

Agenda

January 4, 2012
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Executive Session from 1:45pm to 2:15pm Regular Agenda will begin at 2:15pm

Palm Beach County

Commission on Ethics

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Commissioners

Edward Rodgers, Chair

Manuel Farach, Vice Chair

Robin N. Fiore

Ronald E. Harbison

Bruce E. Reinhart

Executive Director

Alan S. Johnson

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 November 30, 2011
- V. Executive Session
 - a. C11-021
 - b. C11-022
 - c. C11-023
 - d. C11-024
 - e. C11-025
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 11-106
 - b. RQO 11-114
 - c. RQO 11-119
 - d. RQO 11-122
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Proposed Advisory Opinions
 - a. RQO 11-104
 - b. RQO 11-107
 - c. RQO 11-111
 - d. RQO 11-112
 - e. RQO 11-113
 - f. RQO 11-115
 - g. RQO 11-117
 - h. RQO 11-118
 - i. RQO 11-123
- IX. Boca Raton Voting Conflicts
- X. Revision to Rules of Procedure, Section 2
- XI. Executive Director Comments
- XII. Public Comments
- XIII. Adjournment

MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS (COE)

I. CALL TO ORDER: November 30, 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
Robin N. Fiore, Ph.D.
Ronald E. Harbison, CPA
Bruce E. Reinhart, Esq. - Absent

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

III. INTRODUCTORY REMARKS

Judge Edward 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. He added that public speakers should adhere to the time limit.

IV. APPROVAL OF MINUTES FROM OCTOBER 31 AND NOVEMBER 3, 2011

MOTION to approve the October 6, 2011, and November 3, 2011, minutes. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 4-0. Bruce Reinhart absent.

V. COMPLAINTS – PROPOSED SETTLEMENT

V.a. C11-017

Alan Johnson, Esq., COE executive director, requested that the COE members consider Conrad Saddler's complaint case. He said that if the COE accepted the proposed negotiated settlement, staff would recommend that the letter of reprimand be publicly read.

John Cleary, COE advocate (Advocate), stated that:

- Pursuant to the COE's ordinance, section 2-260, Mr Saddler (Respondent) believed that it would be in his best interest to avoid the time and expense of a final hearing by not contesting the complaint's allegations.
- Pursuant to the proposed settlement agreement (agreement), the COE agreed to waive the \$500 fine prescribed under the COE's ordinance, section 2-448(b), and to issue a letter of reprimand.
- The Respondent understood and agreed to abide by the COE's findings, pursuant to the COE's ordinance, section 2-260.1(g), as to the violation being intentional or unintentional.
- The two-page agreement embodied the consent of the parties, with no promises, terms, conditions, or obligations other than those contained in the document.
- The agreement superseded any and all previous communications, representations, and offers, either verbal or written, between the Advocate and the Respondent.
- By signing the document, the Respondent acknowledged that he did so freely, voluntarily, and without duress; that he was competent to enter into the agreement; reviewed the agreement with his attorney; and fully and completely read and understood the terms and conditions.
- The Advocate and the Respondent agreed that the settlement of his action in the manner described was just and in the best interest of the respondent and the County's citizens.
- Evidence of the offer of compromise and settlement was inadmissible to prove any allegations.

V.a. – CONTINUED

- The Respondent also understood and agreed that offers were final when accepted by the COE.
- The Advocate would submit the agreement and incorporate by reference the Respondent's one-day suspension discipline by the County's human resources department.

Dominique Marsh, Esq., the Respondent's attorney, stated that the assigned agreement was submitted to the Advocate, and it was being presented to the COE for approval.

Mr. Saddler said that he had no questions for the COE members, and that he understood the agreement's terms.

Mr. Johnson stated that pursuant to the County's Code of Ethics (Code), the COE should determine whether complaint violations were intentional or unintentional.

MOTION to approve the proposed negotiated settlement agreement. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 4-0. Bruce Reinhart absent.

Dr. Robin Fiore commented that since the Respondent had signed a pledge stating that he understood that he was not to provide or receive help on the test, his actions appeared intentional.

Commissioner Manuel Farach stated that:

- By printing the test pages and providing them to a supervisor, the Respondent, in effect, pushed approval of his actions up the line.
- His recollection was that the test pages did not contain a watermark or a written statement that the test pages should not be distributed.
- Under both circumstances, the complaint's violation would qualify as unintentional.

Mr. Johnson clarified that one of the respondents in the companion case was a supervisor, and that she and other supervisors, including the Pretrial Services Agencies' director and assistant director, ultimately took the test.

V.a. – CONTINUED

Judge Rodgers said that he was unsure how the COE could conclude that the Respondent's actions were unintentional, and he hoped that a determination could be made without harming the Respondent's career.

Mr. Johnson stated that:

- Each test screen had to be printed since there was no ability to download and print the test in one step.
- No prior tests were included in the 1,000 test pages that were distributed as a study guide.
- Staff had recommended probable cause based on these two, and other, factors. No staff recommendation was made whether the complaint's violation was intentional or unintentional, and the Code did not provide any guidance.
- Everyone who received the test pages had to retake the exam.

Commissioner Ronald Harbison commented that it was too difficult to conclude that there was a lack of intent.

Mr. Johnson said that staff determined that there was a distinction in the factual pattern between the first and the second case. This case was similar to a no-contest plea, and withholding of adjudication did not exist.

MOTION to approve the Commission on Ethics' finding that the violation was intentional. Motion by Robin Fiore, seconded by Ronald Harbison, and upon a show of hands, the motion carried 3-1. Manuel Farach opposed and Bruce Reinhart absent.

Judge Rodgers stated that the COE's vote was to accept the agreement without any changes as consented by the parties.

Mr. Johnson clarified that:

- The vote just taken was a separate vote to determine whether the complaint's violation was intentional or unintentional.
- The COE had previously voted unanimously to accept the agreement.

V.a. – CONTINUED

- A revised public report and final order would be issued using the word, intentional.
- The letter of reprimand should be publicly read by either the COE's chair or vice chair.

Judge Rodgers requested that Commissioner Farach read the letter of reprimand.

Commissioner Farach stated that he would summarize the letter's pertinent portions as follows:

The executive director of the Commission on Ethics, Alan Johnson, filed a complaint in case number C11-017, in re: Conrad Sadler on August 26, 2011, alleging that Mr. Sadler misused his public position by printing and distributing a National Association of Pretrial Services certification examination to other public employees who had not yet taken the test.

On August 26, 2011, the complaint was deemed to be legally sufficient by staff. On October 6, 2011, the Commission on Ethics, in executive session, found probable cause to believe a violation had occurred and set the matter for a final hearing.

On November 30, 2011, a negotiated settlement was submitted to the Commission on Ethics, and the Commission on Ethics has voted on that settlement unanimously.

According to the negotiated settlement, Respondent agrees not to contest the allegations contained in the complaint and the finding of the commission that he violated section 2-443(b) of the Code of Ethics, and agrees to accept a letter of reprimand.

Pursuant to the Commission on Ethics ordinance, section 2-260.1, Public Hearing Procedures, the commission finds the violation was intentional. The ethics commission did not assess a fine; however, Respondent has been issued a letter of reprimand. Done and ordered by the Palm Beach County Commission on Ethics in public session on November 30, 2011.

V.a. – CONTINUED

Mr. Johnson stated that Commissioner Farach had read the beginning of the letter of reprimand, which restated the facts of the case. Staff recommended that Commissioner Farach read last paragraph on page 2 of the letter of reprimand, beginning with the words, Your actions.

