



Agenda

November 30, 2011
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Palm Beach County
Commission on Ethics
2633 Vista Parkway
West Palm Beach, FL 33411
561.233.0724
FAX: 561.233.0735
Hotline: 877.766.5920

E-mail:
ethics@palmbeachcountyethics.com

Commissioners
Edward Rodgers, Chair
Manuel Farach, Vice Chair

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

Executive Director
Alan S. Johnson

Executive Assistant
Gina A. Levesque

Staff Counsel
Megan C. Rogers

Senior Investigator
Mark E. Bannon

Investigator
James A. Poag

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from October 31 and November 3, 2011
- V. Complaints – Proposed Settlement
 - a. C11-017
 - b. C11-018
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 11-102
 - b. RQO 11-108
 - c. RQO 11-109
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Holiday Gifts (Proposed Opinions)
 - a. RQO 11-100
 - b. RQO 11-103
 - c. RQO 11-110
- IX. Misuse of Office and Voting Conflicts: Reasonable Care Standard (Proposed Opinions)
 - a. RQO 11-099
 - b. RQO 11-101
- X. Proposed Advisory Opinions
 - a. RQO 11-089 (resubmitted)
 - b. RQO 11-090 (resubmitted)
 - c. RQO 11-104
 - d. RQO 11-105
- XI. Executive Director Comments
- XII. Public Comments
- XIII. Adjournment

MEETING: SPECIAL MEETING OF THE PALM BEACH COUNTY COMMISSION ON ETHICS

I. CALL TO ORDER: October 31, 2011, at 3:12 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
Robin N. Fiore, Ph.D.
Ronald E. Harbison, CPA
Bruce E. Reinhart, Esq.

STAFF:

Mark E. Bannon, COE Investigator
Leonard Berger, Assistant County Attorney
Todd Bonlarron, Legislative Affairs Director
Tammy Gray, Public Information Specialist
Alan S. Johnson, Esq., COE Executive Director
Gina A. Levesque, COE Administrative Assistant
James Poag, COE Investigator
Richard Radcliffe, League of Cities Executive Director
Megan C. Rogers, Esq., COE Staff Counsel
Barbara Strickland, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Judge Edward Rodgers requested that all cellphones be silenced. He stated that the discussion topic was the Palm Beach County and the League of Cities' proposed revised lobbyist registration ordinance.

IV. DISCUSSION OF PROPOSED ORDINANCE AND RECOMMENDATIONS INCLUDING PUBLIC COMMENTS

Assistant County Attorney Leonard Berger stated that:

IV. - CONTINUED

- The proposed lobbyist registration ordinance packet that was distributed to Commission on Ethics (COE) members contained definitions that were altered to match those in the Code of Ethics (Code).
- Lobbyist registration and expenditure reporting requirements that were introduced locally more than a year ago became effective soon.
- A new computerized lobbyist registration system allowed lobbyists to register online with electronic signatures.
 - The system was developed with the League of Cities' assistance.
 - Sorted and cross-referenced data allowed users to find names of lobbyists and principals who conducted business in 38 municipalities and in the county's unincorporated areas.
 - Lobbyists, city officials, and the general public could use the new resource.
- Attorney lobbyists were required to register as lobbyists, according to the County's 2003 lobbyist registration ordinance.
- A cone of silence that enhanced transparency was an option for the municipalities that chose to prohibit communication between their commissioners and staff, and with anyone involved in the proposal process. The COE was responsible for enforcement.
 - Daily fines were penalties for failures to register.
 - Extreme cases could result in de-barment from lobbying for specific time periods.
 - Knowing violations were first-degree misdemeanors.

IV. - CONTINUED

- The proposed ordinance was effective within County government and in all the cities and municipalities that had not adopted an ordinance contrary to this one.

Legislative Affairs Director Todd Bonlarron referred to the registration language that required a principal to affirmatively sign and attest that a particular lobbyist represented that principal. He said that the online registration process allowed electronic signatures and e-mail messages to flow between lobbyists and principals and return to the database.

COE Executive Director Alan Johnson stated that:

- The ordinance packet contained Palm Beach County Economic Council recommendations for Code amendments. Amendments could be achieved by a drafting committee convened by a referendum.
- Approximately 40 lobbyists and other interested parties had attended a meeting at the COE offices to give their input regarding the ordinance's definitions. He and COE staff members represented those interests in today's discussion.
- The proposed ordinance required the COE to review and advise the Board of County Commissioners (BCC) on all legislation related to ethics. The COE could advise the BCC to adopt the proposed ordinance or recommend changes to the proposal.

Judge Rodgers stated that some municipalities had complained about the ordinance. He said that some advisory boards occasionally required a sophistication of specialties that the smaller entities could not achieve under rigid ordinance requirements. He queried whether an exception could be made for the smaller towns that were unable to attract experienced volunteers.

Mr. Berger said that such exception existed in the State's Code, and that the appointing body could waive the conflict under the current rules. He added that:

- The COE could discuss the topic in greater detail.
- Specific cities could be identified as those whose sizes would create genuine problems.

IV. - CONTINUED

- The League of Cities could be asked to furnish opinions and ideas.

Concerning the recordkeeping provisions of the proposed ordinance, Commissioner Harbison asked what the statute of limitations requirement was in public corruption cases. Commissioner Reinhart replied that it was five years in federal courts. Mr. Johnson said that State courts imposed four years for a felony, which could be expanded to five years for public officials after they left office.

Commissioner Harbison stated that an amendment should be made to correspond with the public corruption statute of limitations. Commissioner Reinhart said that keeping records for an additional two years should not prove problematic if records appeared online. Mr. Berger said that paper records would be maintained, that they would not appear online, and that they would be voluminous.

Mr. Bonlarron commented that computers or paper logs could be set up at offices' entrances for registered lobbyists to sign in. He said that the sign-in records could be scanned for computer storage.

PUBLIC COMMENT: John R. Levinson.

Commissioner Manuel Farach asked whether the present definition of lobbyist applied to a business owner who lobbied for his business without compensation. Mr. Berger said that the present lobbyist definition applied to those who were hired to interact regularly with government entities. He also said that:

- A large portion of the gift law dealt with the principals of lobbyists just as it dealt with lobbyists themselves.
- The COE would decide how far it wanted to go in regulating lobbying activities, and what it required for transparency.

Mr. Johnson stated that the present lobbyist definition was well thought out, and that it was the same as the Code's definition. The COE could recommend language changes to the Code's drafting committee, he added.

IV. - CONTINUED

Mr. Bonlarron clarified that any initial investigation, as outlined in the ordinance, was conducted by County administration, and that evidence of probable cause was the department's primary indicator. He said that initial reviews would be forwarded to the COE.

Mr. Johnson stated that the complaints received at his office were processed by his staff in accordance with the ordinance's dual review system.

Mr. Bonlarron said that:

- Lobbyist registration required forms completed online or on paper, in addition to a \$25 fee per principal represented.
- Registered lobbyists remained registered until they submitted notification forms of withdrawal.
- Annual lobbyist expenditure reports would keep membership rolls current.

Mr. Johnson advised that the COE make a recommendation that the BCC either adopt or deny the ordinance. He said that a third option was to make no recommendation.

Commissioner Reinhart stated that the COE would enforce the BCC's decision to adopt or deny, and that no opinion should be expressed. Commissioner Harbison stated that the COE's function was to advise the BCC, and that he preferred to make a recommendation for the BCC's action.

MOTION to recommend adoption of the proposed ordinance to the Board of County Commissioners. Motion by Ronald Harbison.

MOTION DIED FOR LACK OF A SECOND.

IV. - CONTINUED

MOTION that the Commission on Ethics take no position at this time on the proposed ordinance. Motion by Manuel Farach, and seconded by Bruce Reinhart.

Commissioner Farach stated that his motion was intended to convey his discomfort with making changes until he had gained greater understanding of all of the ordinance's conflicting and contradictory objectives.

UPON CALL FOR A VOTE, the motion carried 4-1. Ronald Harbison opposed.

V. STAFF COMMENTS

V.1. DISCUSSED: Proclamation.

Mr. Johnson informed the COE that the BCC would make a presentation of a proclamation during its regular meeting the next day declaring that November 18, 2011, as Ethics Awareness Day. He invited the commissioners to attend the meeting.

Mr. Johnson said that Commissioner Fiore planned to make a keynote address in BCC chambers. He also said that:

- Teachers were encouraged by the school board to incorporate ethics into their lesson plans for November 18, 2011;
- An interfaith clergy group recommended that ethics be introduced into their sermons on the weekend prior to November 18, 2011;
- Libraries planned to dedicate sections of books on ethics topics;
- Postcards promoting Ethics Awareness Day were mailed to 1200 elected officials;
- Those present today were invited to attend the next day's BCC meeting at 9:30 a.m.; and,
- A new campaign would replace the "Got Ethics?" public bus advertisements.

VI. Adjournment

At 4:03 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS (COE)

I. CALL TO ORDER: November 3, 2011, at 1:40 p.m., in the Commission Chambers, 6th Floor, Governmental Center, West Palm Beach, Florida.

II. ROLL CALL

COMMISSIONERS:

Judge Edward Rodgers, Chair
Manuel Farach, Esq., Vice Chair – Arrived later
Robin N. Fiore, Ph.D
Ronald E. Harbison, CPA
Bruce E. Reinhart, Esq.

STAFF:

Mark E. Bannon, COE Investigator
Alan S. Johnson, Esq., COE Executive Director
Gina A. Levesque, COE Administrative Assistant
Megan C. Rogers, Esq., COE Staff Counsel
Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

Judge Edward Rodgers stated that there was a quorum.

III. INTRODUCTORY REMARKS

Judge Rodgers requested that everyone turn off or silence all cell phones, and that if anyone wished to speak, a comment card containing the agenda item should be filled out and submitted to a Commission on Ethics (COE) staff member.

IV. APPROVAL OF MINUTES FROM OCTOBER 6, 2011

MOTION to approve the October 6, 2011, minutes. Motion by Bruce Reinhart, seconded by Ronald Harbison, and carried 4-0. Manuel Farach absent.

RECESS

At 1:42 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 2:47 p.m., the meeting reconvened with Manuel Farach, Robin Fiore, Ronald Harbison, Bruce Reinhart, and Judge Rodgers present.

(CLERK'S NOTE: A roll call was taken again at this time, and all the commissioners were present.)

Judge Rodgers stated that:

- Cell phones should be turned off or silenced.
- Public comments were welcome. If anyone wished to speak, a public comment card containing the agenda item should be filled out and submitted to a COE staff member.
- Public comments were limited to three minutes, and should be relative to agenda items.
- No one should make accusations regarding someone's statements unless the person was present to respond to them.

V. EXECUTIVE SESSION (1:45 P.M. – 2:15 P.M.)

V.a. C11-019

Commissioner Manuel Farach read a portion of the COE's public report and final order of dismissal as follows:

Complainant, Paul Beaudreau, a Palm Beach County employee, filed the above-referenced complaint on September 30, 2011, alleging a possible ethics violation involving respondent, Sheryl Steckler, Palm Beach County Inspector General.

(This space intentionally left blank.)

V. – CONTINUED

Commissioner Farach stated that the COE’s full report would be made public possibly by tomorrow. He read the following conclusion:

On October 15, 2011, the complaint of Mr. Beaudreau was determined by staff to be legally insufficient and presented to the Commission on Ethics on November 3, 2011, with a recommendation of dismissal as legally insufficient. The Commission on Ethics reviewed the staff inquiry report and determined that the allegations against respondent, Sheryl Steckler, do not constitute a violation of the Palm Beach County Code of Ethics because there is no evidence of financial or corrupt misuse of office, and dismissed the complaint on November 3, 2011, due to no legal sufficiency. Done and ordered by the Palm Beach County Commission on Ethics in public session on November 3, 2011. Signed by Edward Rodgers, chair of the Palm Beach County Commission on Ethics.

V.b. C11-020

Commissioner Farach read a portion of the COE’s public report and final order of dismissal as follows:

Complainant, Paul Beaudreau, a Palm Beach County employee, filed the above-referenced complaint on September 30, 2011, alleging possible ethics violations involving respondent, Wayne Condry, Palm Beach Director of Human Resources.

(This space intentionally left blank.)

V. – CONTINUED

Commissioner Farach stated that the COE's public report and final order of dismissal would be available possibly tomorrow. He read the following conclusion:

On October 15, 2011, after an initial inquiry into the matter, the complaint was determined by staff to be legally insufficient and presented to the Commission on Ethics on November 3, 2011, with a recommendation of dismissal as legally insufficient. The Commission on Ethics reviewed the staff inquiry report and determined that the allegations against respondent, Wayne Condry, do not constitute a violation of the Palm Beach County Code of Ethics because there is no evidence of financial or corrupt misuse of office and dismissed the complaint on November 3, 2011, due to no legal sufficiency. The decision of the Commission on Ethics construes only the Palm Beach County Code of Ethics ordinance and is not applicable to any other legal or administrative rules that may apply. Done and ordered by the Palm Beach County Commission on Ethics in public session on November 3, 2011. Signed: Edward Rodgers, chair.

(CLERK'S NOTE: An unscheduled item was presented at this time.)

XIII. UNSCHEDULED ITEM

Judge Rodgers said that a Board of County Commissioners (BCC) proclamation declaring November 18, 2011, as Palm Beach County Ethics Awareness Day was given to the COE.

Alan Johnson, Esq., COE executive director, commented that:

- On November 18, 2011, at 9:00 a.m. in the Commission Chambers, Dr. Robin Fiore would be making a keynote address with a panel discussion to follow.
- At 3:00 p.m., Palm Beach Atlantic University would be demonstrating an ethics bowl competition event, with another panel discussion regarding general ethics to follow.

XIII. – CONTINUED

- At 7:00 p.m., he and Inspector General (IG) Sheryl Steckler would be attending a final panel discussion at Florida Atlantic University's honors college in the Town of Jupiter. The topic of discussion would be the future of County-enacted ethics programs.
- A partnership between Palm Beach State College and the Palm Beach County School Board culminated in declaring November 14-18, 2011, as Ethics Week. Both entities would be conducting joint ethics programs in the public schools.

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VI.a. Request for Advisory Opinion (RQO) 11-095

VI.b. RQO 11-098

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

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. CITY OF BOCA RATON ADVISORY BOARD CONFLICTS (PREVIOUSLY TABLED)

(CLERK'S NOTE: RQO 11-067 and RQO 11-076 were discussed in tandem and voted on separately.)

Mr. Johnson said that RQO 11-067 and RQO 11-076 involved the City of Boca Raton (Boca Raton) licensure boards.

VIII.a. RQO 11-067

VIII.b. RQO 11-076

Megan C. Rogers, Esq., COE staff counsel, stated that:

- Based on the voting conflicts section of the County's Code of Ethics (Code), staff initially submitted that once a conflict came before an advisory board, an advisory board member, who was also a licensed professional, should abstain and not participate, even with staff.

VIII.a. AND VIII.b.– CONTINUED

- Until the conflict came before the advisory board, the member could participate with staff; however, under Sunshine Law requirements, the member could not discuss the matter with other advisory board members.
- Under the Code's misuse of office section, the advisory board member would also be prohibited from using his or her official position in any way to give a client a special financial benefit.

PUBLIC COMMENTS: Richard Radcliffe, Jennifer Ashton, Maziar Keshavar, James H. Anstis, Reverend Canon Howarth Lewis, and Dan Clark.

Dr. Fiore said that:

- The COE members had worked through various scenarios and had looked at possibilities during the last COE meeting.
- Mere disclosure did nothing to protect the public from conflicts.
- Advisory board members performed jobs without remuneration for communities and towns; however, advisory board members should not serve for the sole purpose of generating business for their employers.

Commissioner Bruce Reinhart commented that:

- The COE existed to enforce a code that was provided by the BCC after due consideration from the Palm Beach County Ethics Ordinances Drafting Committee (drafting committee).
- Staff had correctly analyzed, and had reasonably interpreted, the Code's language.

