, §2-254 of the Palm Beach County Commission on Ethics ordinance. This ordinance gives the Ethics Commission the power to review, interpret, enforce and render opinions regarding the County ethics ordinances.

How do I file a complaint?

Any person may file a complaint with the Commission on Ethics. The Commission has an on-line complaint form that you may fill out and print for mailing or delivery to the commission. Instructions on how to complete the form are also on-line. Additionally, you can pick up a blank complaint form with instructions at our office, located at 2633 Vista Parkway, West Palm Beach, FL 33411. Complaints must be in writing, allege a violation of one of the ordinances mentioned above, be based substantially on personal knowledge and be signed under oath or affirmation by the complaining person. If you have any questions about the complaint process or would like to speak with a member of our staff please call the Palm Beach County Ethics Hotline at 877.766.5920.

Must I identify myself when I make an ethics allegation?

In order to file a complaint you must identify yourself on the complaint form. However, the commission does have a hot-line 877.766.5920 and staff will take anonymous information over the phone or by mail. There must be sufficient, reliable information given by the anonymous complainant indicating a violation of the county ethics ordinances before the ethics commission staff will start any inquiry into the alleged conduct.

I've gone before my local commission or advisory board on a matter of importance to me and they did nothing. I think that their decision is unethical and I'm ready to file a complaint. What do I need to have when I talk to you?

For the Commission on Ethics to be able to process your complaint, you must have evidence based on your own personal knowledge that the action or inaction by the government official, employee or advisory board member resulted in a financial benefit to a defined person or business (e.g., the official, the official's relative, customer, client or outside employer or business) when the benefit is not shared by similarly situated members of the general public. It is not an ethics code violation for an official to be merely "wrong" in their decision making. Nor is it necessarily a code of ethics violation when an official violates a county or municipal policy. Policy violations should be referred to the appropriate county or municipal officials.

What is a financial benefit?

Anything of value that can be obtained through the exercise of an official or employee's authority that is not shared with similarly situated members of the public.

I am a volunteer and was appointed to sit on a board. Am I subject to the ethics ordinance?

All county and municipal advisory board members are subject to the ethics ordinances if they are selected by the Board of County Commissioners, municipal governing body, mayor or other chief executive officer of a municipality.

What is a gift statement? Who has to file it?

Under the new ordinance, all county and municipal employees, officials, or advisory board members who are not currently required to submit quarterly gift reports under state law are required to complete an annual gift disclosure form if they receive something worth more than one hundred (\$100) dollars that is not otherwise exempt from gift reporting requirements. Certain "reporting individuals" already have a quarterly requirement under state law and are required to send a copy of these reports to the Palm Beach County Commission on Ethics. For more specific questions, please view the gift disclosure instruction form available at www.palmbeachcountyethics.com/pdf/Forms/Gift_Form.pdf or call our office at 561.233.0724.

When do I file my gift statement?

Under the county ethics code, for non-state reporting individuals, the gift reporting calendar year is October 1st -September 30th. Gift reports are due no later than November 1st for the previous reporting year.

What is the purpose of gift reporting?

Through transparency and access to information, including non-exempt gifts received by public officials and employees, public trust and confidence in government will be improved.

What is a gift?

A gift is essentially anything of value. Political contributions, gifts from relatives or members of your household, and awards for professional or civic achievement are exempted from the gift law. Gifts from long-time personal friends or colleagues need not be reported provided they are not vendors or lobbyists doing business with your government. For a more complete list of exemptions and related information, please see our gift disclosure instruction form at www.palmbeachcountyethics.com/pdf/Forms/Gift_Form.pdf.

Is there any limitation placed on the acceptance and solicitations of gifts, gratuities, or other things of value?

Yes. County and municipal officials, employees and advisory board members may not solicit or accept gifts valued at more than one hundred (\$100) dollars from vendors, lobbyists, principals or employers of lobbyists. Public officials and employees may not solicit anything of value from vendors, lobbyists, principals or employers of lobbyists for their personal benefit. Under no circumstances may a county or municipal official, employee or advisory board member accept a gratuity or tip for the performance of their official duties.