Commissioner Farach read the portion of the letter of reprimand, page 2, as follows:

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.

Commissioner Farach suggested that the words, above reproach, should be changed to the words, beyond reproach. He continued:

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 public welfare. Violations of the Code of Ethics contribute to the erosion of public confidence and confirm the opinion who believe (sic) 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 of the Commission on Ethics.

MOTION to receive and file the letter of reprimand document as amended, replacing the words, above reproach, with the words, beyond reproach, on page 2, fourth paragraph; the proposed negotiated settlement agreement document; and the public report and final order document, once the Commission on Ethics signed all three documents. Motion by Ronald Harbison, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

Mr. Johnson said that staff would amend the letter of reprimand's language as discussed.

V. – CONTINUED

V.b. C11-018

Mr. Cleary stated that:

- Pursuant to the COE's ordinance, section 2-260(d), the COE may enter into stipulations and settlements that it found to be just and in the best interest of the County's citizens.
- Debbie Crow (Respondent) believed that the proposed stipulated agreement (agreement) would be in her best interest to avoid the time and expense of litigation, and that she desired to resolve the matter in the stated fashion.
- Pursuant to the agreement, the COE agreed to waive the \$500 fine and issue a letter of reprimand.
- The Respondent agreed and understood to abide by the COE's decision regarding its finding, which was required pursuant to the COE's ordinance, section 2-260.1(g) as to whether the violation was intentional or unintentional.
- The agreement embodied the consent of the parties.
- There were no promises, terms, conditions, or obligations were made other than those contained in the agreement.
- The agreement superseded any and all previous communications, representations, and offers, either verbal or written, between the Advocate and the Respondent.
- By signing the document, the Respondent acknowledged that she did so freely and voluntarily without duress; that she was competent to enter into the agreement; that she had reviewed the agreement with her attorney; and that she fully understood and completely read the terms and conditions.
- The Advocate and the Respondent agreed that the settlement of this action was just and in the best interest of the Respondent and the County's citizens.

V.b. – CONTINUED

- Evidence of the offer of compromise and settlement was inadmissible to prove any of the allegations.
- The Respondent understood and agreed that no offer was final until accepted by the COE.

Tara Finnigan, Esq., the Respondent's attorney, stated that she and her client believed that the negotiated settlement covered everything and that her client believed it was in her and the County's best interest to admit to the allegations.

Mr. Cleary said that part of the agreement included an incorporated reference to the Respondent's three-day suspension by the County's human resources department. He added that the Respondent had completed the suspension from November 21, 2011, to November 23, 2011.

Ms. Finnigan stated that she believed that the test takers had received permission to retake the test without re-paying the \$110 fee.

Mark Bannon, the COE senior investigator, clarified that the \$110 test fee provided two opportunities to take the test.

MOTION to approve the proposed negotiated settlement agreement. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

MOTION to approve the Commission on Ethics' finding that the violation was intentional. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

MOTION to receive and file the letter of reprimand document; the proposed negotiated settlement agreement document; and the public report and final order document, once the Commission on Ethics signed the three documents. Motion by Manuel Farach, seconded by Robin Fiore, and carried 4-0. Bruce Reinhart absent.

Mr. Johnson requested that the letter of reprimand be publicly read into the record.

Judge Rogers asked that Commissioner Farach read the letter of reprimand.

V.b. – CONTINUED

Commissioner Farach said that the letter of reprimand regarding complaint C11-018 was dated November 30, 2011, and was addressed to Ms. Debbie Crow, pretrial counselor. He stated that he would read the letter of reprimand's pertinent portions as follows:

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

The significant facts are as follows: You are employed as a supervisor by the Palm Beach County Pretrial Services Department, the PTS Department. Seventeen employees within PTS were scheduled to take an examination given by the National Association of Pretrial Services Agencies 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 17 employees, for a total cost of \$1,870. The successful completion of the examination would lead employees to being awarded the 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, the test was an open-book examination. At the conclusion of the examination, you certified you had not received any such assistance. NAPSA provided over 1,000 pages of study materials; however, there were no practice tests or copies of old examinations provided as reference materials by NAPSA. You took an active role in preparing employees within your office for the examination.

V.b. – CONTINUED

Conrad Saddler, a PTS employee and quote, point person, for the exam, took the certification examination on Tuesday, June 21, 2011. While taking this test, he printed out copies and attached information he believed constituted correct answers to the test. There was no accessibility given by NAPSA to print the test as a whole document; however, Mr. Saddler was able to print the individual pages by printing each screen of the online examination separately. He then distributed copies of this document to you. Upon receiving a faxed copy of these materials from Mr. Saddler and being aware 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 consciously refused to use these materials. The same examination was given on June 23rd and 25th. You personally sat for the examination on June 23, 2011.

Your actions as outlined above constitute 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 beyond reproach. As a public employee, you are an agent of the people and hold your position for the benefit of the public. The public's confidence in their government is eroded when they perceive that official actions may be based upon private goals rather than 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, Commission on Ethics. Dated November 30, 2011.

Mr. Johnson commented that the COE's advocates, including Mr. Cleary, were pro bono through the Legal Aid Society.

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VI.a. Request for Advisory Opinion (RQO) 11-102

VI.b. RQO 11-108

VI.c. RQO 11-109

MOTION to approve the Consent Agenda. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

(CLERK'S NOTE: Judge Rodgers inadvertently called the vote 4-1.)

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. HOLIDAY GIFTS (PROPOSED OPINIONS)

Mr. Johnson stated that he was disclaiming any ability to make decisions, which was solely in the COE's purview, and that only proposed opinions and recommendations by staff were being presented to the COE. He added that of the three advisory opinions regarding holiday gifts, RQO 11-103 was the most thorough and the most encompassing.

VIII.a. Page 14

VIII.b. RQO 11-103

Mr. Johnson stated that:

- Peter Elwell, the Town of Palm Beach manager, submitted an advisory opinion containing four specific questions regarding holiday gift giving.
- Staff had expanded on the opinion regarding question three since there were companion letters that referred to general holiday gifts.
- In all cases, at no time could public officials and employees accept items valued over \$100 if given by their municipal vendors or lobbyists.

VIII.b. – CONTINUED

- Public officials and employees could not accept anything of value that they solicited from a vendor or a lobbyist if it financially benefitted themselves, another employee or official of their government, their relatives, or household members.
- Under no circumstances could a gift be accepted or solicited in exchange for an official public action or a public duty.

MOTION to approve proposed advisory opinion letter RQO 11-103. Motion by Manuel Farach.

(CLERK'S NOTE: The motion was amended and seconded later in the meeting.)

Dr. Fiore stated that she supported approving RQO 11-103 in theory, but she had concerns regarding the letter's wording. She said that the letter's reference to gifts valued in excess of \$100 from a vendor or a lobbyist could mean individual gifts and not in the aggregate or for the year. She suggested that clearer language was needed wherever the \$100 was referenced.

Mr. Johnson said that staff would review the letter, and the following language could be changed:

- Wherever the word, gift, was referenced, it could be changed to the word, gifts.
- A comma and the language, in the aggregate for the calendar year, could be added after each reference to the language, gifts of a value in excess of \$100.

Dr. Fiore also suggested that the letter should clarify that each gift from the same vendor was totaled throughout the year.

Commissioner Harbison commented that gift giving to sanitation workers as opposed to policemen or building inspectors were very different situations. It would help staff if municipalities had their own policies and rules regarding these situations, he said.