Commissioner Ronald Harbison stated that the public should view the COE's comments on the dais as somewhat improvisational since the COE members could only discuss matters at COE meetings. He added that:

- It was clear that the Code's language favored a philosophy of disclosure and recusal rather than a prohibition from serving.
- The COE would handle the lack of timely disclosures on a case-by-case basis.

VIII.a. and VIII.b. – CONTINUED

- In general, the COE may need to depart from how some situations were previously handled and ensure that any changes conform to the ethics infrastructure.

Commissioner Farach said that:

- The Code ordinance referenced in the proposed advisory opinion letters had elevated form over substance.
- It was unreasonable, illogical, and unrealistic to believe that influence would not occur by someone who participated on an advisory board and was, in effect, submitting his or her application to the advisory board on behalf of a client for financial gain.

Commissioner Harbison stated that he would amend his previous comments to concur with Commissioner Farach's statements.

ADDITIONAL PUBLIC COMMENT: Maziar Keshavar.

Mr. Johnson said that Richard Radcliffe, League of Cities (League) executive director, had informed him that the League was in contact with Shannon LaRocque-Baas, assistant County administrator, who had requested a possible voting delay on the matter until next month. He added that he believed the request would be withdrawn if the proposed advisory opinion letter was accepted.

Joannie Hamilton (phonetic), Boca Raton representative, stated that no issue existed if the COE voted on the matter today.

Mr. Johnson added that:

- Although some of the issues were becoming blurred, a different Code section applied for individuals who sat on advisory boards, and who had conflicting contracts.
 - Advisory board members or department heads could not sit on boards if they oversaw, managed, or conducted policy setting regarding the conflicting contracts.
 - Advisory board members could apply for waivers if they only sat for advisory purposes; however, sitting on governing boards was prohibited.

VIII.a. AND VIII.b. – CONTINUED

- Most advisory opinion letters dealt with customers or clients who worked with advisory board members to get approval of advisory board projects.
- The Code's misuse of office sections still applied to the referenced situations.
- Advisory opinion letters RQO 11-067 and RQO 11-076 related to the Code's voting conflict section 2-443(c), and their proposals went beyond State law, which allowed participation after disclosure.

MOTION to approve advisory opinion letter RQO 11-067. Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 5-0.

MOTION to approve advisory opinion letter RQO 11-076. Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 5-0.

Mr. Johnson stated that staff would bring back the voting conflict issue in a separately noticed meeting if another drafting committee convened to discuss whether amendments to section 2-443(c) were warranted.

Dr. Fiore expressed concern about the Code's constant revisions. She said that the COE should attempt to work with what was available rather than bringing issues that were lengthily discussed by the COE before a drafting committee.

IX. PROPOSED ADVISORY OPINIONS

IX.a. RQO 11-089

Mr. Johnson stated that the requested advisory opinion was by a State reporting individual. He requested that the item be tabled for 30 days since the information would somewhat change the opinion.

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

MOTION to table proposed advisory opinion letter RQO 11-089. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

(CLERK'S NOTE: Commissioner Reinhart rejoined the meeting.)

IX.a. – CONTINUED

Commissioner Reinhart said that he would join in tabling RQO 11-089.

MOTION now carried 5-0, the chair declared.

IX.b. RQO 11-090

Mr. Johnson stated that:

- A Town of Palm Beach Shores (PBS) public works director asked whether a prohibited conflict of interest was created if his spouse submitted a sealed bid to his government employer and was awarded a contract to provide lawn and landscape services.
- The underlying contract was supervised by the PBS manager, and the employee was not involved in the contract's bid specifications or oversight.
- Staff had recommended that:
 - Municipal employees may not use their public position to give a special financial benefit to their spouse's outside business.
 - While the Code prohibited employees or officials from contracting with the government that they served, spouses and relatives were not prohibited from contracting with their spouse's public employer, provided that the employees or officials were not owners, principals, or employees of the spouse's business and did not use their official position to benefit that business.

Commissioner Harbison said that although public employees may not be participants in a business, they may be stockholders.

Mr. Johnson responded that stockholder language could be added to the advisory opinion letter.

Judge Rodgers stated that he would not support staff's recommendation.

IX.b. – CONTINUED

Dr. Fiore stated that individuals were entitled to pursue their economic interest, and any form of prohibition or limitation reduced the ability of public employees' spouses to support themselves.

Commissioner Reinhart stated that a spousal relationship should be considered an indirect relationship, and that he concurred with Judge Rodgers.

Commissioner Farach said that a numerical test regarding financial benefit had been applied to two previous advisory opinion letters, with the COE members voting that no conflict of interest existed if the connection to a municipality was sufficiently attenuated.

Mr. Johnson said that one of the previous advisory opinion letters had involved a potential, economic benefit, which was attenuated to the individual. He added that it would be far reaching to decide that spouses or domestic partners could not do business with a municipality where their spouses or partners were employed or were officials.

MOTION to table proposed advisory opinion letter RQO 11-090 until additional facts were obtained. Motion by Bruce Reinhart.

(CLERK'S NOTE: Motion was seconded later in the meeting.)

Commissioner Harbison suggested that S & W Professional Services could be researched regarding what form of business entity it was and who the shareholders were.

Ms. Rogers said that:

- The business was not registered as a limited liability company or as any form of corporation in Florida.
- The contract had expired on September 30, 2011.
- The municipal employee had not been involved in the enforcement, oversight, administration, or any other facet of the lawn maintenance contract.
- Although not stated in RQO 11-090, the municipal employee had stipulated that he did not work for his wife's independent business.

IX.b. – CONTINUED

MOTION SECONDED by Manuel Farach, and carried 5-0.

Commissioner Reinhart requested that the additional facts include what role the contract played in the business' overall revenues and structure.

Dr. Fiore suggested that the research include whether the municipal employee and his spouse had filed a joint tax return.

Commissioner Harbison said that the tax return should be reviewed to determine whether a Schedule C was included.

Mr. Johnson stated that:

- Under the current Code, had the lawn service's proprietor filed the intent to bid with the COE and the Supervisor of Elections, the entire situation may have been exempted from section 2-443(d).
- He supported Commissioner Reinhart's suggestion of informing the proprietor that she could file an intent to bid with the COE and the Supervisor of Elections.

Judge Rodgers expressed concern about the COE being labeled as sanctioning matters. He said that it would be counterproductive to the COE's efforts to foster integrity and to promote public trust.

IX.c. RQO 11-091

Mr. Johnson stated that:

- A County employee asked whether the Code prohibited public employees from using their public email to solicit donations and gifts from other County employees on behalf of church projects.
- The County employee was a church member and not an officer or a director.
- The solicitation was mostly for in-kind toiletry contributions.

IX.c. – CONTINUED

- Staff had recommended that:
 - The Code did not prohibit public employees from soliciting donations from coworkers for nonprofit organizations unless they were officers or directors of the nonprofit organizations or unless the soliciting was done corruptly.
 - The COE should state that it could not opine as to County policy or procedure regarding the use of County resources to solicit for donations.

Dr. Fiore commented that the question of solicitation should be handled by the County employee's manager. She suggested that the third paragraph, last sentence of RQO 11-091 should read: "The COE cannot opine as to county policy or procedure regarding solicitations and the use of county resources in this manner."

MOTION to approve proposed advisory opinion letter RQO 11-091 as amended to include adding the word, solicitations, to page 1, third paragraph, last sentence, after the word, regarding. Motion by Robin Fiore, seconded by Manuel Farach, and carried 5-0.

IX.d. RQO 11-092

Mr. Johnson stated that:

- The Village of Wellington (Village) attorney had asked whether a Village council member, whose outside business provided engineering services to the County, could vote on interlocal agreements between the Village and her government client.
- Staff had submitted that:
 - Municipal officials, whose outside business or employer contracted with County government, were not prohibited from voting on contracts between their government client and the government that they served, provided that the interlocal agreement was unrelated to their business relationship with the government client, or did not otherwise give their outside business a special financial benefit.

IX.d. – CONTINUED

- Voting on interlocal agreements that may result in a special financial benefit to the municipal officer's outside employer or business would violate the Code's misuse of office provision.
- In RQO 11-092, the outside business only dealt with the County, that represented all County residents; therefore, there was no special benefit as long as the contract did not otherwise violate the Code by giving a special benefit to the outside business.
- For clarity, the words, Councilperson Gerwig, on page 2, second-to-last paragraph, last sentence, could be changed to, Councilperson Gerwig's outside business or employer.

Dr. Fiore noted that the word, you, on page 3, second paragraph, first line, should be changed to Councilperson Gerwig; and the last line should read, Councilperson Gerwig, her husband, or the firm.

Commissioner Reinhart said that the word, based, on page 3, second paragraph, first line, should not be capitalized.

MOTION to approve proposed advisory opinion letter RQO 11-092 as amended to include the changes as discussed. Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 5-0.

IX.e. RQO 11-093

Ms. Rogers stated that:

- A County-vendor employee, who was appointed by the League to a County technical and professional working group, asked whether he could continue to serve as a group member.
- The group reported to the Water Resources Task Force (WRTF). While the resolution that created the WRTF addressed the existence of a working group, it did not address its creation.
- The group could only convene at the WRTF chairman's request, and only for the limited purpose of answering technical questions.

IX.e. – CONTINUED

- Staff had submitted that:
 - The COE's jurisdiction was limited to municipal and County employees, officials, and advisory board members.
 - Although the group reported to a County advisory board rather than a municipal or County governing body, it was not an advisory board created either by the County or a municipality.
 - As a League appointee and not an appointee of the BCC or a municipality within the County, the group member who requested the letter was not considered an official, nor an advisory board member under the Code's definition; therefore, he was not subject to the Code's provisions.

Mr. Radcliffe stated that it was very difficult to find individuals with expertise who were willing to donate their time. He added that:

- The State had requested that the group work on a long-term strategy regarding the rise in sea level.
- The group member would work with the Emergency Operations Center (EOC) on post-disaster development plans.
- The group would also review future water issues and supply.
- The group's recommendations would be brought before the EOC and placed into a working plan for countywide distribution.

Dr. Fiore said that she disagreed that the group member was not considered an official under the Code's definition, and that she was unclear why the waiver process was not applied in this matter.

Ms. Rogers clarified that:

- As a County-vendor employee, the group member would be subject to vendor requirements under the Code's gift section.

IX.e. – CONTINUED

- If the group was considered an advisory board, the waiver requirement would only pertain to officials applying for that waiver.
- Since the group member was appointed by the League and not the BCC, there was no vehicle with which to apply for a waiver.

Commissioner Farach stated that for disclosure purposes, Engenuity Group, Inc., was owned by Town of Palm Beach Shores Vice Mayor Tropepe.

MOTION to approve proposed advisory opinion letter RQO 11-093. Motion by Bruce Reinhart, seconded by Ronald Harbison, and carried 4-1. Robin Fiore opposed.

IX.f. RQO 11-094

Ms. Rogers stated that:

- A City of Palm Beach Gardens (City) employee inquired whether she and her husband, who also worked for the City, could participate in fundraising efforts for Palm Beach Gardens High School's Project Graduation.
- The City employee's son, who also worked part-time for the City, planned to attend the event.
- Historically, parents of graduating seniors solicited donations from local businesses, some being City vendors.
- The City employee asked whether in a private capacity, her name could be included on a letter requesting donations from local City vendors.
- Staff had submitted that:
 - Since the son would receive a financial benefit by being able to attend Project Graduation's party, the City employee would be prohibited from soliciting City vendors for a coworker's or a relative's personal, financial benefit.

IX.f. – CONTINUED

- Public employees were not prohibited in their personal capacity from soliciting or accepting donations for their children's benefit from persons or entities who were not vendors, lobbyists, principals, or employees of lobbyists who sold, leased, or lobbied their municipalities as long as there was no quid pro quo or other benefit given for an official act or performance of their public duty, and as long as they did not use their official position or title if they or their children were eligible for that special financial benefit.
- Typically, a municipal employee could solicit on behalf of a nonprofit organization if a log of the solicited vendors or lobbyists was created.

MOTION to approve proposed advisory opinion letter RQO 11-094. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 5-0.

IX.g. RQO 11-096

Mr. Johnson stated that:

- A Town of Highland Beach (Town) finance director asked whether the current Town attorney, who resigned his position effective December 31, 2011, could meet for lunch with Town employees or officials to discuss the Request for Qualifications (RFQ) process for selecting his replacement where the current contract was with the attorney's law firm and not specifically with the Town attorney.
- Staff had submitted that:
 - Employees may not use their official position to obtain a financial benefit not shared by similarly-situated members of the general public for themselves or their outside business or employer.
 - A contract for services or a service contract renewal was a financial benefit to the applicant; therefore, a contracted Town employee with a pending application before the Town could not discuss the application with officials or employees unless all other applicants were given the same opportunity, and in the same manner, as the Town employee. The circumstances extended to an application submitted by the Town employee's outside business or employer.

IX.g. – CONTINUED

- The current Town attorney's meetings with officials would be in his official capacity to discuss the RFQ process.

MOTION to approve proposed advisory opinion letter RQO 11-096. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 5-0.

IX.h. RQO 11-097

Mr. Johnson stated that:

- A Town of Palm Beach (Palm Beach) police officer asked whether he was required to report a fellow police officer's gift of discounted tickets to a charity function valued over \$100. If required to report, he also asked whether the gift reporting requirement applied to all nonexempt gifts given during the fiscal year, but prior to the effective date of the Code.
- Staff had submitted that:
 - A municipal employee was not required to report a gift motivated by a personal friendship or a social relationship provided the gift was not given by a vendor, lobbyist, principal, or employer of a lobbyist who sold, leased, or lobbied his or her municipality.
 - The police officer who originally received the discounted tickets needed to report the gift if it valued over \$100.
 - The requirement to report gifts was procedural, meaning that it was not a substantive violation.
 - When the event was held in January 2011, the Code was not in effect for municipalities. Any gift received from vendors or lobbyists, as long as there was no State violation, would not violate the Code since matters could not be determined retroactively.
 - The Code was in force as of November 1, 2011, and as a procedural requirement, an individual was required to report all gifts.

IX.h. – CONTINUED

MOTION to approve proposed advisory opinion letter RQO 11-097. Motion by Ronald Harbison, seconded by Bruce Reinhart, and carried 5-0.

X. RULES OF PROCEDURE AMENDMENTS

X.a. Section 2.8(g)

Mr. Johnson stated that:

- Although there was no Code requirement, Rules of Procedure, subsection 2.8(g), required signatures of the COE executive director and the chairperson or co-chairperson on an advisory opinion letter.
- The Code only required that COE opinions be rendered by the COE on a timely basis, and that the opinions should be numbered, dated, and published.
- In reviewing approximately 12 entities' rules, he was unable to find any requirement of dual signatures.
- Dual signatures would create extra work.
- Advisory opinion letters showed Code compliance since the first line of each letter stated that the Palm Beach County Commission on Ethics considered the request for an advisory opinion and rendered its opinion at a public meeting held on a certain date.
- The signature at the end of each letter referred to the COE, who had made the decision.

MOTION to approve Rules of Procedure's section 2.8(g) language, as amended to read, Signature of the Executive Director or COE Staff Counsel. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 5-0.

RULES OF PROCEDURE AMENDMENTS - CONTINUED

X.b. Section 5.8

Mr. Johnson stated that

- Section 5.9 of section E in the Rules of Procedure was recently changed to reflect the revised COE ordinance requirement that in all cases, once the COE found probable cause, the matter was set for final hearing within 120 days.
- Section 5.9's language made section 5.8 irrelevant and inapplicable since it no longer depended on the respondent or the COE.
- Staff had recommended that section 5.8 be deleted in its entirety.

Commissioner Reinhart asked whether section 5.9 should be renumbered to section 5.8 or whether section 5.8 should indicate that it was voided.