Why are there gift limits?

Restrictions on accepting gifts prevent outside interests from giving things of value to county and city employees and officials. The limits are designed to avoid the appearance that these gifts are made to influence a decision or otherwise obtain the good will of the public employee or official.

Are invitations to events considered gifts?

An invitation or a ticket to an event is generally considered a gift unless there is an exception that applies. For example, if the attendance at an event is for the benefit of the government you serve and you are attending in your official capacity on official business, the admission cost is not considered a gift.

Are meals considered gifts?

Yes. A meal is a gift, unless one of the exceptions to the gift law applies.

I'm a county employee who deals with residents every day. One of my regular customers brings me a Publix gift card for excellent service. Can I accept the Publix gift card? How about a bottle of wine?

No. You cannot accept a gift of any value given to you because of the way you perform your duties as a public employee. This includes thank you gifts.

An organization wants to give me a plaque to honor me for work I did as a city official, can I accept it?

Yes. Awards for professional and civic achievement are exempt from the gift law.

What are travel expenses and why are they subject to regulation?

As a public employee or official, you cannot accept payment or reimbursement of any travel expenses from a contractor, vendor, service provider, bidder or proposer doing business with your public employer. Travel expenses include, but are not limited to, transportation, lodging, meals, registration fees and incidentals. This prohibition can be waived by the county commission or applicable municipal governing body. This prohibition does not apply to reimbursements paid by other governments or organizations to which your public employer is a member when the travel is related to that membership. Travel expenses are subject to regulation in order to promote transparency.

What is the general rule regarding financial misuse of a city or county official's position?

A county or municipal official or employee *cannot use their position in any way*, if they know or should know with the exercise of reasonable care that it would result in special financial benefit to themselves, their spouse or household members, or any of the employers of these persons, certain relatives and their employers, their own outside employer, business or fellow employees, a customer or client of their outside employer or business, someone to whom they owe a debt greater than ten thousand (\$10,000) dollars (other than a bank) or a non-profit organization where they serve as an officer or director.

May a public official (advisory board member) have an outside business or employment?

Yes, provided that their outside employer or business does not have contracts with the government they serve. For advisory board members, if their outside employer or business does transact business or contract with their local government, the official will generally need to obtain a waiver from the local governing body. If the official serves on a decision-making advisory board and contracts with the department under the board's authority, no waiver is permitted.

May a public employee have an outside business or employment?

An employee may have outside employment provided that the employee or employee's spouse has no authority over the procurement, enforcement or administration of the subject contract, the outside work does not impair or interfere with the employee's faithful public job performance, the contract is not within the employee's department and the employee obtains approval from both a supervisor and chief administrator.

May an official or employee contract with their own county or municipal agency?

No. Public employees and officials may not enter into a contract or transaction to provide goods or services with the public entity he or she serves (county or municipality), unless an exception or waiver provision applies. For more information, please contact us at 877.766.5920. For advisory board members, this prohibition applies only to contracts or transactions with his or her board or department subject to the board's authority.

Is the prohibition on contracts with a county or municipal agency absolute?

No. For advisory board members, there are exceptions to the contractual relations section of the code, including sole source or emergency contracts, minor transactions under five hundred (\$500) dollars annually, or sealed bid contracts under certain circumstances and with full disclosure. Moreover, unless the official serves on a decision making board and the contract involves matters under the board's authority, officials may apply for a waiver of this prohibition by a supermajority of the governing body after full public disclosure. For more information, please call us at 877.766.5920 or send an email to ethics@palmbeachcountyethics.com.

What is lobbying?

Lobbying is seeking to influence a decision, through oral or written communication, or attempt to obtain the good will, of any county commissioner, advisory board member or public employee with respect to the passage, defeat or modification of anything which may foreseeably be presented for consideration to the advisory board, county or municipal governing body.

How do I know if someone is a lobbyist or employs lobbyists?