Mr. Johnson stated that:

- Most municipalities had their own gift rules, which could be more stringent than the County's Code of Ethics (Code).

VIII.b. – CONTINUED

- Some service-type industries that employed newspaper delivery, sanitation and postal workers were more socially acknowledged as industries being given holiday gifts.
- The proposed language, Therefore, the total allowable gifts that may be given by a vendor or a lobbyist may not exceed \$100 during the course of an entire calendar year, could be added after the first sentence, last paragraph on page 3.

Judge Rodgers asked whether the COE should forward copies of the advisory opinion letters to the municipalities.

At Judge Rodgers' query, the COE's consensus was to direct staff to attach and email advisory opinion letters to the 38 municipalities to save money and postage.

AMENDED MOTION to approve proposed advisory opinion letter RQO 11-103 with the changes as discussed. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

VIII.c. RQO-11-110

Mr. Johnson stated that the City of Atlantis (City) manager asked whether the Code would be violated if the City solicited monetary donations from residents for an employee holiday fund where the funds would be later distributed equally to each City employee. He added that staff had submitted the following:

- The Code did not prohibit the distribution of funds donated by City residents to its employees as a holiday gift, provided that if the distribution was over \$100 per employee, no funds were solicited or accepted into the fund from any City vendor or lobbyist.
- The collected funds could not be given for past, present, or future performance of a legal duty or as a result of any official action taken by the City or its employees.
- If each City employee's share exceeded \$100, the gift must be reported per the Code.

VIII.c. – CONTINUED

Keith Davis, Esq., City attorney, stated that City staff supported approval of RQO 11-110. He added that he believed that the monetary donations were not anonymous.

Commissioner Harbison disclosed that he was a City resident, and that he did not remember receiving a solicitation.

Mr. Bannon stated that almost all of the solicited donations were made by check, and receipts were given for all donations.

Mr. Johnson stated that:

- His office had received a flyer containing the solicitation information from an anonymous source.
- Staff could have made an inquiry into the anonymous flyer, or they could have contacted the City and requested information about the flyer.
- Rather than conducting an inquiry or an investigation, staff had decided to provide an advisory opinion letter through the City's manager.

MOTION to approve proposed advisory opinion letter RQO 11-110. Motion by Manuel Farach, seconded by Robin Fiore, and carried 4-0. Bruce Reinhart absent.

(CLERK'S NOTE: Item VIII.a. was presented at this time.)

VIII.a. RQO 11-100

Mr. Johnson stated that:

- The advisory opinion letter was originally a consent agenda item; however, staff pulled the letter for discussion with other holiday gift-giving items.
- The letter involved an attorney whose law firm contracted with the Town of Haverhill (Town) to provide legal services.
- The attorney asked whether his law firm could provide holiday gifts to Town council members and staff, provided that the gifts were valued at less than \$100.

VIII.a. – CONTINUED

Dr. Fiore stated that in addition to the language, provided the gifts are valued at less than \$100, the advisory opinion letter should include language that the law firm had not been previous given gifts.

Mr. Johnson said that he agreed that the issue of an aggregate had not been raised in the letter. He added that:

- The attorney was a contract employee so his gift was an employee-to-employee gift as opposed to a gift from his law firm, which, depending on its interpretation, could possibly be a lobbyist gift.
- The question of whether the law firm or the attorney individually contracted with the Town would have been vetted in the letter if staff had analyzed the broad issue after the item was removed from the consent agenda.
- Assuming that the aggregate of gifts during the year was below \$100, the issue of whether the attorney was an employee or a vendor was not relevant to this particular letter.
- The letter could be revised to include a comma and the language, in the aggregate for the calendar year, after each use of the language, gifts of a value in excess of \$100.

Dr. Fiore recommended that the sentence on page 2 above the words, In summary, and beginning with the words, Since the value, should be deleted since the aggregate was unknown.

Mr. Johnson said that the word, Since, at the beginning of the sentence on page 2 could be changed to the word, If.

Commissioner Farach stated that he was concerned about calling the attorney a contract employee rather than a vendor.

Commissioner Harbison said that he agreed that the attorney should be considered a vendor.

VIII.a. – CONTINUED

Mr. Johnson stated that:

- The question of whether the attorney was considered a contract employee, a vendor, or both, in relation to the Town was raised in the letter, but the sentence on page 2, beginning with the words, A question arises, could be stricken.
- The Code said that anyone within the COE's jurisdiction could ask for an advisory opinion.
- As a contract employee, the attorney's actions would be more restricted.
- The last paragraph on page 1, beginning with the words, The definition of official or employee, and concluding on page 2, ending with the words, to the Town, could be stricken.

Dr. Fiore commented that the letter also stated that the gift law prohibited a public official or employee, as if the attorney was placed in that category.

Mr. Johnson clarified that:

- The main jurisdiction over vendors involved gift giving.
- The first paragraph on page 2 provided alternatives by considering prohibitions involving public officials in the first sentence, and vendors in the second sentence.

MOTION to approve proposed advisory opinion letter RQO 11-100 as amended to include the changes as discussed. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

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

IX. MISUSE OF OFFICE AND VOTING CONFLICTS: REASONABLE CARE STANDARD (PROPOSED OPINIONS)

IX.a. RQO 11-099

Mr. Johnson stated that:

- A municipal official was employed by a major, national bank in one of its local branches.
- The letter, submitted through the City of Boca Raton's (City) attorney, Diana Grub Frieser, Esq., regarded the standard of care required to determine whether someone appearing before the municipal official's board was a customer or client of the municipal official's employer.
- The Code said that elected officials may not financially benefit if they knew or should have known, with the exercise of reasonable care, that they would be specially, financially benefitted.

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

- Elected officials were prohibited from voting on matter that would financial benefit themselves, their outside employer, or a customer or client of their outside employer.
- The Code defined a customer or client as any person or entity to which an official or employee's outside employer or business had supplied goods or services during the previous 24 months, having an aggregate value of more than \$10,000.
- There was no bright line definition of reasonable care. It depended on the facts and circumstances.
- In determining if a conflict existed, the Code did not require any particular degree of research or due diligence on a public official's part.
- The City submitted an addendum letter to staff's opinion letter which stated that an official or an employee would be prohibited from voting on a matter that was significantly attenuated from a perceived or a real financial benefit; and that staff's interpretation was overly broad.

IX.a. – CONTINUED

- The City suggested that staff revise the advisory opinion letter allowing an elected official to vote on, and participate in, a matter where a customer or client of the official's outside employer was before the official's board, but there was no nexus between the matter and the official's or client's relationship with the official's outside employer.
- In the City's initial hypothetical scenario where an official would or would not know of the relationship between the official's outside business or employer and its customer or client, the official's ability to influence his or her customer or client, or the official outcome of his or her employer's business was significantly attenuated that no financial benefit existed.

Mr. Johnson stated that:

- Ms. Rogers' last reference to the City's initial hypothetical scenario was the City's recommendation that was contained in its letter and submitted by the City's attorney.
- Problems existed in determining what constituted a financial nexus, and in providing any bright line as to what constituted knowledge.
- Court cases had offered some guidance that the reasonableness standard must refer to actual or constructive knowledge, and accepting a gift was insufficient to establish a violation. Circumstances were necessary to support that someone knew a gift was given to influence.
- If the COE required the standard practice of performing computer searches to determine whether a gift was given to influence, it was unlikely that an appellate court would uphold its constitutionality if a conviction was decided without additional clear and convincing evidence that someone either knew, or constructively knew, that the gift was given to influence.