Mr. Johnson responded that section 5.10 would need to be renumbered section 5.9 and section 5.9 renumbered as section 5.8 for consistency.

MOTION to approve Rules of Procedure's section E as amended to delete section 5.8's original language, and to renumber the current language in section 5.10 as section 5.9, and section 5.9 as section 5.8. Motion by Bruce Reinhart, seconded by Ronald Harbison, and carried 5-0.

XI. EXECUTIVE DIRECTOR COMMENTS

XI.a.

DISCUSSED: Ethics Awareness Day.

Mr. Johnson commented that the COE was gearing up for Ethics Awareness Day on November 18, 2011. He added that the COE was looking forward to Dr. Fiore's keynote address, and that he was very proud of the COE members.

EXECUTIVE DIRECTOR COMMENTS - CONTINUED

XI.b.

DISCUSSED: Office of Inspector General Accreditation.

Commissioner Harbison stated that IG Steckler had been informed that the Office of Inspector General would be receiving its accreditation, and that it would be announced in several weeks.

XI.c.

DISCUSSED: Next COE Meeting.

Gina Levesque, COE executive assistant, stated that the COE's **December meeting** was rescheduled to **Wednesday, November 30, 2011**.

XII. PUBLIC COMMENTS – None

XIII. Page 4-5

XIV. ADJOURNMENT

At 5:01 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

Negotiated Settlement

In Re: Conrad Saddler

Case No.: C11-017

Pursuant To section 2-260(d) of the Palm Beach County Commission on Ethics ordinance, the Commission *may enter into such stipulations and settlements as it finds to be just and in the best interest of the citizens of the county*. Commission on Ethics Rules of Procedure 6.16 permits the COE Advocate to enter into settlement negotiations and present proposed agreements to the Commission for consideration and approval. Advocate and Respondent do hereby submit the following settlement agreement in the above captioned matter based upon the following terms and conditions:

1. Respondent, Conrad Saddler, believes it to be in his best interest to avoid the expense and time of litigation in this matter and desires to resolve the issues contained in the probable cause finding by the Commission. Accordingly, Respondent agrees not to contest the allegations contained in the complaint.
2. Pursuant to this Proposed Settlement Agreement, the Commission on Ethics agrees to waive the \$500 fine prescribed under section 2-448(b) of the Palm Beach County Code of Ethics and to issue a Letter of Reprimand.
3. Respondent understands and agrees to abide by the decision of the Commission regarding its finding, required pursuant to section 2-260.1(g) of the Commission on Ethics ordinance, as to whether this violation was intentional or unintentional.
4. This Proposed Settlement Agreement, consisting of two (2) pages, embodies the entire agreement of the parties respecting the subject matter herein. There are no promises, terms, conditions or obligations other than those contained in this Proposed Settlement Agreement.
5. This Proposed Settlement Agreement supersedes any and all previous communications, representations, and offers, either verbal or written, between the Advocate and Respondent. By signing this document, Respondent acknowledges that he is doing so freely, voluntarily and without duress; that he is competent to enter this agreement; that he has reviewed this Proposed Settlement Agreement with his attorney; and that he has fully and completely read and understands the terms and conditions herein.
6. Advocate and Respondent agree that settlement of his action in the manner described above is just and in the best interest of the Respondent and the citizens of Palm Beach County.
7. Evidence of this offer of compromise and settlement is inadmissible to prove any of the allegations alleged.
8. Respondent understands and agrees that **NO OFFER IS FINAL UNTIL ACCEPTED BY THE COMMISSION ON ETHICS.**

Advocate

Date

Respondent

Date

Respondent's Representative
(If represented by counsel)

Date

Public Report and Final Order

COMPLAINANT, Alan S. Johnson, Executive Director of the Commission on Ethics, filed the above referenced COMPLAINT on August 26, 2011, alleging that the RESPONDENT, Conrad Saddler, misused his public position by printing and distributing a National Association of Pretrial Services (NAPSA) certification examination to other public employees who had not yet taken the examination.

Pursuant to Chapter 2, Article V, Division 8, Section 2-258(a)¹ of the Palm Beach County Code of Ethics, the Commission on Ethics is empowered to enforce the county code of ethics.

Pursuant to Chapter 8, Article XIII, Section 2-443(b) *Corrupt misuse of official position. An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.*

On August 26, 2011, the COMPLAINT was determined by staff to be LEGALLY SUFFICIENT. On October 6, 2011, in executive session, the COMMISSION ON ETHICS (COE) found PROBABLE CAUSE to believe a violation had occurred and set the matter for final hearing. On November 30, 2011, the RESPONDENT and ADVOCATE submitted a NEGOTIATED SETTLEMENT to the COE for approval. RESPONDENT stipulates to the facts and circumstances as contained in the aforementioned PROBABLE CAUSE determination.

¹ Article V, Division 8, section 2-258(a). *Powers and Duties.* The commission on ethics shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The commission on ethics shall be empowered to review, interpret, render advisory opinions and enforce the:

- (1) Countywide Code of Ethics;
- (2) County Post-employment Ordinance; and
- (3) County Lobbyist Registration Ordinance

According to the NEGOTIATED SETTLEMENT, RESPONDENT agrees not to contest the allegations contained in the COMPLAINT and the finding of this commission that he violated of §2-443(b) of the Code of Ethics and agrees to accept a LETTER OF REPRIMAND. Pursuant to The Commission on Ethics Ordinance §2-260.1 *Public hearing procedures*, the commission finds that the violation was intentional/unintentional. The ethics commission did not assess a fine; however, RESPONDENT has been issued a LETTER OF REPRIMAND.

Therefore it is:

ORDERED AND ADJUDGED THAT this matter is concluded upon acceptance of a LETTER OF REPRIMAND.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on November 30, 2011.

Palm Beach County Commission on Ethics

By: _____

Edward Rodgers, Chair

PROPOSED

November 30, 2011

Mr. Conrad Saddler, Pretrial Counselor
Palm Beach County Justice Services & Victim Services
3228 Gun Club Road
West Palm Beach, FL 33406

Re: Complaint No. C11-017
Letter of Reprimand

Dear Mr. Saddler,

When the Commission on Ethics met in executive session on October 6, 2011, it found that probable cause existed to believe that you had violated the Code of Ethics, particularly §2-443(b), using your official position, by printing out and distributing a National Association of Pretrial Services Agencies (NAPSA) certification examination, to benefit other Pretrial Services employees who had not yet taken the examination. On November 30, 2011, you agreed not to contest the allegations that you violated §2-443(b) of the Code of Ethics entitled, "Corrupt misuse of official position." The settlement agreement in this case provides for you to accept this public reprimand.

Article XIII, § 2-443(b) Corrupt misuse of official position provides:

An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

The facts are as follows:

You are employed by the Palm Beach County Pretrial Services Department. Seventeen employees within your department were scheduled to take an examination given by NAPSA to become certified in the area of Pretrial Services. You were assigned to coordinate the examination and preparation of employees. The exam was to be administered on one of three dates; June 21, 23 and 25, 2011. This test was paid for by the County, at a cost of \$110 per employee for each of the seventeen (17) employees who sat for the examination, for a total cost of \$1,870. The successful completion of this examination would lead to the employee being awarded NAPSA Certification as a Pretrial Services Professional. NAPSA had given each test taker instructions that although the test was an "open book" examination (study materials had been provided through the NAPSA website), they were prohibited from receiving

assistance from anyone in taking the computer based examination. At the conclusion of the examination each test taker certified that they had not received such assistance. NAPSA provided over 1000 pages of study materials, however, there were no practice tests or copies of old examinations provided as reference material by NAPSA.

You took the certification examination on Tuesday, June 21, 2011. While taking this test, you printed out copies and attached information that you believed constituted correct answers to the test. There was no accessibility given by NAPSA to print the test as a whole document, however, you were able to print the individual pages by printing each screen separately. You then distributed copies of this document to the PTS Director, supervisors, and several employees, with the knowledge that PTS employees were scheduled to take the certification examination later in the week. Obtaining this information gave an advantage to employees who had not yet taken the examination.

Your actions constituted a violation of the Code of Ethics.

The Commission on Ethics is of the strong belief that all public employees and officials are responsible for making sure their actions fully comply with the law and are above reproach. As a public employee, you are an agent of the people and hold your position for the benefit of the public. The people's confidence in their government is eroded when they perceive that official actions may be based upon private goals rather than the public welfare. Violations of the Code of Ethics contribute to the erosion of public confidence and confirm the opinion of those who believe the worst about public officials.

You are hereby admonished and urged to make the respect of the people in their government your foremost concern in your future actions.

Sincerely,

Edward Rodgers,
Chairman

Copies to: John Cleary, Advocate
Dominique T. Marsh, Esquire

ER/gal

Negotiated Settlement

In Re: Debbie Crow /

Case No.: C11-018

Pursuant To section 2-260(d) of the Palm Beach County Commission on Ethics ordinance, the Commission *may enter into such stipulations and settlements as it finds to be just and in the best interest of the citizens of the county*. Commission on Ethics Rules of Procedure 6.16 permits the COE Advocate to enter into settlement negotiations and present proposed agreements to the Commission for consideration and approval. Advocate and Respondent do hereby submit the following settlement agreement in the above captioned matter based upon the following terms and conditions:

1. Respondent, Debbie Crow, believes it to be in her best interest to avoid the expense and time of litigation in this matter and desires to resolve the issues contained in the probable cause finding by the Commission. Accordingly, Respondent admits to the allegations contained in the complaint.
2. Pursuant to this Proposed Settlement Agreement, the Commission on Ethics agrees to waive the \$500 fine prescribed under section 2-448(b) of the Palm Beach County Code of Ethics and to issue a Letter of Reprimand.
3. Respondent understands and agrees to abide by the decision of the Commission regarding its finding, required pursuant to section 2-260.1(g) of the Commission on Ethics ordinance, as to whether this violation was intentional or unintentional.
4. This Proposed Settlement Agreement embodies the entire agreement of the parties respecting the subject matter herein. There are no promises, terms, conditions or obligations other than those contained in this Proposed Settlement Agreement.
5. This Proposed Settlement Agreement supersedes any and all previous communications, representations, and offers, either verbal or written, between the Advocate and Respondent. By signing this document, Respondent acknowledges that she is doing so freely, voluntarily and without duress; that she is competent to enter this agreement; that she has reviewed this Proposed Settlement Agreement with her attorney; and that she has fully and completely read and understands the terms and conditions herein.
6. Advocate and Respondent agree that settlement of his action in the manner described above is just and in the best interest of the Respondent and the citizens of Palm Beach County.
7. Evidence of this offer of compromise and settlement is inadmissible to prove any of the allegations alleged.
8. Respondent understands and agrees that **NO OFFER IS FINAL UNTIL ACCEPTED BY THE COMMISSION ON ETHICS.**

Advocate

Date

Respondent

Date

Respondent's Representative
(If represented by counsel)

Date

Public Report and Final Order

COMPLAINANT, Alan S. Johnson, Executive Director of the Commission on Ethics, filed the above referenced COMPLAINT on August 26, 2011, alleging that the RESPONDENT, Debbie Crow, misused her public position by copying, personally using and distributing a National Association of Pretrial Services (NAPSA) certification examination to other public employees who had not yet taken the examination.

Pursuant to Chapter 2, Article V, Division 8, Section 2-258(a)¹ of the Palm Beach County Code of Ethics, the Commission on Ethics is empowered to enforce the county code of ethics.

Pursuant to Chapter 8, Article XIII, Section 2-443(b) *Corrupt misuse of official position. An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.*

On August 26, 2011, the COMPLAINT was determined by staff to be LEGALLY SUFFICIENT. On October 6, 2011, in executive session, the COMMISSION ON ETHICS (COE) found PROBABLE CAUSE to believe a violation had occurred and set the matter for final hearing. On November 30, 2011, the RESPONDENT and ADVOCATE submitted a NEGOTIATED SETTLEMENT to the COE for approval. RESPONDENT stipulates to the facts and circumstances as contained in the aforementioned PROBABLE CAUSE determination.

¹ Article V, Division 8, section 2-258(a). *Powers and Duties.* The commission on ethics shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The commission on ethics shall be empowered to review, interpret, render advisory opinions and enforce the:

- (1) Countywide Code of Ethics;
- (2) County Post-employment Ordinance; and
- (3) County Lobbyist Registration Ordinance

According to the NEGOTIATED SETTLEMENT, RESPONDENT admits to the allegations contained in the COMPLAINT that she violated of §2-443(b) of the Code of Ethics and agrees to accept a LETTER OF REPRIMAND. Pursuant to The Commission on Ethics Ordinance §2-260.1 *Public hearing procedures*, the commission finds that the violation was intentional/unintentional. The ethics commission did not assess a fine; however, RESPONDENT has been issued a LETTER OF REPRIMAND.

Therefore it is:

ORDERED AND ADJUDGED THAT this matter is concluded upon acceptance of a LETTER OF REPRIMAND.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on November 30, 2011.

Palm Beach County Commission on Ethics

By:

Edward Rodgers, Chair

PROPOSED

November 30, 2011

Ms. Debbie Crow, Pretrial Counselor
Palm Beach County Justice Services & Victim Services
205 North Dixie Highway
West Palm Beach, FL 33401

Re: Complaint No. C11-018
Letter of Reprimand

Dear Ms. Crow:

When the Commission on Ethics met in executive session on October 6, 2011, it found that probable cause existed to believe that you had violated the Code of Ethics, particularly §2-443(b), by using your official position to copy, distribute and use a National Association of Pretrial Services Agencies (NAPSA) certification examination, to benefit other Pretrial Services employees who had not yet taken the examination. On November 30, 2011, you admitted to violating §2-443(b) of the Code of Ethics entitled, "Corrupt Misuse of Official Position." The settlement agreement in this case provides for you to accept this public reprimand.

Article XIII, §2-443(b) Corrupt misuse of official position provides:

An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

The facts are as follows:

You are employed as a supervisor by the Palm Beach County Pretrial Services Department. Seventeen employees within PTS were scheduled to take an examination given by NAPSA to become certified in the area of Pretrial Services. The exam was to be administered on one of three dates; June 21, 23 and 25, 2011. This test was paid for by the County, at a cost of \$110 per employee for each of the seventeen (17) employees who sat for the examination, for a total cost of \$1,870. The successful completion of this examination would lead to the employees being awarded NAPSA Certification as Pretrial Services Professionals. NAPSA gave each test taker (including yourself) instructions that you were prohibited from receiving assistance from anyone in taking the computer based examination, notwithstanding that the test was an "open book" examination (study materials had been provided through the NAPSA

website). At the conclusion of the examination, you certified that you had not received any such assistance. NAPSA provided over 1000 pages of study materials, however, there were no practice tests or copies of old examinations provided as reference material by NAPSA. You took an active role in preparing employees within your office for the examination.

Conrad Saddler, a PTS employee and “point person” for the coordination of the exam, took the certification examination on Tuesday, June 21, 2011. While taking this test, he printed out copies and attached information that he believed constituted correct answers to the test. There was no accessibility given by NAPSA to print the test as a whole document, however, he was able to print the individual pages by printing each screen separately. He then distributed copies of this document to you. Upon receiving a faxed copy of these materials from Conrad Saddler, and being aware that the document was a copy of a completed test, you made additional copies of this information and distributed them to several of your subordinates at the PTS Main Courthouse location. You then used this material with your employees in a study session, knowing that you and your employees had not yet taken the examination. This information gave you and your employees an advantage over those who had taken the test on June 21st. At least one of your employees refused to use this material. The same examination was given on June 23rd and 25th. You personally sat for the examination on June 23rd.

Your actions constituted a violation of the Code of Ethics.

The Commission on Ethics is of the strong belief that all public employees and officials are responsible for making sure their actions fully comply with the law and are above reproach. As a public employee, you are an agent of the people and hold your position for the benefit of the public. The people’s confidence in their government is eroded when they perceive that official actions may be based upon private goals rather than the public welfare. Violations of the Code of Ethics contribute to the erosion of public confidence and confirm the opinion of those who believe the worst about public officials.