A searchable database for all lobbyists in Palm Beach County is available online at http://www.pbcgov.org/plrapplication.aspx/PLRSearchPublicView_New.aspx. Vendor databases, when available, will be linked through our website as well.

Do ethics laws impose any restrictions on county employees after they leave county service?

Yes. The commission on ethics is charged with enforcing the post-employment ordinance. (Presently, this ordinance applies only to Palm Beach County government and not municipalities). Depending on the public position, former employees must refrain from representing anyone, other than the governing body he or she served, in any matter before that government for a certain period of time. The length of time varies from six (6) months to two (2) years depending on the public position they previously held. A full text of the post-employment ordinance is available at our website at www.palmbeachcountyethics.com.

What penalties can the Palm Beach County Commission on Ethics impose?

The Commission can impose civil penalties only, including fines up to five hundred (\$500) dollars and a public reprimand. In addition, the ethics commission may issue a letter of instruction in minor cases, and has the power to impose restitution where the violator or a third party receives a money benefit as a result of the violation. The county or local governing body may rescind or void contracts, licenses, permits and other transactions upon a finding of violation.

Are violations of the code of ethics a crime?

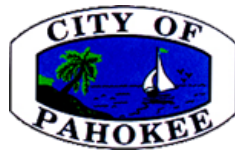
Most sections of the code of ethics can be prosecuted by the state attorney if the violation is willful. The maximum penalty for a willful violation is a year in the county jail, one thousand (\$1,000) dollar fine, or both.

Can I attend meetings of the Ethics Commission?

Yes. The Palm Beach County Commission on Ethics meets on the first Thursday of every month at 3 o'clock in the County Commission Chambers. You are welcome and encouraged to attend our meetings. If you cannot attend, the meeting is broadcast on access cable channel 20. Video of all meetings can be found on the ethics commission website under the media tab. www.palmbeachcountyethics.com.

I still have questions. How do I get help?

Please feel free to contact us via email at ethics@palmbeachcountyethics.com or call 877.766.5920.





PALM BEACH COUNTY COMMISSION ON ETHICS

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"Honesty, Integrity, Character"

AGENDA ITEM X – SOCIAL MEDIA

As part of the Commission on Ethics' mission to promote the public's trust in the public service, staff has created community training modules, a website, and utilized the "got ethics?" logo seen across the county on Palm Tran buses. In keeping with this proactive approach to community outreach, staff has looked for fiscally sound and innovative ways to increase public access to the Commission. New media with its ever-developing forms of communication has the potential to do just that. Specifically, staff recommends that the Commission use Twitter, or "Tweet" as a means of providing information and updating the public on what's happening at the Commission on Ethics meetings as well as information updates during the month.

The New York Times explains Twitter as a mixture of social networking, messaging, and microblogging.¹ Practically, Twitter is an information network made up of 140-character messages called "tweets," that provides information to "followers" in real time.² While Twitter initially gained publicity and popularity through celebrities, in its short history Twitter has become an important marketing tool not only for celebrities, but for politicians, businesses and government.

Today, Twitter is an integral part of mass communication around the world. For example, just this week Swedish foreign Minister Carl Bildt reached out to his counterpart in Bahrain on Twitter when he couldn't reach him through traditional means of communication. Federal agencies including the Department of Justice, United States Secret Service, FBI, and even the United States Supreme Court have active twitter accounts. Palm Beach County, West Palm Beach and Del Ray are just a few of the local governments that post information via Twitter.

Twitter allows the public direct access to information and institutions. For staff purposes, Twitter would allow staff to publicize a meeting date or change a meeting time and "followers" would receive instant updates sent straight to their mobile phones. Additionally, commission staff can use this media to update the general public on new features to our website, important dates, articles of interest and other relevant ethics-related information.

¹ <http://topics.nytimes.com/top/news/business/companies/twitter/index.html?scp=1-spot&sq=Twitter&st=cse>

² http://news.yahoo.com/s/ap/20110526/ap_on_hi_te/eu_twitter_diplomacy