Dr. Fiore commented that the hypothetical scenarios being used, and Mr. Johnson's references to reasonableness, were obfuscating the issue. The issue, she said, was when should an advisory board member or an elected official abstain and not participate in a vote.

IX.a. – CONTINUED

Ms. Rogers said that:

- The City's letter requested an opinion regarding a City council member who worked for a large, national financial institution. The hypothetical portion of staff's opinion regarded an out-of-state individual who invested in the City and who was a national financial institution's client.
- Advisory opinion letter RQO 11-099 was unrelated to a previous advisory opinion letter regarding a City architect.

Mr. Farach said that he believed that the COE would be unable to provide a bright-line definition regarding the misuse of office ordinance since it depended on the circumstances.

Ms. Frieser stated that:

- The addendum letter's purpose was to respond to staff's proposed advisory opinion letter.
- Today's advisory opinion letter was unrelated to any prior letter since it contained completely different facts and was under a different County Code section.
- A majority of the advisory opinion letter and of today's discussion, addressed the reasonableness standard, not the opinion's scope. The City's central question was whether a nexus was required, and whether a voting conflict existed if no relationship existed between the matter before the COE and the City council member or the City council member's outside employer.
- Hypothetical scenarios were provided to demonstrate the effects of the proposed advisory opinion, which the City believed was not a correct application of an ethics code.
- Staff's proposed advisory opinion language constituted an unlawful voting conflict and an arbitrary rule, and would create an absurd result. The intent of ethics' rules was to avoid conflict situations.

IX.a. – CONTINUED

- The City asserted that in the factual circumstance neither a direct nor an indirect benefit existed either to the City council member or to his or her outside employer; therefore, no situation should exist to result in a voting conflict.
- She agreed with the COE's opinion that no bright-line rule defined reasonableness; however, she disagreed with creating rules regarding when a voting conflict existed.
- The City's request for guidance, based on specific facts on how the \$10,000 threshold for goods and services should be calculated for the purposes of a customer or client, was not included in the proposed advisory opinion letter.

Ms. Frieser, in explaining the specific, factual situation as contained in the City's advisory opinion request to the COE, added that:

- Under the Code and staff's proposed advisory opinion, a situation where someone was a client of the council member's employer, and who resided in a different location, would constitute a per-se conflict.
- Under State law, an elected official had an obligation to participate in the voting process unless he or she had a voting conflict.

Commissioner Farach commented that he did not perceive a per-se prohibition in staff's proposed advisory opinion. He added that even with Ms. Frieser's factual scenario, he would have asked more questions, such as, how many accounts the client had at Citibank's Town of Jupiter branch.

Mr. Johnson stated that:

- Staff had reviewed the Code's bright-line definition that if an elected official had a customer or a client, he or she could not specially, financially benefit that customer or client.
- The issue was whether an individual knew that someone was a customer or client.

IX.a. – CONTINUED

- If the COE interpreted the Code’s language to mean that a financial nexus was required between the individual and the issue before the City’s governing body, the proposed advisory opinion letter may need to be rewritten.
- Staff had attempted to state what constituted reasonableness with regard to having knowledge.

Ms. Frieser commented that the proposed advisory opinion letter focused on whether a violation would be issued.

Commissioner Harbison stated that:

- He read staff’s proposed advisory letter and the City’s supplemental letter, and he did not believe that any issues existed with staff’s opinion letter.
- He was concerned with creating a precedent in an advisory opinion, which someone could use in a different circumstance.

Ms. Frieser said that the City had reviewed whether the City council member should ask anyone who came before her if he or she was a customer or a client of Citicorp. She added that it would require additional research to determine whether that placed a reasonable or unreasonable legal burden on elected officials.

Mr. Johnson stated that staff had not provided any guidance in the proposed advisory opinion letter on the meaning of customer or client regarding factored goods or services valued over \$10,000, but they would review State law and other sources and bring back at the next COE meeting specific guidance for the City.

MOTION to approve proposed advisory opinion letter RQO 11-099. Motion by Manuel Farach and seconded by Ronald Harbison.

Dr. Fiore asked whether the motion could be amended to delete the proposed advisory opinion letter’s hypothetical scenarios.

AMENDED MOTION to approve proposed advisory opinion letter RQO 11-099 as amended to delete the hypothetical scenarios. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

IX.a. – CONTINUED

Dr. Fiore said that if and when a hypothetical scenario became an issue, the City could submit another opinion request.

Mr. Johnson clarified that:

- The hypothetical scenarios contained in the City's addendum letter were not included in the proposed advisory opinion letter.
- Staff would delete the proposed advisory opinion letter's one paragraph that contained a hypothetical scenario and leave the last line which began, As the City attorney.

Dr. Fiore requested that the last two sentences on page 3, fourth paragraph, that began, As evidenced by the hypothetical scenario, should also be deleted; and the COE's consensus was to accept that change.

IX.b. RQO 11-101

Mr. Johnson stated that:

- A Board of County (BCC) commissioner asked whether the Code applied to issues that may come before the BCC involving customers or clients of her son's firm, and what reasonable care and special benefit meant within the context of an official's public duty under the Code.
- Staff submitted that:
 - The Code's misuse of office provisions involving special, financial benefit did not apply directly to customers or clients of an official's child's employer or business.
 - If a scenario was presented to the BCC whereby an official's child's firm would receive a financial benefit not shared with similarly situated members of the general public, an official could not vote on, or participate in, the matter.
 - There was no bright-line definition of reasonable care or special, financial benefit since reasonableness necessarily depended on the facts and circumstances as presented.

IX.b. – CONTINUED

- Based on reviewed case law, constructive or actual knowledge was necessary.
- Circumstances could occur where the official's son was standing next to an applicant, where the official's son's name appeared as a coapplicant in terms of his employer or business, or where the official may have knowledge, however gained. In those circumstances, the official should abstain from participating or voting on a matter.

Judge Rodgers commented that the COE should attempt to provide advisory opinions based on the law.

MOTION to approve proposed advisory opinion letter RQO 11-101 as amended to delete any hypothetical scenarios. Motion by Robin Fiore.

MOTION DIED FOR LACK OF A SECOND.

Mr. Johnson said that the sentence on page 3, third paragraph, beginning with the words, Clearly, if your son's company, could be deleted.

Dr. Fiore suggested that the last sentence on page 3, third paragraph, beginning with the words, An official proceeds at his or her peril, should also be deleted.

Mr. Johnson responded that the last sentence was not a hypothetical scenario, and it should remain. He said that he believed that no other hypothetical scenarios existed.

Commissioner Farach expressed concern a discussion of the *Goin* case in the proposed advisory opinion letter.

Mr. Johnson stated that a reference to the *Goin* opinion was instructive with respect to other identical statute language and how the courts had reacted to that case; however, any reference to the *Goin* case could be deleted.

Mr. Farach suggested that the first two sentences on page 2, last paragraph should remain, and references to the *Goin* case should be deleted.

IX.b. – CONTINUED

Mr. Johnson said that the last two sentences on page 2, beginning with the words, *In Goin v. Commission on Ethics*, and with Dr. Fiore's suggestion, ending with page 3, third paragraph, first sentence, the words, of office sections, could be deleted.

Mr. Farach suggested that the entire paragraph on page 3, third paragraph, beginning with the words, *Applying the reasoning*, should be deleted.