You are hereby admonished and urged to make the respect of the people in their government your foremost concern in your future actions.

Sincerely,

Edward Rodgers,
Chairman

Copies to: John Cleary, Advocate
Tara A. Finnigan, Esquire

ER/gal

ITEM VI – Synopsis – Processed Advisory Opinions

RQO 11-102 Ruth Moguilansky

A county department held a fundraiser event involving a “silent auction” in support of a local charity. Auction items were donated by local businesses. A County employee asked whether she was required to file a gift disclosure form with the Commission on Ethics, to report acceptance of a “sunset cruise” gift certificate valued at \$100, for which she paid \$55 in the silent auction.

The Code of Ethics requires public employees who are non-state reporting individuals to file an annual gift disclosure report with the Commission on Ethics if they have received a gift valued at greater than \$100 during the fiscal calendar year. In this scenario, the gift certificate was valued at exactly \$100, and therefore would not require disclosure. Further, by paying \$55 for the gift certificate in a silent auction the net value of the gift is \$45, well below the value that would trigger the Code’s disclosure requirement.

RQO 11-108 Elizabeth Kennelly

A law firm, co-sponsoring a publically-ticketed luncheon with the Delray Beach Chamber of Commerce asked if the firm could give tickets to public officials and employees valued at \$20, without violating the Palm Beach County Code of Ethics, and if so, is the firm required to fill out gift or lobbying forms.

Staff submits the following for COE approval: provided the total value of the tickets given to any individual public employee does not exceed \$100 and further, that the gift is not in exchange for the past, present or future performance or non-performance of a public action or legal duty, the code does not prohibit the gift. Further, lobbying expenses pertaining to county government must be disclosed on annual lobbying expenditure reports.

RQO 11-109 Joe Sherpitis

A county employee asked whether the Palm Beach County Code of Ethics affects the county sponsored United Way Campaign. This county sponsored program provides an internal voluntary means whereby employees can give charitable donations through payroll deduction. As an internal program sponsored by the county, county resources are used for dissemination of information and processing donations through payroll. The program is wholly administered by county personnel and does not solicit or accept donations from vendors or lobbyists of the county. The United Way is not involved in the program other than to make itself available as a charitable conduit in partnership with the county. No county official or employee is an officer or director of the United Way.

The United Way Campaign is a county sponsored program that enables employees to voluntarily give to charitable organizations via payroll deductions. It is an employee only program and does not solicit or accept donations from vendors, lobbyists, principals or employers of lobbyists who do business with Palm Beach County. Approximately 60% of county employees participate in the program. There is no quid pro quo or other inducement offered in exchange for contributions, nor is pressure used to obtain contributions. The use of public resources is an internal policy issue and does not involve the ethics code. As a voluntary employee program, the United Way Campaign is not prohibited under the code.



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

November 22, 2011

Ruth C. Moguillansky
2300 N. Jog Road, Suite 2E-48
West Palm Beach, FL 33411-2741

Re: RQO 11-102
Gift Law/ Valuation

Dear Ms. Moguillansky,

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

YOU ASKED in your email dated November 10, 2011, whether you are required to file a gift disclosure form with the Commission on Ethics (COE), to report your acceptance of a "sunset cruise" gift certificate valued at \$100, for which you paid \$55 in a silent auction. Additional information was obtained by COE staff via email.

IN SUM, the Code of Ethics requires public employees who are non-state reporting individuals to file an annual gift disclosure report with the Commission on Ethics if they have received a gift valued at greater than \$100 during the fiscal calendar year. Based on the information you provided, the gift certificate you received is valued at exactly \$100, and therefore would not require disclosure. Further, by paying \$55 for the gift certificate in a silent auction, the net value of the gift to you is \$45, well below the value that would trigger the Code's disclosure requirement.

THE FACTS as we understand them are as follows:

You are a Palm Beach County employee, and thus subject to the Palm Beach County Code of Ethics. On November 10, 2011, the PBC Planning, Zoning and Building department held a fundraiser event involving a "silent auction" in support of the United Way Charities. Supporters offered written "bids" for each of several donated gifts, and the highest bid was awarded the donated prize. A company known as Tropical Sailing, donated a gift certificate for a "sunset cruise" to this event which you advise was valued at \$100. You were given the gift certificate after submitting a winning bid of \$55. This gift certificate was donated by Tropical Sailing for the purpose of supporting the United Ways Charities, and not in exchange for any public act or legal duty performed by you as the final recipient of the gift.

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

Sec. 2-444. Gift law.

- (e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:
- (1) An official public action taken or to be taken, or which could be taken;
 - (2) A legal duty performed or to be performed or which could be performed; or
 - (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

- (f) Gift reports. Any official or employee who *receives a gift in excess of one hundred dollars (\$100) shall report that gift* in accordance with this section. (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)

The "cash value" of the donated gift certificate is \$100. While you paid \$55 for the gift, this would not be considered to be "adequate consideration" for a gift valued at \$100. Therefore, the net value of the gift is the value of the gift (\$100) minus the consideration you paid for the gift (\$55), for a net gift value to you of \$45.¹ This amount is below the reporting threshold under the Code of Ethics, thus no disclosure related to this gift need be made.

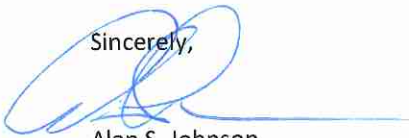
Further, because the gift certificate was distributed via a silent auction, it is unlikely that the gift was donated or accepted for any past, present or future performance of a legal duty, or as the result of any official action in violation of any of the above provisions of §2-444(e), since the donor could not have known who would be the final recipient of this gift.

IN SUMMARY, because the net value of the gift certificate you received in the charity silent auction was not greater than \$100, you are not required to file a gift disclosure form for receipt of this gift. Keep in mind that no gift of any value may be either given or accepted for any past, present or future performance of a legal duty, or as the result of any official action.

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,
Commission on Ethics

ASJ/meb/gal

¹ Section 112.3148(7), Florida Statutes, and Section 34-13.310, Florida Administrative Code, list the procedures to determine the "net value" of a gift.



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

November 23, 2011

Elizabeth Kennelly, Legal Assistant
Weiner & Lynne, P.A.
10 SE 1st Avenue, Suite C
Delray Beach, FL 33444

Re: RQO 11-108
Gift/Public Ticketed Event

Dear Ms. Kennelly,

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

YOU ASKED whether your firm, a co-sponsor of a public ticketed luncheon event with the Delray Beach Chamber of Commerce, may give tickets to public employees and officials valued at \$20, without violating the Palm Beach County Code of Ethics, and if so, does your firm have an obligation to fill out gift or lobbying forms.

IN SUM, provided the total value of the tickets given to any individual public employee does not exceed \$100 and further, that the gift is not in exchange for the past, present or future performance or non-performance of a public action or legal duty, the code does not prohibit the gift.

THE FACTS as we understand them are as follows:

Weiner & Lynne, P.A. (the Firm) is sponsoring a luncheon event with the Delray Beach Chamber of Commerce. As co-sponsors, you plan to distribute a number of tickets to invited guests. Some of the guests will be public employees and officials, including Delray Beach and Palm Beach County. The event is open to the public and the ticketed price is \$20 per person and the cost of the luncheon will not exceed the ticketed price. Members of your firm are registered as lobbyists within the county. As lobbyists, you are subject to Code of Ethics gift law regulations.

The purpose of the luncheon is to discuss the upcoming Florida legislative session. Attendees have either purchased their ticket or have been individually invited as a guest. The value of the tickets given away per person will not exceed \$100. The tickets are not being offered as a quid pro quo or in exchange for the performance or non-performance of a public act or legal duty.

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

Section 2-444(a)(1) prohibits an elected official or public employee from accepting gifts with a value, annually in the aggregate, in excess of \$100, from a vendor or lobbyist who lobbies, sells or leases to the official or employee's public employer. In addition, §2-444(b)(1) prohibits a lobbyist or vendor from giving such a gift to someone they know is a public official or employee of a government entity with which they vend or lobby.

Section 2-444(e) prohibits the giving or accepting a gift because of an official public action, performance, non-performance or violation of a legal duty.

Gifts that do not exceed \$100 in value are not prohibited by the code unless given as a quid pro quo for official action. The cost of your event does not exceed \$20 per person and no individual will receive tickets of a value in excess of \$100. The luncheon is informational and you advise that there is no exchange based upon performance, non-performance or violation of a public act or legal duty.

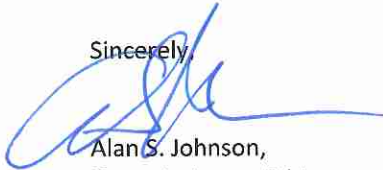
The County Lobbyist Registration ordinance, §2-353(d), requires lobbying expenditures in excess of \$25 to be reported on an annual lobbyist expenditure report.¹

IN SUMMARY, based upon the facts and circumstances you have submitted, the Palm Beach County Code of Ethics does not prohibit you from giving luncheon tickets of a value of \$100 or less to public officials or employees.

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,
Commission on Ethics

ASJ/gal

¹ At the time of this opinion, the Lobbyist Registration Ordinance applies only to Palm Beach County Government. A county-wide ordinance has been drafted by the County and League of Cities which is scheduled for consideration by the Board of County Commissioners in December, 2011.



Palm Beach County Commission on Ethics

Commissioners

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

Executive Director

Alan S. Johnson

November 23, 2011

Joe Sherpitis, Assistant Deputy of Inspections
Planning Zoning and Building
2300 North Jog Road
West Palm Beach, FL 33411

Re: RQO 11-109
Fundraising/United Way Campaign

Dear Mr. Sherpitis,

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

YOU ASKED in your email dated November 18, 2011, whether the Palm Beach County Code of Ethics affected the county sponsored United Way Campaign. Additional information was obtained from assistant county administrators Brad Merriman and Vince Bonvento

IN SUM, the United Way Campaign is a county sponsored program that enables employees to voluntarily give to charitable organizations via payroll deductions. It is an employee only program and does not solicit or accept donations from vendors, lobbyists, principals or employers of lobbyists who do business with Palm Beach County. Approximately 60% of county employees participate in the program. There is no quid pro quo or other inducement offered in exchange for contributions, nor is pressure used to obtain contributions. The use of public resources is an internal policy issue and does not involve the ethics code. As a voluntary employee program, the United Way Campaign is not prohibited under the code.

THE FACTS as we understand them are as follows:

You are a Palm Beach County employee and support the United Way Campaign program. This county sponsored program provides an internal voluntary means whereby employees can give charitable donations through payroll deduction. As an internal program sponsored by the county, county resources are used for dissemination of information and processing donations through payroll. The program is wholly administered by county personnel and does not solicit or accept donations from vendors or lobbyists of the county. The United Way is not involved in the program other than to make itself available as a charitable conduit in partnership with the county. No county official or employee is an officer or director of the United Way.

A number of county employees are concerned that the Code of Ethics will impact their ability to contribute to charitable causes through this payroll deduction program, specifically the section which prohibits the use of public resources for charitable fundraising.

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

Provided that there is no quid pro quo or other benefit offered in exchange for charitable donations, and donations are not solicited or accepted from vendors, lobbyists, principals or employers of lobbyists who lobby, lease or sell to the county, the gift law does not prohibit or otherwise limit charitable fundraising.¹

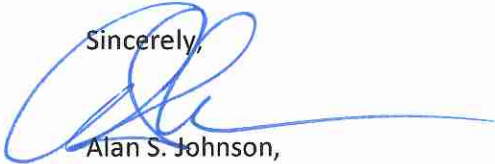
Charitable fundraising from vendors and lobbyists is limited by the gift law prohibition limiting solicitations and donations to \$100, annually in the aggregate, unless a log is maintained in accordance with the code exception for charitable donations.² This exception prohibits the use of government resources.³ The restriction only applies to vendor/lobbyist solicitation and donations otherwise prohibited by the code. Since the United Way Campaign is employee only, use of government resources such as email, phones and employee hours is controlled by county policy and procedure, not the Code of Ethics.

IN SUMMARY, the Palm Beach County Code of Ethics does not prohibit county facilitated employee fundraising as provided by the United Way Campaign. Donations are from county employees and elected officials only. There is no coercion, benefit of quid pro quo offered in exchange for donations, and the program is sponsored and coordinated by county staff. No vendors or lobbyists are solicited, nor are such donations accepted, therefore, the use of public resources is controlled by county policy and procedure.

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,
Commission on Ethics

ASJ/gal

¹ §2-444(e), §2-444(a)

² §2-444(h)

³ §2-444(h)(3)

ITEM VIII – HOLIDAY GIFTS

Staff Analysis:

RQO 11-103 asks the following questions regarding winter holiday gift giving:

1. May employees exchange holiday gifts?
2. May employees accept shared food items such as fruit baskets, candy or baked goods?
3. May employees accept individual holiday gifts which are placed in a pool to be randomly raffled at the end of the holiday season?
4. May Town sanitation workers accept holiday gifts of cash as a general expression of appreciation where such gifts are not tied to a specific task or trash pick-up?

First, the code does not prohibit the exchange of gifts between employees provided there is not an official quid pro quo or benefit given. Any gift in excess of \$100, not exempted under the code, must be reported as required.

Shared food items that are not given in exchange for an official act or a legal duty performed are likewise not prohibited unless the gift is from a vendor or lobbyist and the individual valuation exceeds \$100. The prohibition against accepting anything of value in exchange for the performance of an official act or legal duty is written as singular. The issue is whether a gift traditionally given for a holiday occasion and not tied to a particular action or duty is prohibited under the code.

Section 2-444 states as follows:

- (e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:
 - (1) An official public action taken or to be taken, or which could be taken;
 - (2) A legal duty performed or to be performed or which could be performed; or
 - (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

The applicability of the code provisions regarding food gifts applies equally to individual gifts given to officials or employees.

An official or employee may not accept a gift from a lobbyist or vendor of the Town if the value of the gift or gifts exceed \$100 annually, in the aggregate. No official or employee may knowingly solicit anything of value from a vendor or lobbyist where the gift is for his or her benefit, the benefit of a relative or household member, or the benefit of a fellow official or employee.

Each governmental entity may adopt more restrictive rules regarding the giving and receiving of gifts, notwithstanding the applicability of the countywide Code of Ethics. For example, the Town does not permit individual gifts from the community and requires any such gift be immediately forwarded to the Town Manager's office to be included in a general employee holiday raffle.

Lastly, holiday gifts of cash to sanitation workers are governed by the same sections of the code as individual gifts to employees of other departments. If the gift is not a prohibited gift from a vendor or lobbyist, is not improperly solicited and is not given in exchange for the performance of an official act or a legal duty, it is not prohibited. The question then becomes whether any gift to sanitation workers is per se given because of the performance of an

official act or legal duty, regardless of whether or not such a gift is tied to a particular act. Clearly, it would violate the code if the facts and circumstances show a gift is given to influence future action. However, unlike a random gift given at a random time, where the gift is one of general appreciation, given in a manner consistent with the common practice of seasonal gift giving for workers who provide a personal service during the course of the year, such a motive does not readily attach without some additional indicia of corruption.

Staff Recommendation:

Staff recommends the COE accept RQO 11-103 as follows:

1. Holiday gifts of a value in excess of \$100 may not be accepted from vendors, lobbyists, principals or employers of lobbyists who lobby, sell or lease to the Town. No official or employee may knowingly solicit anything of value from a vendor or lobbyist where the gift is for his or her benefit, the benefit of a relative or household member, or the benefit of a fellow official or employee.
2. Gifts exchanged between employees are not prohibited, provided there is no official quid pro quo involved.
3. Gifts of food or other items received from residents of the town during the holiday season cannot be accepted if given because of the past, present or future performance of a public act or legal duty. Gifts donated to the town and distributed via a "blind raffle" are not prohibited, provided the gift is not given by a vendor or lobbyist if valued in excess of \$100.
4. A holiday gift of cash to sanitation employees is not prohibited provided it is not given in exchange for the past, present or future performance of an official act or a legal duty.
5. Lastly, a gift that is not otherwise prohibited must be reported if valued in excess of \$100. The value of a gift of food is determined by the total value of the gift divided by the number of employees who share in the gift.

Item VIII – Synopsis – Holiday Gifts

RQO 11-103 Peter Elwell

A Town Manager asked whether the following was permissible under the gift law provisions of the Palm Beach County Code of Ethics;

1. May employees exchange holiday gifts?
2. May employees accept shared food items such as fruit baskets, candy or baked goods?
3. May employees accept individual holiday gifts placed in a pool to be randomly raffled at the end of the holiday season
4. May Town sanitation workers accept holiday gifts of cash as a general expression of appreciation where such gifts are not tie to a specific task or trash pickup?

Staff submits the following for COE approval: holiday gifts valued in excess of \$100 may not be accepted from vendors, lobbyists, principals or employers of lobbyists who lobby, sell or lease to the Town. However, depending on the facts and circumstances, a general holiday gift, not tied to a public act or duty, is not prohibited under the code. A public employee or official may not *solicit* anything of value from a vendor or lobbyist where the gift is for his or her personal benefit, or the benefit of another official or employee, or any relative or household member of the official or employee.

Employee to Employee Gifts

Gifts of any value are prohibited under §2-444(e) if given for the past, present or future performance of a public act or duty. Gifts exchanged between employees are not prohibited, provided there is no official quid pro quo involved.

Employee Fruit Baskets, Candy or Baked Goods

Holiday gifts of food that are not given to an individual employee as a “thank you” gift in exchange for a specific service, public action or legal duty performed or violated are not prohibited. For gift reporting purposes, the individual value of a gift of food is the total value divided by the number of persons sharing the gift. If the individual share exceeds \$100, the gift must be reported by the employees. If the gift basket is provided by a vendor or lobbyist of the town, employees must take great care not to accept a prohibited gift of a value in excess of \$100.

Individual Holiday Gift Raffle

A blind raffle of donated gifts and conducted by the town is not prohibited under the code, provided the donor is not a vendor or lobbyist of the Town, and there is no quid pro quo or other special consideration given to the donor in exchange for the donated gift. Any gift that is not otherwise prohibited or exempted by the code, valued in excess of \$100, must be reported as required.

Sanitation Holiday Gifts

Unsolicited holiday gifts to sanitation workers that are not connected to a specific official action, but rather, are given as a general expression of appreciation, are not prohibited. Sanitation workers are unique among government employees and have traditionally been allowed such gifts. Previously, this commission interpreted §2-444(e) not to apply to wait staff or municipal golf personnel where tips and gratuities were contemplated in the public employees compensation package as is standard practice in the industry. Similarly, holiday gifts of a voluntary nature are not uncommon in regard to regular home

service providers. This standard does not run afoul of the code as long as the holiday gift is not in exchange for a specific act, or given in anticipation of future action.

RQO 11-110 Mo Thornton

A City Manager asked whether it violates the Palm Beach County Code of Ethics for the City to solicit monetary donations from residents for an "Employee Holiday Fund," where the funds are later distributed equally to each employee of the City.

Staff submits the following for COE approval: the Code of Ethics does not prohibit the distribution of funds donated by residents of the City to its employees as a holiday gift, providing that if the distribution amounts to more than \$100 per employee, no funds are solicited or accepted into this fund from any vendor or lobbyist of the City. The funds collected may not be given for the past, present or future performance of a legal duty, or as the result of any official action taken by the City or any employee. If the individual employee share exceeds \$100, the gift must be reported as required by the Code.

RQO 11-100 John Fenn Foster (for review from consent agenda)

A Town attorney that contracts with a municipality to provide legal services asked whether his firm may provide holiday gifts to council-members and staff of the municipality provided the gifts are valued at less than \$100.

So long as the gifts are not given as a quid pro quo for an official public action or a legal duty performed or violated by a public employee or official and the value of the gift is not more than \$100, the Code of Ethics does not prohibit the giving of such a gift even if the donor is a vendor, lobbyist, principal or employer of a lobbyist who sells, leases or lobbies the employee or official's public employer.



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

November 14, 2011

John Fenn Foster, Esq.
FOSTER & FUCHS, P.A.
Greenway Professional Center
4425 Military Trail, Suite 109
Jupiter, FL 33458

Re: RQO 11-100
Gift Law

Dear Mr. Foster:

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

YOU ASKED, in your email of 11/07/2011, whether an officer/shareholder of a private law firm who serves as an attorney for a municipality may provide holiday gifts to council-members and staff of the municipality provided the gifts are valued at less than \$100.

IN SUM, provided the gifts are not given as a *quid pro quo* for an official public action or a legal duty performed or violated by a public employee or official, and the value of the gift is not more than \$100, the Code of Ethics does not prohibit the giving of such a gift, even if the donor is a vendor, lobbyist, principal or employer of a lobbyist who sells, leases or lobbies the employee or official's public employer.

THE FACTS as we understand them are as follows:

You are an officer/shareholder in the law firm of Foster and Fuchs, P.A. Your firm serves as the Town Attorney for the Town of Haverhill (the Town). As the attorney for the Town, you provide routine general legal services. You and your firm would like to give holiday gifts to the Town Council members and municipal staff. The gifts to each person are valued at less than \$100.

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

The definition of *Official or employee* includes "...contract personnel and contract administrators performing a government function..."¹ A vendor is defined as "any person or entity who...currently sells goods or services...to the county or municipality involved in the subject contract or transaction as

¹ §2-442 Definitions. Official or employee

applicable.”² A question arises as to whether you are a contract employee, a vendor, or both in relation to the Town.

The Gift Law prohibits a public official or employee from knowingly accepting any gift with a value of greater than \$100 annually, in the aggregate, from someone they know, or reasonably should know is a vendor or lobbyist of their public employer.³ Likewise, a vendor, lobbyist, employer or principal of a lobbyist may not knowingly give any gift with a value greater than \$100 to a person they know is a public employee or official when they do business with his or her public employer.⁴ There is no prohibition under these sections for a vendor, lobbyist, principal or employer of a lobbyist from giving a gift of \$100 or less.

However, no gift, regardless of value, may be given to a public official or employee, because of:

- (1) An official public action taken or to be taken, or which could be taken;
- (2) A legal duty performed or to be performed or which could be performed; or
- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

In other words, nothing of value may be given as a quid pro quo or in gratitude to a public employee or official in anticipation, or as a result, of an official act or duty performed or violated. This commission has previously opined as to gratuities given for the performance of a public act or legal duty.⁵ Such a gratuity or “thank you” gift is prohibited under the code. However, gifts of a value of \$100 or less that are not tied to a public act or legal duty are not prohibited. We cannot opine as to any Town rules or procedures that may apply to holiday gifts.

Since the value of the gift is not more than \$100, annually in the aggregate, we need not examine the relationship between your firm and the Town as vendor or contract employee.

IN SUMMARY, you are not prohibited from giving holiday gifts valued at less than \$100 to public officials and employees, unrelated to any official act or duty on the part of the official or employee.

This opinion construes the Palm Beach County Code of Ethics and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Sincerely,


Alan S. Johnson,
Executive Director

ASJ/gal

² §2-442 Definitions. Vendor

³ §2-443(a)(1)

⁴ §2-443(a)(2)

⁵ RQO 10-031, RQO 11-008, RQO 11-098

December 1, 2011

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

Re: RQO 11-103
Holiday gifts

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 November 30, 2011.

YOU ASKED in your letter of November 10, 2011 whether the following was permissible under the gift law provisions of the Palm Beach County Code of Ethics;

1. May employees exchange holiday gifts?
2. May employees accept shared food items such as fruit baskets, candy or baked goods?
3. May employees accept individual holiday gifts which are placed in a pool to be randomly raffled at the end of the holiday season?
4. May Town sanitation workers accept holiday gifts of cash as a general expression of appreciation where such gifts are not tied to a specific task or trash pick-up?

IN SUM, holiday gifts of a value in excess of \$100 may not be accepted from vendors, lobbyists, principals or employers of lobbyists who lobby, sell or lease to the Town.

Gifts of any value are prohibited under §2-444(e) if given for the past, present or future performance of a public act or legal duty. However, depending upon the facts and circumstances, a general holiday gift, not tied to a public act or duty, is not prohibited under the code. A blind raffle of donated gifts and conducted by the Town is not prohibited by the code, provided the donor is not a vendor or lobbyist of the Town, and there is no *quid pro quo* or other special consideration given to the donor in exchange for the donated gift.¹

A public employee or official may not solicit anything of value from a vendor of lobbyist where the gift is for his or her personal benefit, or the benefit of another official or employee, or any relative or household member of the official or employee.²

¹ RQO 11-055

² §2-444(c)

Any gift that is not otherwise prohibited or exempted by the code, of a value in excess of \$100, must be reported as required by the code. To determine the individual value of a gift of food, given to multiple employees, the total value of the gift is divided by the number of employees who share in that gift.³ Lastly, unsolicited holiday gifts to sanitation workers that are not connected to a specific official action, but rather, are given as a general expression of appreciation, are not prohibited. However, no gift of a value in excess of \$100 may be accepted from a vendor or lobbyist of the Town. These gifts are subject to the gift law reporting requirements of all public employees.

THE FACTS as we understand them are as follows:

You are the town manager for the Town of Palm Beach (the Town). During the winter holiday season Town employees receive gifts from the community in the form of “small food items such as fruit baskets, boxes of candy or nuts, baked goods, etc.” The Town policy is to place these items in shared public spaces such as public counters or communal break rooms, to be shared by all. Town policy prohibits employees from accepting individual holiday gifts, unless they consist of gift exchanges among employees for items of small value.

However, individual gifts from the community, received by employees, may be accepted provided that they are immediately forwarded to the Town Manager’s office to be included in a “raffle” of all such items at the end of the holiday season. Names of employees are randomly drawn to determine who receives each item. The most common type of holiday gift subject to the raffle is a bottle of wine. No gift given by a vendor or lobbyist of the Town, valued in excess of \$100, may be accepted by an employee and placed in the raffle.

The Town does not outsource its sanitation function and maintains its own sanitation personnel. Town policy allows employees who collect garbage and yard trash “to receive holiday gifts of cash as an expression of general appreciation for everything they have done throughout the year.” Such gifts may not be solicited, however, voluntary gifts are permitted by the Town as “consistent with common practice in our society to provide a holiday “thank you” to sanitation workers, postal carriers, newspaper delivery people and others who perform a recurring personal service to their customers throughout the year.” Gifts may not be accepted in exchange for performing a specific task or trash pick-up.

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

Section 2-444(a)(1) prohibits an elected official or employee of government from soliciting or accepting any gift with a value of greater than \$100, in the aggregate for the calendar year, from a person or 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 their government employer. Therefore, in no instance may an employee of the town accept such a gift.

Section 2-444(c) prohibits the solicitation of any gift from a vendor or lobbyist, if the gift is for the personal benefit of the official or employee, fellow official or employee, or the official or employee’s relatives or household members.

³ §2-444(g)(for questions of valuation the code of ethics refers to §112.3148(7), Florida Statutes, and §34-13, Florida administrative Code)

Section 2-444(e) states as follows:

- (e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:
 - (1) An official public action taken or to be taken, or which could be taken;
 - (2) A legal duty performed or to be performed or which could be performed; or
 - (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

A gift of any value may not be accepted as a *quid pro quo* for any official action, duty performed or duty violated. Gifts that are not prohibited may be accepted. In most instances, allowable gifts in excess of \$100, not given by personal friends, co-workers or relatives, must be reported as required by the Code of Ethics.

Specifically, gifts exchanged between employees are not prohibited, provided there is no official *quid pro quo* involved. Holiday gifts of food that are not given to an individual employee as a "thank you" gift in exchange for a specific service, public action or legal duty performed or violated are not prohibited.⁴ In determining the value of a gift the code adopts Florida codes and statutes.⁵ For gift reporting purposes, the individual value of a gift of food is the total value divided by the number of persons sharing the gift. If the individual share exceeds \$100, the gift must be reported by the employees.

Individual gifts from non-vendors or lobbyists can only be accepted so long as they are not given in exchange for a public act or legal duty performed by the employee. The Town requires that all individual gifts be immediately submitted to the Town Manager for inclusion in a holiday "blind raffle." Notwithstanding, regarding an individual gift submitted for a holiday raffle, employees must take great care not to accept a prohibited gift of a value in excess of \$100, given by a vendor or lobbyist of the Town.

Lastly, you asked whether sanitation workers who are public employees may accept general holiday gifts of cash from residents of the Town. First, they may not accept a gift of a value greater than \$100 from a vendor or lobbyist of the Town. In addition, as previously stated, no employee may accept a gift of any value in exchange for the past, present or future performance of an official act or legal duty. The next question then becomes whether a holiday gift is given in exchange for such a public action or duty, performed or to be performed. Previously, this commission interpreted §2-444(e) not to apply to wait staff or municipal golf personnel where tips and gratuities were contemplated in the public employee's compensation package.⁶ The COE noted that such arrangements also reflected standard practices within the service industry. Similarly, holiday gifts of a voluntary nature are not uncommon in regard to regular home service providers. This standard does not run afoul of the code as long as the holiday gift is not in exchange for a specific act, or given in anticipation of future action.

IN SUMMARY, holiday gifts of a value in excess of \$100 may not be accepted from vendors, lobbyists, principals or employers of lobbyists who lobby, sell or lease to the Town. No official or employee may

⁴ Tips in exchange for an official act are generally prohibited. See, RQO 10-031, RQO 11-008, RQO 11-082

⁵ §112.3148(7), Florida Statutes, §34-13.310, Florida Administrative Code, RQO 11-022, RQO 11-047

⁶ RQO 11-028 ("allowing gratuities as part of the compensation package for Country Club employees is grounded in a reasonable interpretation of what constitutes an "official public action" or "legal duty" on the part of a public employee under these circumstances")

knowingly solicit anything of value from a vendor or lobbyist where the gift is for his or her benefit, the benefit of a relative or household member, or the benefit of a fellow official or employee.

Gifts exchanged between employees are not prohibited, provided there is no official quid pro quo involved.

Gifts of food or other items received from residents of the town during the holiday season cannot be accepted if given because of the past, present or future performance of a public act or legal duty. Gifts donated to the town and distributed via a "blind raffle" are not prohibited, provided the gift is not given by a vendor or lobbyist if valued in excess of \$100.

A holiday gift of cash to sanitation employees is not prohibited provided it is not given in exchange for the past, present or future performance of an official act or a legal duty.

Lastly, a gift that is not otherwise prohibited or exempted under the code must be reported if valued in excess of \$100. The value of a gift of food is determined by the total value of the gift divided by the number of employees who share in the gift.

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

ASJ/gal

December 1, 2011

Mo Thornton, City Manager
City of Atlantis
260 Orange Tree Drive
Atlantis, FL 33462

Re: RQO 11-110
Gift Law

Dear Ms. Thornton,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on November 30, 2011.

YOU ASKED in your email dated November 22, 2011, whether it violates the Palm Beach County Code of Ethics for the City of Atlantis (the City) to solicit monetary donations from residents of the City for "The Employee Holiday Fund," where these funds are later distributed equally to each employee of the City. Further information was obtained by COE staff through follow-up communications with you.

IN SUM, the Code of Ethics does not prohibit the distribution of funds donated by residents of the City to its employees as a holiday gift, providing that no funds are solicited or accepted into this fund from any vendor or lobbyist of the City, and the distribution to employees is based on the worker's status as employees of the City, and not on the past, present or future performance of a legal duty, or as the result of any official action performed by the City or any employee. Further, if the amount distributed to each employee is greater than \$100, they must report acceptance of such a gift to the Commission on Ethics as required by the Code.