Mr. Johnson clarified that the following language would be deleted: The last two sentences on page 2, last paragraph, beginning with the words, *In Goin v. Commission on Ethics*, and ending with page 3, the entire third paragraph, beginning with the words, *Applying the reasoning*.

Dr. Fiore suggested that the words, *In order to sustain a violation*, on page 3, fourth paragraph, first sentence, could be deleted.

Mr. Johnson said that the words, *that violation*, on page 3, fourth paragraph, first sentence, should be changed to, *a violation*.

Dr. Fiore suggested deleting the words, *Such a finding must be*, on page 3, fourth paragraph, second sentence.

Mr. Johnson read the amended language on page 3, fourth paragraph:

The COE must find by clear and convincing evidence that a public official or employee committed a violation, based upon competent, substantial evidence in the record.

MOTION to approve the proposed advisory opinion letter as amended to include the changes as discussed. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

RECESS

At 4:14 p.m., the chair declared a recess.

RECONVENE

At 4:32 p.m., the meeting reconvened with Manuel Farach, Robin Fiore, Ronald Harbison, and Judge Rodgers present.

(CLERK'S NOTE: The motion on item IX.b. was repeated.)

MOTION to approve the proposed advisory opinion letter as amended to include the changes as discussed. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

X. PROPOSED ADVISORY OPINIONS

X.a. RQO 11-089 (resubmitted)

Mr. Bannon stated that:

- The item had been before the COE three times, with only the reporting requirements being changed in the letter.
- In the final analysis, whether the trustees were originally nominated for the position by other trustees, the issue was who appointed them, which was the governing board.
- The trustees were also reporting individuals under State law. As pension board members appointed by their governing board, they still had prohibitions.

MOTION to approve the proposed advisory opinion letter RQO 11-089. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

X.b. RQO 11-090 (resubmitted)

Ms. Rogers stated that:

- Staff had resubmitted RQO 11-090 after receiving additional information regarding the bid process and the company that was involved in the bid process.

X.b. – CONTINUED

- A Town of Palm Beach Shores (Town) 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 government employer.
- The changed facts were that his spouse was the sole owner of the lawn and landscaping company, of which she owned more than five percent.
- The Town employee filed a statement with the Supervisor of Elections and the COE, disclosing his wife's ownership interest in the landscaping company.
- The underlying contract was supervised by the Town manager, and the employee was not involved in the bid specifications or oversight of the contracts.
- After submission of the opinion request, staff was notified by the Town's attorney that the Town employee's spouse was not awarded the contract.
- Staff submitted that:
 - A public employee may never use his or her official position to give or influence others to his or her spouse's business a special, financial benefit.
 - The Code prohibited an employee, his or her outside employer or business, or a business in which a member of their household has at least five percent ownership interest, such as this situation, from contracting with their public employer.
 - The Code contained an exception to the contractual relationship provision for contracts under a sealed competitive-bid process where public employees did not participate in the bid specifications. In this situation, the Town employee had not participated in the bid specification, and he would discontinue participation in the contract's oversight.
 - The Code's exception stated that public employees could not use their positions to influence colleagues.

X.b. – CONTINUED

- A public employee should disclose the nature of his or her spouse's interest in a corporation that was submitting a contract bid, which the Town employee did.
- Based on the facts submitted, the Code did not prohibit S & W Professional Services Corporation from contracting with the Town.

Keith Davis, Esq., Town attorney, stated that he believed the proposed advisory opinion letter implied and inferred that the contract could have only been awarded to the lowest bidder, which became an issue when the bid was awarded.

Mr. Johnson said that the Code's exception included awards given to the lowest bidders. He recommended the following changes to the proposed advisory opinion letter:

- Page 1, third paragraph, fourth sentence:

The Code provides an exemption for contracts entered into under a process of sealed, competitive bidding, where your spouse is the lowest bidder, provided that you have not participated...

- Page 2, last paragraph, second sentence:

However, section 2-442(e)(1) provides an exception for contracts awarded under a system of sealed, competitive bidding, where your spouse is the lowest bidder.

MOTION to approve proposed advisory opinion letter RQO 11-090 as amended to include the changes as discussed. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

X.c. RQO 11-104

Mr. Bannon stated that:

- A Town of South Palm Beach (SPB) clerk, who was the president of the County's Municipal Clerk's Association, asked for procedures regarding fundraising to further other clerks' education.

X.c. – CONTINUED

- Staff submitted that providing the fundraising was done by silent auction of donated items, and providing that a lobbyist, a principal, an employer of a lobbyist, or a vendor of any municipalities did not donate items, the SPB clerk could fundraise.
- The SPB clerk had provided COE staff with a fundraising procedure based on an incorrect reference to the Code's section regarding charitable organizations.

Mr. Johnson said that the training and educational fees were considered an exception to the Code's gift law under section 2-444(g)(1)(h):

Registration fees and other related costs associated with educational or governmental conferences or seminars and travel expenses either properly waived or inapplicable pursuant to 2-443(f) provided that the attendance is for government purposes and the attendance is related to their duties and responsibilities.

He added that if a vendor made a donation, the Code's section regarding reimbursements would apply.

Dr. Fiore said that the clerks were basically raising money for themselves to further their educations, which would be considered a gift.

Mr. Johnson stated that:

- The fees themselves were not reportable gifts, but the clerks could not accept any travel expenses, which was under a different Code provision.
- The clerks would be unable to accept travel expenses without a waiver. If they accepted them with the waiver, then it would not be considered a gift.
- The proposed advisory opinion letter may need to be pulled and reviewed. If travel expenses were not considered gifts, the clerks' actions may not be limited under the Code's gift law.
- Donations would be gifts since they were not being used to actually pay the registration fees.

Mr. Johnson said that if the COE elected to table the item, staff would review the issues regarding reimbursement and gifts.

X.c. – CONTINUED

Commissioner Farach requested that the revised proposed advisory opinion letter contain a summary sheet explaining why the letter was coming back for the COE's review.

MOTION to table proposed advisory opinion letter RQO 11-104. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

X.d. RQO 11-105

Mr. Bannon stated that:

- The Town of Juno Beach (Juno) attorney requested an advisory opinion whether Seacoast Utility Authority (SAU), which employed a Juno council member, was considered an outside employer, and whether the Juno council member would have a voting conflict if the SAU came before the Juno council.
- Staff had opined that since SAU was a governmental organization owned by five municipalities, an exception to the conflict rules existed, and the voting and participation restrictions did not apply to the council member.

MOTION to approve proposed advisory opinion letter RQO 11-105. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

XI. EXECUTIVE DIRECTOR COMMENTS

XI.a.

DISCUSSED: Next COE Meeting.

Mr. Johnson stated that the next COE meeting would be the first Thursday in January 2012.

XI.b.

DISCUSSED: Ethics Awareness Day.

Commissioner Harbison complimented staff and fellow COE members for a successful Ethics Awareness Day.

XI.b. – CONTINUED

Mr. Johnson said that staff had received great feedback, and he complimented Ms. Rogers on her achievements.

XII. PUBLIC COMMENTS – None

XIII. ADJOURNMENT

At 4:59 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

ITEM VI – PROCESSED ADVISORY OPINIONS

RQO 11-106 Carl Erickson

A county employee asked whether he and other department staff members were prohibited from accepting a tuition waiver for a future training class provided by IBM (a vendor of the County). The tuition waiver was offered in return for employee assistance in a product evaluation survey.