THE FACTS as we understand them are as follows:

For over twenty years, the City of Atlantis (the City) has solicited and collected monetary donations from its residents during the holiday season for "The Employee Holiday Fund." These funds are then equally divided among the employees of the City as a holiday gift from its residents. Historically, these funds are solicited from residents by the Mayor on a voluntary basis. Recently, the solicitations have been made using the City's newsletter, "The City News." This newsletter makes clear that donations are voluntary, and that all funds collected are equally divided among all City employees. You advised in your communications with staff that generally, each employee would receive more than \$100 from this fund each holiday season, although the exact amount is not known until donations are cut-off, and the distribution is made to the employees.

Until distributed, these funds are kept in a separate bank account set up by City administration for this purpose. At this point, all residents of the City have been encouraged to donate to the fund, without regard to whether they are vendors or lobbyists of the City. You are aware that the Code of Ethics may require certain changes in donation policy, in particular as it applies to City vendors and lobbyists, but the City would like to keep the program in place.

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

Section 2-444(a)(1) of the Code of Ethics, prohibits municipal employees from accepting, directly or indirectly, any gift valued at more than \$100 from any City vendor or lobbyist. Section 2-444(a)(2) prohibits City vendors and lobbyists, or employers or principals of lobbyists from giving these prohibited gifts to persons they know are City officials or employees.

Section 2-444(c) prohibits an employee or elected official, or anyone on his or her behalf, from soliciting a gift of any value from a vendor or lobbyist of the City, where the gift is for the *personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee.*

Section 2-444(e), prohibits *any* person or entity from offering, giving or agreeing to give a gift of any value to any county or municipal official or employee, as well as prohibiting any official or employee from accepting or agreeing to accept a gift of any value, because of the performance or non-performance of an official act or legal duty.

Section 2-444(f), Gift reports, requires any official or employee who *receives a gift in excess of one hundred dollars (\$100)* to report that gift in accordance with the disclosure requirements of the Code.

And finally, Section 2-444(g), defines a gift as, “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)

The Gift law portion of the Code of Ethics curtails undue influence that gifts may exert on local government officials and employees in three ways.

1. The code prohibits gifts valued at greater than \$100 from being given to officials or employees by vendors or lobbyists of those governments; and,
2. The code prohibits the solicitation of anything of value from lobbyists or vendors, for the personal benefit of any elected official or employee, and;
3. The code requires allowable gift transactions over \$100 to be transparent by requiring disclosure of these gifts.

Under the facts as you have stated to COE staff, these disbursements to City employees are not prohibited gifts provided the donations are neither solicited nor accepted from vendors or lobbyists of the City. If the value of the disbursed gifts exceeds \$100 they must be reported in a manner as required by the code.

IN SUMMARY, providing that donations to “The Employee Holiday Fund” are not solicited or accepted from any City vendor, or any lobbyist, or employer or principal of any lobbyist that lobbies the City, and the disbursement of such donations to employees is not based on any official act or legal duty taken or to be taken, the Code of Ethics does not prohibit residents of the City of Atlantis from donating to this Fund, or the distribution of collected donations to employees of the City as a holiday gift.

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
ASJ/meb/gal

ITEM IX – MISUSE OF OFFICE: REASONABLE CARE STANDARD

Staff Analysis:

Staff received two requests for guidance regarding the standard of care required under the misuse of office and conflict sections of the code of ethics.

In RQO 11-101, the facts and circumstances involve an official whose son has customers or clients who may potentially appear before the official's commission. The code does not contain a financial benefit prohibition regarding customers or clients of other entities than his or her direct employer or business. Insofar as a special financial benefit for the son's company, the code would apply if the official knows, or should know with the exercise of reasonable care that her son's company would obtain a special financial benefit not shared with similarly situated members of the general public. The official was concerned over what standard of care is required to research whether a benefit may relate back to the son's company based upon a commission decision regarding a customer or client of that company. This scenario is more attenuated than a direct customer or client of the official.

In RQO 11-099, an official who works in a particular local department for a major financial institution submitted a similar request as to the standard of care required to determine whether a person appearing before her board is in fact a customer or client of her employer. Unlike the facts presented in RQO 11-101, this scenario deals with customers or clients of her employer. Therefore, the code prohibition does directly pertain to this conflict, if known.

The relevant portions of the misuse section state as follows:

Sec. 2-443. Prohibited conduct.

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, *in a manner which he or she knows or should know with the exercise of reasonable care* will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
 - (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
 - (5) A customer or client of the official or employee's outside employer or business;

The voting conflicts §2-443(c) contains similar language requiring the exercise of reasonable care.

In prior opinions, this commission has opined regarding matters related to the definition of "similarly situated members of the general public" but has not addressed the issue of "the exercise of reasonable care." A review of Florida appellate court case opinions regarding the constitutionality of statutes requiring the exercise of reasonable care is instructive. A statute must give reasonable notice as to prohibited conduct. Therefore, to be constitutional, a financial conflict violation may only be sustained if the official had actual or constructive knowledge of the conflict. In *Commission on Ethics v. Barker*¹, the Florida Supreme Court reviewed an ethics violation involving a gift to an official. The state statute, *unauthorized compensation*, contains the same reasonable care standard as the misuse of office and voting conflict sections of the code. The Supreme Court upheld the constitutionality of the reasonableness standard, so long as a violation was supported by actual or

¹ Commission on Ethics v. Barker, 677 So2d 254 (Fla. 1996)

constructive knowledge. It noted that while constructive knowledge may be sufficient to pass constitutional muster, “at the same time, however, we note that proof that something of value was given to a public official who might be in a position to help the donor one day, without more, would not establish a violation of §112.313(4)”

Applying the Barker decision to the reasonableness standard under the misuse and voting conflicts sections of the code, the mere status of a conflict may not be enough to sustain a violation under the standard of clear and convincing evidence. The knowledge of a conflict must be established circumstantially if actual knowledge is not apparent. Therefore, a determination of a violation may only be made based on the specific facts and circumstances of each case. There is no bright line definition of reasonable care. Nor is there a requirement that a particular level of scrutiny be undertaken by public officials regarding the business interests of customers or clients of their employer or business. An official proceeds at his or her peril if the lack of knowledge amounts to willful blindness. However, the more attenuated the relationship, the less likely that constructive knowledge will be imputed to the official. Factors regarding constructive knowledge as to customers or clients of an outside employer or business may include; the size of the business, the ownership or employment position held by the official, prior relationships and business dealings, the attenuation of a familial relationship, collateral relationships or other circumstances calling attention to the conflict.

Staff recommendation:

That the COE adopt the RQO 11-099 and RQO 11-101 analysis of the standard of proof necessary to support a violation of the code of ethics. In order to be constitutionally sound, a statute requiring that a person *know or should know with the exercise of reasonable care* of a conflict requires clear and convincing evidence of actual or constructive knowledge of the conflict. There is no bright line regarding reasonableness and the code does not require any particular degree of research or due diligence on the part of the official. While an official acts at his or her peril if the lack of knowledge amounts to *willful blindness*, each case must be decided based upon its own facts and circumstances.

Item IX – Synopsis – Misuse of Office and Voting Conflicts: Reasonable Care Standard

RQO 11-099 Diana Grub Frieser

A City Attorney asked whether an elected official, whose outside employer is a large national bank or financial institution, is required to abstain in every instance any client or customer or the outside employer appears before her board.

Staff submits the following for COE approval: Elected officials are prohibited from voting on a matter that would financially benefit themselves, their outside employer, or a customer or client of their employer, in a manner not shared with similarly situated individuals or entities. A customer or client is clearly defined as a person or entity to which the official's business or outside employer has supplied goods or services during the previous 24 months of a value in excess of \$10,000. The prohibition attaches when the official knows of the conflict, or should know with the exercise of reasonable care. Knowledge may be direct or constructive. There is no bright line definition of reasonable care. Reasonableness necessarily depends on the facts and circumstances presented.

However, in the absence of a nexus between the employer, customer or client and the matter before the City Council, or other evidence of apparent or direct knowledge by the official of the relationship between the official's outside business or employer and its customer or client, a violation is unlikely.

RQO 11-101 Shelley Vana

A County Commissioner asked whether the Code of Ethics applies to issues that may come before the Commission involving customers or clients of her son's firm, and further, what "reasonable care" and "special financial benefit" mean within the context of an official's public duty under the code.

Staff submits the following for COE approval: The code of ethics misuse of office provisions involving special financial benefit do not apply directly to customers or clients of an official's child's employer or business. However, if a scenario is presented to the Board of County Commissioners whereby a child's firm itself will receive a financial benefit, not shared with similarly situated members of the general public, an official may not vote on or participate in the matter. There is no bright line definition of *reasonable care or special financial benefit*. Reasonableness necessarily depends on the facts and circumstance presented. However, in the absence of apparent or direct knowledge on an official's part indicating a special financial benefit to a child or their firm, a violation is unlikely.

Determining what constitutes a *special financial benefit, not shared by similarly situated members of the general public*, depends upon the size of the class affected by the public vote or action, and whether the benefit is shared equally among that class of persons or entities.

December 1, 2011

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

Re: RQO 11-099
Voting Conflicts/Misuse of Office

Dear Ms. Grub Frieser,

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 November 30, 2011.

YOU ASKED whether an elected official, whose outside employer is a large national bank or financial institution, is required to abstain in every instance any client or customer of the outside employer appears before her board.

IN SUM, elected officials are prohibited from voting on a matter that would financially benefit themselves, their outside employer, or a customer or client of their employer, in a manner not shared with similarly situated individuals or entities. A customer or client is clearly defined as a person or entity to which the official's business or outside employer has supplied goods or services during the previous 24 months of a value in excess of \$10,000. The prohibition attaches when the official knows of the conflict, *or should know with the exercise of reasonable care*. Knowledge may be direct or constructive. There is no bright line definition of reasonable care. Reasonableness necessarily depends on the facts and circumstances presented.

However, in the absence of a nexus between the employer, customer or client and the matter before the City Council, or other evidence of apparent or direct knowledge by the official of the relationship between the official's outside business or employer and its customer or client, a violation is unlikely.

THE FACTS as we understand them are as follows:

You are the City Attorney for the City of Boca Raton (the City). Recently, the City of Boca Raton issued a Request for Letters of Interest (Request), which asked any individual or entity to submit proposals, suggestions, or comments on how best to improve, use or develop a City property. The Request was broad and did not restrict submissions to vendors, developers, planners but was open to the general public. The City received numerous responses and the City Council is currently reviewing the proposals.

A member of the City Council is an employee of a large national bank with a vast number of customers/clients in the City and around the country. The official is employed in one division and generally has knowledge of matters or clients within her division. Matters may come before the City

Council including proposals from persons or entities who may meet the definition of “customer or client” provided by the Code of Ethics. Moreover, there may be clients who do significant business with the Councilmember’s outside employer, but with whom the Councilmember would not be familiar.

The city submitted the following hypothetical example: A customer of the Official’s outside employer resides out-of-state and while they bank with or receive services from the official’s employer, they do not know of the Official’s relationship to their financial institution and vice-a-versa. This customer plans to open a business in the City and applies for a development order from the City Council to do so. Neither the customer, nor the official know of each other’s relationship to the bank, the bank is not financing the new business, nor is there any evidence that the bank will benefit in some way from approval or denial of the development order. As the city attorney, you are concerned about the absence of a specific standard or duty of care required by your elected councilmember in researching and determining who is and is not a customer or client of your employer banking institution.

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

Sec. 2-443. Prohibited conduct.

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
 - (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
 - (5) A customer or client of the official or employee’s outside employer or business;

Section 2-443(a) prohibits elected officials from using their official position to take or fail to take any action *if they know or should know with the exercise of reasonable care* that the action would result in a special financial benefit not shared with similarly situated members of the general public, for certain entities or persons including themselves, their outside business or employer, or a customer or client of their outside employer or business. A customer or client is defined as any person or entity to which an official or employee’s outside employer or business has supplied goods or services during the previous twenty-four months, having in the aggregate a value greater than \$10,000.¹

Section 2-443(c) *Disclosure of voting conflicts*, similarly requires a public official to abstain and not participate in any matter coming before his or her board or commission which would result in a *special financial benefit* to the persons or entities listed in the misuse of office section above, while §2-443(b) *Corrupt misuse of official position*, prohibits an official from *corruptly* using his or her office to obtain any benefit for *any* person or entity. *Corruptly* means done with a wrongful intent, inconsistent with the proper performance of an official’s public duties.

In prior opinions, this commission addressed the scenario where an official is an owner or employee of a business and knows that a person or entity, who is a customer or client of their employer or firm, will be

¹ §2-442

petitioning their government entity.² In these situations the official or employee knows of the customer client relationship and their question to the commission has been whether they can vote on the matter despite the relationship because the customer or client is similarly situated to the general public.

Conversely, your request does not involve special financial benefit issues, but asks for guidance on the issue of the standard of care, if any, required of an official who may not have actual knowledge of an existing conflict. The potential for this scenario is magnified when an official is employed by a national or international entity with thousands of employees who provide diverse services to hundreds of thousands of customers.

Under State law, Florida Statute 112.3143(2) governs voting conflicts for public officers.³ Notably, the state statute requires actual knowledge whereas the Palm Beach County Code requires actual or constructive knowledge. Accordingly, where state opinions require actual knowledge on the part of an official, the Palm Beach County Code includes imputed knowledge from the surrounding facts and circumstances.

Additionally, you submitted State Commission on Ethics opinions that find certain customer or client relationships to be too remote to constitute a conflict under state law.⁴ Unlike state law, §2-443(a) and (c) specifically enumerate and define a customer or client of an official's outside business or employer and prohibit official action giving special financial benefit to these entities. State law permits local ethics laws to impose "more stringent standards of conduct and disclosure requirements."⁵

There is no bright line definition of *reasonable care*.⁶ In determining whether or not a conflict exists, the code does not require any particular degree of research or due diligence on the part of a public official. As compared to the gift law, where county officials have easy access to databases enabling them to identify vendors, lobbyists and their principals, there is no public database to access customers or clients of private companies for potential voting conflicts. When examining evidence of constructive knowledge, factors to be considered may include the size of the business as well as the official's position. For example, greater knowledge of significant customers or clients may be imputed to the owner of a small business as opposed to a counter clerk of a multi-national corporation. Likewise, evidence of corporate customers or clients of a particular department within a large corporation with whom an official deals personally is relevant in determining knowledge. As evidenced by the hypothetical presented by the City, there may not be a practical way to determine whether a person or entity is a client of a large national bank. However, customers or clients of an official's outside employer who transact business with the official in her capacity as a bank employee may not be so attenuated and the degree of apparent knowledge would therefore depend on the facts and circumstances of the business relationship.

In order to sustain a violation, the COE must find by clear and convincing evidence that a public official or employee committed that violation. Such a finding must be *based upon competent substantial*

² RQO 11-092(Elected official may vote on contracts between her government-client and the government she serves, provided that the inter-local agreement is unrelated to the firm's business relationship with the government client). See also RQO 11-078 (advisory board member prohibited from voting to financially benefit their spouse's employer); RQO 11-029 (elected official prohibited from voting to financially benefit a non-profit she serves as an officer or director).

³ "...any state public officer voting in an official capacity upon any measure which would inure to the officer's special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained..."

⁴ CEO 06-21, CEO 05-17, CEO 94-37

⁵ §112.326, Florida Statutes

⁶ RQO 11-101 (pending COE approval) (This opinion discusses similar issues relating to the standard of care required of officials, however, RQO 11-101 involves financial benefit to a customer or client of an official's relative which is not an enumerated conflict under §2-443(a) or (c)).

*evidence in the record.*⁷ In a case involving the receipt of a gift as a quid pro quo, the Florida Supreme Court analogized the knowledge component of the state's *unauthorized compensation* statute⁸ to criminal theft statutes that similarly hold a person accountable for trafficking in property that *he knows or should know was stolen.*⁹ While constructive knowledge may be proven by circumstances, the act by itself (i.e., accepting a gift) would not be sufficient to prove the offense.

Therefore, to be constitutional, a financial conflict violation may only be sustained if the official had actual or constructive knowledge of the conflict. In cases involving a large national corporation, without a nexus between the official, his outside employer and a client who brings an issue or project before the Council, there are few practical ways to vet all possible transactions and relationships to determine financial benefit. Clearly, if a person or company comes before a governing body, and the official knows them as a customer or client of his or her outside employer, the conflict is apparent. An official proceeds at his or her peril if the lack of knowledge amounts to *willful blindness*, however, if there is no apparent financial nexus, and the circumstances indicate no direct or constructive knowledge on an official's part indicating a special financial benefit to their employer or client, then the likelihood of a violation is greatly diminished, if not eliminated.

IN SUMMARY, the financial misuse of office and voting conflicts sections of the code prohibit an official from using his or her official position to specially financially benefit his or her outside employer or a person or entity who he or she knows or reasonably should know is a customer or client of his outside employer as defined by the code.

There is no bright line definition of reasonable care. Nor is there a requirement that a particular level of scrutiny be undertaken by public officials regarding the business interests of customers or clients of their employer or business. A determination of whether or not an official or employee knows or should know of a conflict of interest can only be made on a case by case basis, based on the facts and circumstances presented. Circumstantial evidence of knowledge is relevant, however, a violation may ultimately be sustained only by clear and convincing evidence that there was actual or constructive knowledge of the financial conflict.

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
ASJ/mr/gal

⁷ §2-260.1(g)

⁸ §112.313(4) ("No public officer...shall, at any time, accept any...thing of value when such public officer...knows, or, *with the exercise of reasonable care, should know*, that it was given to influence a vote or other action...")

⁹ *Commission on Ethics v. Barker*, 677 So2d 254 (Fla. 1996) (While constructive knowledge may be sufficient to pass constitutional muster, the court indicated "At the same time, however, we note that proof that something of value was given to a public official who might be in a position to help the donor one day, without more, would not establish a violation of §112.313(4)")

December 1, 2011

Shelley Vana, County Commissioner
Palm Beach County Board of County Commissioners
310 North Olive Avenue, Suite 1201
West Palm Beach, FL 33401

Re: RQO 11-101
Financial Benefit/Outside Employer of Relative

Dear Commissioner Vana,

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 November 30, 2011.

YOU ASKED in your letter of 11/07/2011 whether the Code of Ethics applies to issues that may come before the Commission involving customers or clients of your son's firm, and further, what "reasonable care" and "special financial benefit" mean within the context of your public duty under the code.

IN SUM, the code of ethics misuse of office provisions involving special financial benefit do not apply directly to customers or clients of your son's firm. However, if a scenario is presented to the BCC whereby your son's firm itself will receive a financial benefit, not shared with similarly situated members of the general public, you may not vote or participate in the matter. There is no bright line definition of *reasonable care or special financial benefit*. Reasonableness necessarily depends on the facts and circumstances presented. However, in the absence of apparent or direct knowledge on your part indicating a special financial benefit to your son or his firm, a violation is unlikely.

Determining what constitutes a *special financial benefit, not shared by similarly situated members of the general public*, depends upon the size of the class affected by the public vote or action, and whether the benefit is shared equally among that class of persons or entities.

THE FACTS as we understand them are as follows:

You are a sitting Palm Beach County Commissioner. Your son works for a technical services firm that provides staffing for corporations in need of various computer-related operations. He is one of several employees who recruit potential clients for the company and is paid based on salary and commission received for the clients he successfully recruits.

Your son's company does not do business with Palm Beach County, but it is possible from time to time that the clients of his company will. While your son is not an equity owner or officer of his firm, he may be invited into an eventual equity ownership position or partnership in the future.

As a County Commissioner, you are concerned about your ability to monitor the client list of your son's company in order to determine whether a client has business before the Board of County Commissioners (BCC). The company has numerous clients and the BCC votes on well over one hundred matters each month. While you intend to

abstain and not participate in any matter involving a possible conflict of which you are aware, you are concerned about the standard of care required by the code in determining whether or not a conflict may potentially exist.

THE LEGAL BASIS for this opinion may be found in the following relevant provisions of the Code of Ethics:

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: (relevant entities listed below)

- (1) Himself or herself;
- (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
- (5) A customer or client of the official or employee's outside employer or business;

Section 2-443(c) Disclosure of voting conflicts, requires a public official to abstain and not participate in any matter coming before his or her board or commission which would result in a *special financial benefit* to the persons or entities listed in the misuse of office section.

Section 2-443(b) Corrupt misuse of official position, prohibits an official from *corruptly* using his or her office to obtain any benefit for any person or entity. *Corruptly*, means done with a wrongful intent, inconsistent with the proper performance of an official's public duties.

You asked about your public duty as it pertains to customers or clients of your son's company. Sections 2-443(a)(5) and (c) only pertain to customers or clients of *your* outside employer or business. It does not extend to customers or clients of employers or businesses of relatives. That being said, if an issue comes before the BCC that would financially benefit your son's employer, as listed in §2-443(a)(3) and (c), in a manner not shared by other similarly situated individuals or entities, the code requires that you abstain and not participate in the issue, *if you know, or reasonably should know of the conflict*. The status of customer or client to your son's firm alone would not trigger such a conflict, however, if your son's business is involved in the matter directly, or a financial benefit for your son's firm is contingent upon your official action or the passage of legislation, then the misuse sections may apply if you know of the conflict, or should know with the exercise of reasonable care. These sections apply where the financial benefit is to your son, or his firm, not his customer or client. This is true whether your son is an employee or part owner of the firm.

Additionally, you asked for assistance in defining your obligation to exercise reasonable care pertaining to potential conflicts. Regarding the standard of care required by the code, there is no bright line definition of *reasonable care*. The State Code of Ethics contains similar language regarding unauthorized compensation.¹ In the context of receiving gifts, Florida Appellate Courts have upheld the constitutionality of this section of the state ethics code.² In *Goin v. Commission on Ethics*, an Athletic Director of Florida State University received a free or substantially discounted roof from a contractor of FSU. Interpreting the *exercise of reasonable care* requirement under the unlawful compensation section of the code, the Court stated:

¹ §112.313(4) Unauthorized compensation. No public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value *when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know*, that it was given to influence a vote or other action...

² *Commission on Ethics v. Barker*, 677 So2d 254 (Fla. 1996), *Goin v. Commission on Ethics*, 658 So2d 1131 (1st DCA 1995)

The statute here under review allows the state to demonstrate circumstances tending to show that a public official knew why he or she had been singled out as the object of the gift donor's generosity...The ultimate sorting out of the facts must be left to the hearing officer, just as it is left to a jury in criminal cases...

We believe...that the statute merely places a duty upon the public official to avoid certain dealings and transactions. The lack of a bright line test does not compel a finding of unconstitutional vagueness. While, in the view of some, a bright line test is always desirable, the Legislature may well have decided that in the circumstances of a public official, the existence of a bright line test would tend to facilitate conduct that pushes the envelope of propriety and would serve to erode confidence in governmental officials and others in whom public trust is placed.³

Applying the reasoning of the *Goin* opinion to the county misuse of office sections, knowledge of a relationship depends on the facts and circumstances surrounding the transaction. Merely being a customer of your son's firm does not necessarily relate back to the firm, should that customer independently come before the BCC. Nor does the code require any particular degree of research on the part of a public official. Where the status of a vendor or lobbyist is at issue, county officials have easy access to databases enabling them to identify vendors, lobbyists and their principals. On the other hand, there may not be a practical way to determine relationships of independent customers or clients of a company, especially where the company does no business with the county. Additionally, without some nexus between your son's company and a client who brings an issue or project before the BCC, there are few practical ways to vet all possible transactions and relationships to determine financial benefit. Clearly, if your son's company joins a customer or client before the BCC, the conflict is apparent. An official proceeds at his or her peril if the lack of knowledge amounts to *willful blindness*, however, if there is no apparent financial nexus, and no direct knowledge on your part indicating a special financial benefit to your son or his firm, then the likelihood of a violation is greatly diminished, if not eliminated.

In order to sustain a violation, the COE must find by clear and convincing evidence that a public official or employee committed that violation. Such a finding must be *based upon competent substantial evidence in the record*.⁴ In a case involving the receipt of a gift as a quid pro quo, the Florida Supreme Court analogized the knowledge component of the state *unauthorized compensation* statute⁵ to criminal theft statutes that similarly hold a person accountable for trafficking in property that *he knows or should know was stolen*.⁶ While constructive knowledge may be proven by circumstances, the act by itself (i.e., accepting a gift) would not be sufficient to prove the offense. Therefore, in regard to your son's business relationships, a financial conflict violation may only be sustained if you had actual or constructive knowledge of the conflict. Facts and circumstances must be relied upon to determine the presence or absence of that knowledge.

Lastly, you asked for clarification as to the definition of *special financial benefit*. Violation of the misuse of office and voting conflict sections turns on whether or not a financial benefit is shared with similarly situated members of the general public. This issue was discussed in a previous advisory opinion involving the Aviation and Airports Advisory Board's consideration of an airport fuel surcharge.⁷ In the context of your question, a special financial benefit is a benefit that would inure to your son or his company, by virtue of your official action, influence or vote, not shared with similarly situated businesses or members of the general public.

³ *Goin v Commission on Ethics*, id. @ 1136

⁴ §2-260.1(g)

⁵ §112.313(4) ("No public officer...shall, at any time, accept any...thing of value when such public officer...knows, or, *with the exercise of reasonable care, should know*, that it was given to influence a vote or other action...")

⁶ *Commission on Ethics v Barker*, supra. (While constructive knowledge may be sufficient to pass constitutional muster, the court indicated "At the same time, however, we note that proof that something of value was given to a public official who might be in a position to help the donor one day, without more, would not establish a violation of §112.313(4)")

⁷ RQO 10-013 (airport users are considered "similarly situated members of the general public" for purposes of determining whether a voting conflict exists regarding a fuel flowage surcharge affecting only general aviation airport users, provided that the individual board member's benefit or loss does not significantly exceed other members of the affected class.)

IN SUMMARY, the financial misuse of office and voting conflicts sections of the code dealing with customers or clients apply only to the outside employer or business of the official or employee, and do not extend to employers or businesses of his or her child. However, if an official's action results in a financial benefit to the employer or business of their child, that is not shared with similarly situated businesses or members of the general public, and that fact is known, or *with the exercise of reasonable care*, should be known to the official, such an action would violate the code.

There is no bright line definition of reasonable care. Nor is there a requirement that a particular level of scrutiny be undertaken by public officials regarding the business interests of relatives and household members. A determination of whether or not an official or employee knows or should know of a conflict of interest can only be made on a case by case basis, based on the facts and circumstances presented. Circumstantial evidence of knowledge is relevant; however, a violation may ultimately be sustained only by clear and convincing evidence that there was actual or constructive knowledge of the financial conflict.

Lastly, the term *special financial benefit, not shared with similarly situated members of the general public* refers to those who stand to gain or lose financially from a public decision.

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

ASJ/gal

PROPOSED

Item X – Synopsis – Proposed Advisory Opinions

RQO 11-089 Bonni Jensen (resubmitted)

An attorney for a municipal pension plan asked whether plan Trustees who are state reporting individuals, must report salary, benefits, services, fees, commissions, gifts or expenses associated with the Trustee's outside employment, business or service as an officer or director of a corporation or organization, where an exception exists for such items in state law.

Staff submits the following for COE approval: local officials and advisory board members who are state reporting individuals are required to report gifts quarterly, in accordance with state law, and are therefore not subject to the annual gift reporting requirements under §2-444(f)(2)b of the Palm Beach County Code of Ethics. A state reporting individual is responsible to comply with those reporting requirements as contained within state law.

RQO 11-090 Walter Fleming (resubmitted)

A municipal public works director asked whether a prohibited conflict of interest was created if his spouse submitted a sealed bid for and was awarded a contract to provide lawn and landscape services to his governmental employer, so long as he filed a statement with the supervisor of elections and the Commission on Ethics, disclosing his wife's ownership interest in the landscaping company, S&W Professional Services. The underlying contract is supervised by the Town Manager and the employee is not involved in the bid specifications or oversight of the contract. In the time since municipal employee's request for an opinion, commission staff was notified by the Town's attorney that the company was not awarded the contract.

Staff submits the following for COE approval: A public employee may not use his or her official position to give or influence others to give their spouse's business a special financial benefit. In addition, the code prohibits an employee, their outside employer or business, *or a business of which a member of their household has at least a five percent ownership share* from contracting with their public employer. However, there is an exception to the contractual relationship prohibition. The code provides an exemption for contracts entered into under a process of sealed, competitive bidding provided that the public employee has not participated in the bid specifications or determination of the lowest bidder, has not used their position in any way to influence their public colleagues, and has disclosed the nature of their or their spouse's interest in the business submitting the bid. Therefore, based upon the facts submitted, the code does not prohibit S&W Professional Services from contracting with the Town.

RQO 11-104 Janet Whipple

A Town Clerk asked what procedures are to be followed under the Code of Ethics for holding a silent auction benefiting the Palm Beach County Municipal Clerk's Association. The funds raised will be used for the continued professional education of municipal clerks throughout Palm Beach County.

Staff submits the following for COE approval: the Code of Ethics prohibits members of the MCA, as municipal employees, from soliciting or accepting donations in excess of \$100, directly or indirectly, from vendors, lobbyists, principals or employers of lobbyists who lobby, sell or lease to their government employer. Because the MCA is not a registered 501(c)3 entity, the charitable gift exception

of §2-444(h) does not apply. Additionally, county and municipal officials and employees are prohibited from soliciting or accepting donations of any value from any person or entity because of the past, present or future performance of an official act or legal duty.

RQO 11-105 Leonard Rubin

A Town attorney asked whether the Seacoast Utility Authority (SUA), which employs a Town Councilmember as an engineer, is considered an outside employer under the Code of Ethics and if so, under what circumstances would his participation in the Water Resources Task Force (WRTF) result in a prohibited special financial benefit to the SUA.

Staff submits the following for COE approval: the Code of Ethics limits the definition of an outside employer or business by excluding any county, state, federal, regional, local or municipal government entity. The SUA is a regional water and wastewater utility formed by interlocal agreement between five local governments and as a regional governmental entity is not an outside employer as defined by the Code of Ethics. Accordingly, the voting and participation restrictions involving outside employment conflict that would normally apply to a member or alternate member of the WRTF do not apply.

December 1, 2011

Bonni S. Jensen, Esquire
Perry & Jensen, LLC
400 Executive Center Drive, Suite 207
West Palm Beach, FL 33401-2922

Re: RQO 11-089
Gift Law, Retirement Boards

Dear Ms. Jensen,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on November 30, 2011.

YOU ASKED in your letter dated September 22, 2011, whether Trustees of the Firefighter Board of Trustees, Town of Palm Beach Retirement System (FBT), who are subject to the Palm Beach County Commission on Ethics, must report "salary, benefits, services, fees, commissions, gifts or expenses associated primarily with the [Trustees] employment, business or service as an officer or director of a corporation or organization?" You also asked if a Trustee nominated or selected by the other four (4) Trustees to this retirement board, but ultimately appointed by the governing body of the Town, is subject to the jurisdiction of the Palm Beach County Commission on Ethics.

IN SUM, local officials and advisory board members who are state reporting individuals are required to report gifts quarterly, in accordance with state law, and are therefore not subject to the annual gift reporting requirements under §2-444(f)(2)b. of the Palm Beach County Code of Ethics. A state reporting individual is responsible to comply with those reporting requirements as contained within state law.