Staff submits the following for COE approval: the Code of Ethics prohibits employees from accepting employment related travel expenses (which includes registration fees, travel and meals) from any vendor of the government they serve without a waiver from the governing board, in this case the Board of County Commissioners (BCC). Because IBM is a vendor of the county, in order to accept this fee waiver, the BCC must waive the requirements of this section of the code by majority vote. Further, other than properly waived travel expenses, county employees may not accept any gift in excess of \$100 from a vendor, lobbyist, principal or employer of a lobbyist, who sells, leases to, or lobbies Palm Beach County.

RQO 11-114 Gary Brandenburg

A City Attorney asked whether employees of a municipality may solicit donations from vendors and residents of the City in order to establish a fund to purchase gift cards, which would then be distributed to “the elderly that are in need.” This action is not part of any charitable group, or through a 501(c)(3) charitable organization. The City Council supports this effort, but has taken no formal action which would allow the funds to be taken into the City revenue stream and distributed as a City expenditure. The employees and City staff would determine eligibility for distribution of the gift cards.

Staff submits the following for COE approval: city employees may not solicit donations valued at greater than \$100 from vendors or lobbyists who sell, lease or lobby the City for the purpose of obtaining gift cards to distribute to elderly residents in need. Because the solicitations are not being made on behalf of a non-profit charitable organization, as defined under the Internal Revenue Code, there is no log exception to this limitation. The code does not prohibit employees from soliciting donations of any amount from any person or entity that is not a City vendor, lobbyist, principal or employer of a lobbyist. However, no solicitation may be made, or donation accepted from any person or entity based on any *quid pro quo* or the past, present or future performance or non-performance of any of any public action or legal duty.

RQO 11-119 Debbie Blake

A county employee asked whether the County Senior Services department may accept donations, such as bakery items, from Publix to be used as prizes for bingo games. The donations will be exclusively used for the benefit of Senior Center clientele.

Staff submits the following for COE approval: the code of ethics does not prohibit public employees from soliciting or accepting gifts in their official capacity provided they are accepted for use by the county for a public purpose. Use of contributed gifts exclusively for senior clients of the Center for bingo prizes and general distribution to senior citizen clientele is therefore not prohibited.

RQO 11-122 James Hauser

A county librarian asked if it was permissible to accept a box of candy as a holiday “thank you” gift for assisting a library patron in the normal course of his duties over the course of the year.

Staff submits the following for COE approval: general holiday gifts of food are not prohibited so long as the gifts are not given as a “thank you” in exchange for a specific service, public action or legal duty performed or to be performed. The COE does not opine regarding any county or department policy or procedure that may be more stringent than the code of ethics.



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

December 16, 2011

Mr. Carl Erickson
Palm Beach County Information Systems Services
301 N. Olive Avenue
West Palm Beach, FL 33401

Re: RQO 11-106
Accepting travel expenses

Dear Mr. Erickson,

Your request for 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 September 28, 2011, which was forwarded to the Commission on Ethics' staff on November 21, 2011, whether you, or other ISS employees, were prohibited by the Code of Ethics from accepting a tuition waiver for a future training class provided by IBM (a vendor of the County). The tuition waiver was offered in return for your assisting them in a product evaluation survey. You provided additional information to COE staff via email and telephone.

IN SUM, the Code of Ethics prohibits you from accepting employment related travel expenses (which includes registration fees, travel and meals) from any vendor of the county without a waiver from the governing board, in this case the Board of County Commissioners (BCC). Because IBM is a vendor of the county, in order to accept this fee waiver, the BCC must waive the requirements of this section of the code by majority vote. Further, other than properly waived travel expenses, you may not accept any gift in excess of \$100 from a vendor, lobbyist, principal or employer of a lobbyist, who sells, leases to, or lobbies Palm Beach County.

THE FACTS as we understand them are as follows:

You are a Palm Beach County employee working for the Information Systems Services Department (ISS). In January 2011, ISS purchased server hardware from IBM. This purchase included a complementary assessment service from IBM called "PowerCare Assessment." ISS used this service to assess the servers they purchased in January. After the assessment was completed, IBM asked that this service be evaluated via a survey, which you completed. As a reward for completing this evaluation, IBM offered ISS a fee waiver for you, or any ISS employee, to attend an "IBM Power Systems Conference," (IBM Conference) which normally costs \$2,495. The IBM Conference is educational. You were going to attend such a conference in Miami from October 10-14, 2011, but decided not to attend until you were sure acceptance of this fee waiver was not prohibited under the code. You or another employee may attend a future conference, if permitted.

According to a copy of the IBM fee waiver offer sheet you forwarded to COE staff, the waiver includes conference fees, materials, admission to the "Solutions Center Reception" and breakfast and lunch for each day (also included for all paid attendees). It does not include airfare, lodging or other hotel costs, incidentals, or any meals outside of those provided by the conference. This fee waiver may be used by any ISS employee at a future "Power Systems Conference."

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

Section 2-443. Prohibited Conduct.

- (f) *Accepting travel expenses.* No official or employee shall accept, *directly or indirectly*, any travel expenses including, but not limited to, transportation, lodging, meals, *registration fees* and incidentals from any county or municipal contractor, *vendor*, service provider, bidder or proposer as applicable. The board of county commissioners or local municipal governing body as applicable *may waive the requirements* of this subsection by a majority vote of the board or local municipal governing body. (Emphasis added)

Section 2-444(a) prohibits a public employee from soliciting or accepting a gift valued in excess of \$100 from a vendor or lobbyist of his or her government. Conversely, vendors and lobbyists are prohibited from giving such a gift to someone they know is a public employee. However, §2-444(g)(1)h. specifically excludes registration fees and other related costs associated with educational conferences from the definition of a gift, provided a waiver is obtained pursuant to §2-443(f).

Section 2-444(g) defines a gift as the transfer of anything of economic value without adequate and lawful consideration. Section 2-444(g)(1) lists a number of exceptions to the application of this definition as follows:

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

(g)(1)h. Registration fees and other related costs associated with educational or governmental conferences or seminars and travel expenses either properly waived or inapplicable pursuant to section 2-443(f), provided that attendance is for governmental purposes, and attendance is related to their duties and responsibilities as an official or employee of the county or municipality.

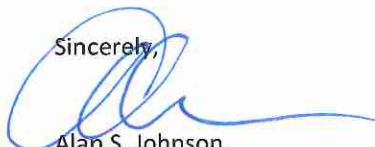
In order to accept and use the IBM fee waiver for any of its employees to attend a future IBM conference, the requirements of §2-443(f) must first be waived by a majority vote of the BCC at an open meeting. The waiver process serves to make the transaction transparent. However, notwithstanding a waiver, a public employee may not accept other items from a vendor that are not related to conference travel expenses as set forth in §2-443(f) if the value exceeds \$100.

IN SUMMARY, ISS employees are not prohibited by the Code of Ethics from attendance at any educational training conference where the travel expenses are paid for by a county vendor, provided that they obtain a waiver from the Board of County Commissioners. ISS employees are also prohibited from accepting anything of value in excess of \$100, other than the related travel expenses, from a vendor/lobbyist of the county.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

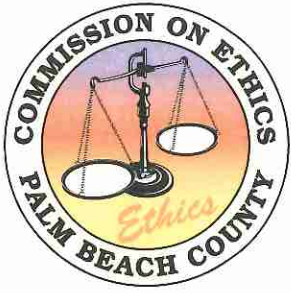
Please feel free to contact me at (561) 233-0724 if I can be of any further assistance in this matter.

Sincerely,



Alan S. Johnson,
Executive Director

ASJ/gal/meb



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

December 15, 2011

Gary Brandenburg, Esq.
Brandenburg & Associates, P.A.
11891 U.S. Highway One, Suite 100
North Palm Beach, FL 33408

Re: RQO 11-114
Gift law

Dear Mr. Brandenburg,

Your request for 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 December 6, 2011, whether employees of the City of Pahokee may solicit donations from vendors or residents of the City, to establish a fund to purchase gift cards, which would then be distributed to "the elderly that are in need." Additional information was obtained by COE staff via email.

IN SUM, under the circumstances you describe, employees of the City of Pahokee (the City) may not solicit donations valued at greater than \$100 from vendors of the City, or from lobbyists or principals or employers of lobbyists that lobby Pahokee, for the purpose of obtaining gift cards to distribute to elderly residents in need. The code does not prohibit employees from soliciting donations of any amount from any person or entity that is not a City vendor, lobbyist, principal or employer of a lobbyist for the stated purpose. However, no solicitation may be made, or donation accepted from any person or entity based on any official *quid pro quo* or the past, present or future performance or non-performance of any of any public action or legal duty.

THE FACTS as we understand them are as follows:

You are the City Attorney for the City of Pahokee (the City). The employees of the City wish to solicit donations from vendors and residents of the City to purchase gift cards, which would then be distributed to elderly persons who are in need. This action is not part of any charitable group, or through a 501(c)(3) charitable organization. The City Council supports this effort, but has taken no formal action which would allow the funds to be taken into the City revenue stream and distributed as a City expenditure. No funds are allowed to be solicited or accepted based on any improper *quid pro quo*, or based on any past, present or future performance or non-performance of any public action or legal duty by the City or its employees. The employees and City staff would determine eligibility for distribution of the gift cards.

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

Section 2-444. *Gift law.*

- (a)(1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient

knows, or should know with the exercise of reasonable care, *is a vendor*, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable. (Emphasis added)

This section does not allow solicitation or acceptance of a donation valued at more than \$100 from any vendor of the City, even where the donation is earmarked for distribution for a charitable reason as described under the facts you presented.

While not applicable to your situation, §2-444(h) provides an exception to this rule for a non-profit charitable organization, as defined under the Internal Revenue Code, so long as the solicitation and acceptance is properly logged and timely submitted to the COE, and no on-duty municipal staff or any municipal resources are used in this effort. Based upon the facts submitted, the fundraising is not part of any charitable organization recognized under the IRS code, therefore, this exception does not apply.

Further, since the City Council supports this effort, but has not adopted it as a "public purpose" and arranged to have the donations taken into the City revenue stream and distributed from the City funds by vote of the City Council, these donations would not meet the requirements of a gift exception under §2-444(g)(1)(e), as *gifts solicited or accepted on behalf of the county or municipal government in performance of their official duties and for use solely for a public purpose.*¹

IN SUMMARY, employees of the City of Pahokee are not prohibited from soliciting donations to purchase gift cards for distribution to elderly persons in need, so long as no donation of more than \$100 is solicited or accepted from a City vendor, or from a lobbyist, principal or employer of a lobbyist that lobbies the City. In addition, donations of any kind, from any person or entity, may not be solicited or accepted by an employee if based on a *quid pro quo* or the past, present or future performance or non-performance of any public act or 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 if I can be of any further assistance in this matter.

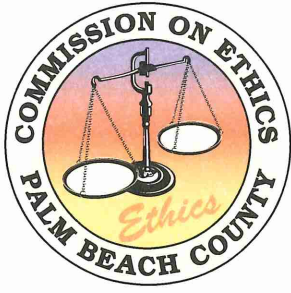
Sincerely,



Alan S. Johnson,
Executive Director

ASJ/gal/meb

¹ Please refer to RQO 11-084 and RQO 10-040 for further information on the "public purpose" exception.



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

December 21, 2011

Debbie Blake, Community Center Manager
Mid County Senior Center
3680 Lake Worth Road
Lake Worth, FL 33461

Re: RQO 11-019
Gifts/solicitations

Dear Ms. Blake,

Your request for 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 dated December 19, 2011, whether Mid County Senior Center (the Center) employees may accept donations from Publix Supermarkets of bakery items, provided the items are used exclusively for senior citizen clients of the Center to be donated as prizes for bingo games.

IN SUM, based on the facts you have submitted, the code of ethics does not prohibit public employees from soliciting or accepting gifts in their official capacity provided they are accepted for use by the county for a public purpose. Use of contributed gifts exclusively for senior clients of the Center for bingo prizes and other purposes is therefore not prohibited.

THE FACTS as we understand them are as follows;

You are the senior center manager for the Mid County Senior Center (the Center), Palm Beach County Division of Senior Services. The Center provides educational and recreational services for seniors 55 and older and provides lunch and transportation through Palm Tran. Many seniors would be homebound all day without companionship were it not for this service provided by Palm Beach County. As Manager, you oversee the programs offered at the Center. A volunteer at the Center contacted a local Publix supermarket and arranged for the donation of bakery goods to the Center for the senior citizens. The donated goods are not used by county staff. All donations are used for the Center clients.

Among the events offered by the Center is bingo. As part of the services provided for seniors, county staff accepts the donations of bakery goods from Publix Supermarkets to be distributed as bingo prizes. You advise that the seniors "really enjoy these items plus the bread they receive." The Center's clientele includes a cross section of seniors, including significant minority participation. Economically diverse, the Center seniors include homeless, low income and high income individuals. All clients share in the benefit of these donations.

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

Section 2-444(a) prohibits a public employee from soliciting or accepting a gift of a value in excess of \$100, annually in the aggregate, from a vendor or lobbyist of their public employer. Publix supermarkets is a vendor of Palm Beach County. This prohibition extends to charitable donations made to employees or on behalf of employees of the government in most instances. However, §2-444(g)(1)e. specifically excludes *gifts solicited or accepted by county officials or employees on behalf of the county in performance of their official duties for use solely by the county for a public purpose* from the definition of gift. The COE has previously opined that this exclusion applies to county department initiatives where the donations were accepted by the government department and used to directly fund county programs.¹

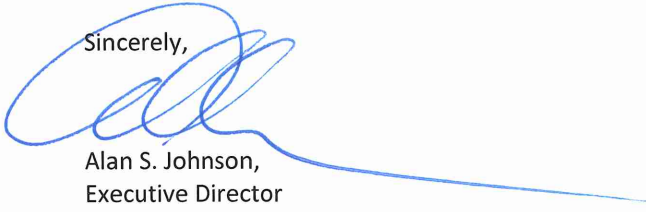
The manner, purpose and use of the bakery goods are consistent with the government use exemption to the gift law prohibitions of the code of ethics. Provided that these items are not solicited for the personal use or consumption by county employees, and no prohibited quid pro quo is given in exchange for these items, the code does not prohibit such a solicitation and acceptance.

IN SUMMARY, based upon the facts submitted, gifts solicited or accepted directly into a government department for use by that department in a public program or other public purpose, and not for the personal benefit of public employees or officials, are not prohibited under the code of ethics, provided that there is no unlawful quid pro quo involved in the transaction.