Although the FBT itself is a state created board and therefore not an advisory board as defined in the Palm Beach County Code of Ethics,¹ trustees who are appointed by the governing body of the Town of Palm Beach (the Town), are considered "officials" and subject to the code. The fact that one appointment is based on a selection by the existing Trustees does not negate the fact that the ultimate appointment is made by the governing body and the appointee is therefore subject to the Code of Ethics.²

THE FACTS as we understand them are as follows:

You are legal counsel for the Firefighters Board of Trustees (FBT), within the Town of Palm Beach Retirement System (RS). The RS was created by a Palm Beach Ordinance in accordance with Chapter 112, Florida Statutes. The FBT's authority was created pursuant to Chapter 175, Florida Statutes, and is contained within Section 82-86

¹ §2-442, RQO 11-060 (Boca Raton Police and Firefighters' Retirement System established pursuant to chapters 175 and 185 of the Florida Statutes, is not an advisory board as defined in the PBC Code of Ethics, however, appointees of the Boca Raton governing body are considered "officials.")

² RQO 11-035, RQO 11-060, id.

of the Town Code. The FBT is comprised of five (5) members. Two (2) are chosen and appointed by the Town Council. Two (2) are employees of the Town and are elected by the members in the retirement fund. The fifth member is chosen by the other four Trustees, but is actually appointed by the Town Council, in what you refer to in your letter as, "a ministerial duty by the Town." The Town of Palm Beach (the Town) is ultimately responsible for funding the System. You also advise that it is the Town that actually appoints this fifth trustee to the Board.

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

Section 2-442 defines *Advisory board* to mean "any advisory or quasi-judicial board created...by local municipal governing bodies, or by the mayors who serve as chief executive officers... of local municipal governing bodies." While the FBT is governed by local ordinance, the board is authorized by state statute. It is not "created by" the local municipal governing body and is, therefore, not an advisory board.

However, §2-442, defines "Official" as a member appointed by the local municipal governing body to serve on any advisory, quasi-judicial or *any other board of the county, state, or any other regional, local, municipal, or corporate entity*. The Code does not make a distinction as to whether the governing body is making such an appointment in any particular manner. The fact that one Trustee on the FBT is initially chosen as a candidate by the other four Trustees is immaterial to the manner in which that person formally becomes a Trustee on the Board when appointed by a vote of the governing body. The governing body, in particular one that is, "responsible to fund the benefits of the Plan," under state law³, can choose not to appoint a particular individual and require that another candidate be selected. Again, the relevant fact is that while the initial choice of a potential candidate is made by the other Trustees, the appointment itself is made by the governing body.

A member of the FBT, appointed by the Boca Raton Council, is under the jurisdiction of the COE as to all sections of the Code of Ethics applicable to officials.

Section 2-444(f)(1) states, "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. Under this section of the Code of Ethics, members of the FBT are "state reporting individuals" and must comply with all state requirements. The COE cannot opine as to any specific reporting requirements under state law.

IN SUMMARY, regardless of who refers a candidate for FBT appointment, FBT Trustees who are appointed by the Boca Raton Council are subject to the PBC Code of Ethics and the jurisdiction of the COE as "officials." Those Trustees who are Boca Raton employees are subject to the code as "employees" as well.

FBT Trustees are subject to state gift reporting requirements as listed under Chapter 112, Florida Statutes and must report as required by 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
ASJ/meb/gal

³ Pursuant to Sections 112.66 and 175.091, Florida Statutes (2011)

December 1, 2011

Mr. Walter Fleming, Public Works Director
Town of Palm Beach Shores
330 Linda Lane
Palm Beach Shores, FL 33404

Re: RQO 11-090
Contractual Relationships/Misuse of Office

Dear Mr. Fleming,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion on November 3, 2011 and again on November 30, 2011, and rendered its opinion at a public meeting held on November 30, 2011.

YOU ASKED in your letter dated September 22, 2011, whether a prohibited conflict of interest is created if your spouse bids for and is awarded a contract to provide lawn and landscape services to the Town of Palm Beach Shores (the Town) for which you serve as Public Works Director.

IN SUM, you may not use your official position to give or influence others to give your spouse's business a special financial benefit. In addition, the code prohibits you, your outside employer or business, *or a business of which a member of your household has at least a five percent ownership share* from contracting with your public employer. However, there is an exception to the contractual relationship prohibition. The code provides an exemption for contracts entered into under a process of sealed, competitive bidding provided that you have not participated in the bid specifications or determination of the lowest bidder, have not used your position in any way to influence your colleagues, and have disclosed the nature of your interest in the business submitting the bid. Therefore, based upon the facts you have submitted, the code does not prohibit S&W Professional Services from contracting with the Town,

THE FACTS you submitted are as follows.

You are the Public Works Director for the Town of Palm Beach Shores (the Town). Your wife is the sole owner and proprietor of S&W Professional Services and has provided lawn maintenance service to the Town since 2005. S&W's contract expired on September 30, 2011. The Town advertised an invitation to bid for Lawn and Landscape Maintenance Services with a formal submission deadline of Tuesday, September 27, 2011 for sealed bids. The underlying contract is under the supervision of the Town manager; you were not involved in preparing the bid specifications, nor would you provide oversight,

management, enforcement or otherwise be involved with the contract or her services. Prior to the submission of the sealed bid, you filed a statement with the supervisor of elections and the Commission on Ethics, disclosing your wife's ownership interest in S&W Professional Services. In the time since your initial request for an opinion, commission staff was notified by the Town's attorney that S&W was not the low-bid and therefore, was not awarded the contract.

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

Section 2-443(a) prohibits you, as a public employee from using your official position, or influencing others to take or fail to take any action, that would result in a special financial benefit not shared with similarly situated members of the general public, for yourself, your spouse or domestic partner or an outside business of yours or your spouse or domestic partner, among other listed persons or entities.

Section 2-443(d) prohibits you from entering into any contract or other transaction for goods or services with your public employer, directly or indirectly, or through your outside business or employer.

An official or employee's outside business is defined in §2-442(2) as any entity doing business with, or being regulated by, their government employer in which the official or employee has an ownership interest. For the purposes of this opinion, an ownership interest means at least five (5) percent of the total assets *owned by you, your spouse or a member of your household*.

Therefore, §2-443(a), *misuse of office*, prohibits you from using your office or influencing other employees and officials to take or fail to take any action that would give your spouse a special financial benefit.¹ Section 2-443(d) prohibits you, your outside employer or business *or an outside employer or business of which your spouse or a member of your household has at least a five (5) percent ownership share* from entering into contracts or other transactions for goods or services with the Town, unless one of several exceptions apply.

Unless an exemption applies, as sole owner and proprietor of S&W Professional Services, your spouse would be prohibited from contracting with your public employer. However, §2-442(e)(1) provides an exception for contracts awarded under a system of sealed, competitive bidding. The sealed bid exception applies so long as the public official or employee does not 1) participate in the determination of bid specifications, 2) use their official position to influence or persuade their government entity other than by the mere submission of the bid and 3) files a statement with the Supervisor of Elections and the Commission on Ethics disclosing the nature of the interest in the outside business prior to submitting the bid. Based upon the information you provided, you were not involved in the bid process in any way, have not used your official position to influence or persuade your colleagues or Town elected officials and filed a statement with both the Supervisor of Elections and the Commission on Ethics declaring your spouse's ownership interest in S&W Professional Services, complying with the requirements of §2-443 (e)(1)a, b, and c.

¹ RQO 11-037 (where a private resident inspector is a sibling of the town building inspector, the best practice would be to assign oversight responsibility to another town employee or official)

IN SUMMARY, as a public employee you may not use your official position to give a special financial benefit to your spouse's outside business. In addition, neither you, nor your spouse or a household member, may enter a contract for goods or services with your government employer, if any of you maintains an ownership interest of at least five percent in the contracting business, unless an exception applies.

Based on the facts you have submitted your spouse would not be prohibited from participating in the bid process, and if successful, entering into a contract with your public employer pursuant to §2-443 (e)(1)a, b, and c.

Notwithstanding this exception to the contractual relationship prohibition, you have an ongoing responsibility to avoid using your official position to specially financially benefit your wife's business, as to do so would constitute a misuse of your 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

ASJ/mr/gal

December 1, 2011

Janet Whipple, Town Clerk
Town of South Palm Beach
3577 S. Ocean Blvd.
South Palm Beach, FL 33480

Re: RQO 11-104
Gift Law/Charitable Organization

Dear Ms. Whipple,

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 November 30, 2011.

YOU ASKED in your email dated November 14, 2011, what the procedures are to be followed under the Code of Ethics for holding a silent auction fundraiser for the PBC Municipal Clerk's Association (MCA), to raise funds to be used for the continued professional education of municipal clerks throughout Palm Beach County.

IN SUM, the Code of Ethics prohibits members of MCA, as municipal employees, from soliciting or accepting donations in excess of \$100, directly or indirectly, from vendors, lobbyists, principals or employers of lobbyists who lobby, sell or lease to their government employer, to raise funds for the proposed MCA silent auction fundraiser for use in educational or training costs of MCA members.

Additionally, county and municipal officials and employees are prohibited from soliciting or accepting donations of any value from *any* person or entity because of the past, present or future performance of an official act or a legal duty.

THE FACTS as we understand them are as follows:

You are the Town Clerk and Assistant to the Town manager for the Town of South Palm Beach. You are also the President of the Palm Beach County Municipal Clerk's Association (MCA), a Florida incorporated non-profit professional association. This association is dedicated to the education and professional recognition of Municipal Clerks throughout Palm Beach County. While you are a non-profit organization, you are not a non-profit "charitable" organization as recognized by the Internal Revenue Code.

Due to a lack of available training and education funds for municipal clerks in recent years, your organization has decided raise additional funds for this purpose. Specifically, you intend to raise funds to assist in your stated goal that all municipal clerks in Palm Beach County attain certain professional

certifications. To this end, MCA is planning to hold a “silent auction” event, and will be using association members to solicit items for this auction. Since you wish to solicit donations for your event, you have asked the COE staff to assist by advising you of the procedures and rules for holding such a fund raising event so as not to violate the Code of Ethics.

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

Sec. 2-444. Gift law.

(a)(1) No...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.

(e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:

- (1) An official public action taken or to be taken, or which could be taken;
- (2) A legal duty performed or to be performed or which could be performed; or
- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

(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)

(h) Solicitation of Contributions on Behalf of a Non-Profit Charitable Organization.

- (1) Notwithstanding the prohibition on gifts as outlined in subsection 2-444(a) and (b), the solicitation of funds by a county or municipal official or employee for a *non-profit charitable organization, as defined under the Internal Revenue Code*, is permissible... (Emphasis added)

In your letter explaining your proposed procedures for such solicitation, you list the procedures outlined within the Code of Ethics under §2-444(h)(1,2&3), *Solicitation of Contributions on Behalf of a Non-Profit Charitable Organization*. However, this provision is not applicable to the solicitations by municipal employees on behalf of MCA as you described, because while MCA is a non-profit association it is not a “charitable” organization as defined under the Internal Revenue Code, as required for this provision to apply. Therefore, you may not solicit a donation valued at more than \$100 from a municipal lobbyist or vendor.

No donation of any value may be given to or accepted by your organization from *any* person or entity based on the past, present or future performance of a legal duty, or as the result of any official action.

Lastly, the COE cannot opine as to the policies and rules of individual municipalities as they relate to solicitation of funds for this event from any non-vendor or lobbyist while on duty under the circumstances you describe.

IN SUMMARY, under the Code of Ethics, officials and employees of the county or any Palm Beach County municipality are prohibited from soliciting or accepting donations from any person or entity that the recipient knows is a vendor, lobbyist or principal or employer of a lobbyist, who lobbies the applicable employing entity, when such donations are of a value in excess of \$100. They are further prohibited from soliciting a gift of any value from any person or entity, based on any past, present or future performance or non-performance of an official act or a legal duty.

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,
Commission on Ethics

ASJ/meb/gal

PROPOSED

December 1, 2011

Leonard G. Rubin, Esq.
Town Attorney, Town of Juno Beach
701 Northpoint Parkway, Suite 209
West Palm Beach, FL 33407-1950

Re: RQO 11-105
Voting Conflicts

Dear Mr. Rubin,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion in a public meeting held on November 30, 2011.

YOU ASKED in your letter dated November 15, 2011, whether the Seacoast Utility Authority (SAU), which employs Juno Beach Town Council Member John Callaghan as an engineer, is considered an "outside employer" under the Code of Ethics. You further asked, if it is determined that SUA is Mr. Callaghan's "outside employer," under what circumstances would his participation in Water Resources Task Force (WRTF) matters result in a prohibited special financial benefit to SUA.

IN SUM, the Code of Ethics limits the definition of an "outside employer or business" by excluding any county, state, federal, regional, local, or municipal government entity. Therefore, the voting and participation restrictions involving outside employment conflicts that would normally apply to a member or alternate member of WRTF do not apply if the outside employer is another governmental entity.

THE FACTS as we understand them are as follows:

You are the Town Attorney for the Town of Juno Beach. You have asked for this advisory opinion on behalf of John Callaghan, an elected member of the Juno Beach Town Council, who is employed as an engineer by the Seacoast Utility Authority (SUA). SUA is a governmental regional water and wastewater utility that was formed under an interlocal agreement between five local governments, Palm Beach County, the City of Palm Beach Gardens, the Village of North Palm Beach, the Town of Lake Park and the Town of Juno Beach. According to their website (www.sua.com), SUA provides potable water and wastewater services to thousands of residential and commercial customers within these five (5) localities.

Because of his professional expertise, the Palm Beach County League of Cities (LOC) has asked Mr. Callaghan to serve as an alternate member of the Palm Beach County Water Resources Task Force (WRTF). The appointed position must be held by a municipal elected official and Mr. Callaghan qualifies as an official of Juno Beach. WRTF is an advisory board and "was created by resolution of the Palm

Beach County Board of County Commissioners (BCC), to identify and evaluate opportunities and impediments to providing future water supply, conservation, wastewater treatment, and reuse or reclaim water opportunities in the most efficient and cost effective manner practicable.”¹ WRTF was created by the BCC by resolution on April 20, 2010.² The language of this resolution allows the LOC to appoint six (6) members, and six (6) alternates to WRTF.

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

Sec. 2-442. Definitions.

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

WTRF is an advisory board that was created by the BCC. If he were to accept the LOC appointment as an alternate member, Mr. Callaghan would be an advisory board member under the Code of Ethics.

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. (Emphasis added)

SUA is a non-profit governmental regional water and wastewater utility. You correctly point out in your letter that as a “regional governmental entity,” SUA is excluded from the definition of “outside employer” under the Code.

Section 2-443(c), *Disclosure of voting conflicts*, requires that county and municipal *officials* abstain from voting and not participate in any matter that will result in a “special financial benefit” for any person or entity listed in §2-443(a)(1-7), which includes any “outside employer” of that official. However, while Mr. Callaghan is an elected Juno Beach Council Member, for purposes of membership on the WRTF, he would merely be appointed as an LOC representative. An “official” is defined, in part, as someone who is elected to a governing body or appointed by a local governing body. Therefore, Mr. Callaghan is an “official” only as regards his status as an elected member of the Juno Beach Town Council. Whether the voting prohibitions and other requirements under §2-443(c) are binding on advisory board members who are *not* appointed by a governing body, mayor, or chief executive, is an issue that need not be determined in this opinion, since SUA is excluded from the definition of “outside employer” by virtue of it being a regional governmental entity.

This analysis is limited to Mr. Callaghan’s proposed role as a member of WRTF, and may not be applicable in every circumstance in his role as a Juno Beach Town Council Member.

IN SUMMARY, under the plain language of the Code of Ethics, where a county or municipal official or employee has an outside employer that is a federal, regional, local, or municipal government entity,

¹ WRTF website, (www.pbcgov.com/wrtf)

² BCC Resolution R-2010-0660

such employment will not be considered to be an “outside employer” for the purposes of disclosure, or voting conflict prohibitions within the Code.

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,
Commission on Ethics

ASJ/meb/gal

PROPOSED