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

¹ RQO 10-027 (donations to structurally improve a county aquatic center to protect Special Olympic participants), RQO 10-040 (solicitations to partially fund the county Drowning Prevention Coalition, a program of the Palm Beach County Fire Rescue Department)



Palm Beach County Commission on Ethics

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Executive Director

Alan S. Johnson

December 29, 2011

James Hauser, Reference Librarian
Palm Beach County Library, Gardens Branch
11301 Campus Drive
Palm Beach Gardens, FL 33410

Re: RQO 11-122
Gifts/Holiday gifts

Dear Mr. Hauser,

Your request for 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 dated December 21, 2011, whether you are permitted to accept an unsolicited gift of a box of candy, with a value less than \$100, as a holiday "thank you" gift for assisting a patron in the normal course of your duties as reference librarian over the course of the year.

IN SUM, holiday gifts from non vendors or lobbyists of your public employer, not connected to the past, present or future performance of a legal duty or an official act, are generally permitted.

THE FACTS as we understand them are as follows:

You are a reference librarian employed by the Palm Beach County Library System. As part of your official duty, you assist the public in obtaining information. In your line of work, each reference librarian has certain patrons with whom they have developed a certain rapport. When patrons come in for help, especially for something important, it is not unusual for them to ask for the librarian they know and trust.

Recently, when you returned to work after being out for lunch, you found a wrapped gift at your desk and an envelope. You believe the gift is a box of candy and that the envelope contains a Christmas card. You are aware of the identity of the donor as his name was attached. The donor is a library patron and not a vendor or lobbyist of Palm Beach County Government. It is a gentleman you have assisted on a number of occasions as part of your official duties. While you believe other librarians have assisted this patron as well, you are the only one who has received a gift. While you have helped this gentleman periodically, and you assume that he was generally expressing his gratitude for the help, you did not give him any special treatment in the performance of your job. It is your intention to share the candy with the entire library staff.

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(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.

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. You have indicated that this gift is not of a value in excess of \$100.

IN SUMMARY, holiday gifts of food are not prohibited so long as the gifts are not given to an individual employee as a "thank you" gift in exchange for a specific service, public action or legal duty performed.¹ Under the facts you have provided, the question then becomes whether a holiday gift is given in exchange for such a public action or duty, performed or to be performed. In addition to past performance, you must take great care to not accept such a gift if it is given in anticipation of future action or service.

Based upon the facts you have provided, the gift is not tied to any specific public act or legal duty performed or to be performed, but is general in nature. As such, it would not be prohibited under the gift law section of the Palm Beach County Code of Ethics. The COE cannot opine regarding any county or department policy or procedure that may be more stringent than the code of ethics.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson,
Executive Director

ASJ/gal

¹ Tips in exchange for a specific official action or performance of a duty are generally prohibited. See, RQO 10-031, RQO 11-008, RQO 11-082

ITEM VIII – PROPOSED ADVISORY OPINIONS

RQO 11-104 Janet Whipple (resubmitted)

A municipal employee asked what procedures must be followed for holding a silent auction fundraiser for the Palm Beach County Municipal Clerk's Association (MCA) to raise funds to be used for the continued professional education and professional certification of municipal clerks.

Staff submits the following for COE approval: Professional certification derived from funds solicited by and for individual members of MCA, is for the personal benefit of each member who receives them. Any funds solicited by a public employee, or any other person or business entity on his or her behalf, from vendors, lobbyists, principals or employers of lobbyists who lobby, sell or lease to any of the MCA member governments, are prohibited gifts under the Code of Ethics.

Gifts solicited from non vendors or lobbyists are not prohibited, provided they are not accepted because of the past, present or future performance of an official act or a legal duty. If an employee receives funds for education from MCA in excess of \$100, the gift must be reported as required under the code.

RQO 11-107 Anna Yeskey

A part-time staff member of the Palm Beach County Intergovernmental Coordination Program (the Program) asked whether members of the Countywide Intergovernmental Coordination Program are subject to the Palm Beach County Code of Ethics.

Staff submits the following for COE approval: The Countywide Intergovernmental Coordination Program was not created solely by the BCC or by a municipality but by interlocal agreement. Therefore, it is not an advisory board within the meaning of the Code of Ethics. However, members of the Program's three boards are officials, so long as they are appointed by the County or one of the 38 municipalities subject to the jurisdiction of the Commission on Ethics. Employees who are on these boards as required by their government employer are subject to the Code of Ethics as employees of their jurisdiction.

RQO 11-111 Christopher Yannuzzi- Holiday Gifts

A Town Police Chief asked whether members of a municipal Police Department may accept a \$50 gift card from a Town resident, who is not a vendor or lobbyist of the Town, as a holiday gift.

Staff submits the following for COE approval: A holiday gift of gift cards to all police department 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. However, because the official acts of police officers are of a discretionary nature and the officers have the power and authority to sanction or detain citizens under the law, gifts such as these may create an appearance of impropriety. Therefore, municipalities may have policy and procedural rules banning such gifts. While holiday gifts such as these may not be prohibited under the code, officers and department personnel must take great care to not take an official action, or perform, fail to perform or violate a legal duty because of a gift accepted by them or on their behalf.

RQO 11-112 Christopher Yannuzzi

A municipal Police Chief asked whether an Officer and Director of a Public Safety Support Group (Support Group), a 501(c)3 charitable organization, who is also an employee of a municipal Police Department (ORPD), may solicit donations from the residents of their municipality for the benefit of the department and its employees and if so, in what manner may they solicit such donations.

Staff submits the following for COE approval: Town employees are prohibited from using their official position to give a special financial benefit not shared with similarly situated charitable organizations in the community, to a non-profit organization of which they are an officer or director. Lending one's name and official title to a fundraising effort would per se constitute using their employment to specially financially benefit the Support Group. Therefore, in order for an employee or official to use their official title to solicit donations on behalf of the charitable entity they serve as an officer or director, they would need to resign their position with the charity. In the alternative, should an employee or official remain as an officer or director, any solicitation would need to be in their name without any reference to their public title, including in the organization's letterhead.

In addition, because Town employees stand to receive a personal financial benefit from the Support Group, an employee may not solicit a gift of any value from a vendor, lobbyist, principal or employer of a lobbyist who sells, leases or lobbies the Town. This applies to all Town employees, as well as anyone indirectly soliciting on their behalf.

RQO 11-113 Lydia Littlefield

A County employee asked whether the code of ethics prohibited an employee from giving a vendor a gift as an expression of appreciation.

Staff submits the following for COE approval: While the Code of Ethics prohibits municipal and county employees from soliciting or accepting anything of value in exchange for the past, present or future performance of an official act or a legal duty, and no gift from a vendor or lobbyist may be accepted (or given), if valued in excess of \$100, in the aggregate over the course of the calendar year, from a vendor or lobbyist of their government employer, the code does not prohibit an employee from giving personal gifts to a vendor or lobbyist of the county or the municipal government they serve.

RQO 11-115 Lori LaVerriere

An interim City Manager asked whether serving on the board of directors of the Schoolhouse Children's Museum and Learning Centre (the Centre) created a conflict of interest with her service to the City of Boynton Beach (the City), and additionally, whether she could continue to fundraise on behalf of the Museum. The City provides funding, staff and space to the Centre and an agreement entered into between the City and the Centre provides that the City Manager shall serve on the Centre's board as a permanent voting member.

Staff submits the following for COE approval: While serving as an officer or director of the Centre, public officials and employees may not use their public position to give the Centre a special financial benefit, not shared with similarly situated charitable organizations, even if the employee serves on the board by direction of their government employer. As an officer or director of a charity, soliciting donations on

behalf of that charity while using the employee's official title would constitute a violation of the misuse of office section of the code.

If an employee or official resigns their position as an officer or director, or uses only their name and not their official title to solicit on behalf of the charity, they must keep a detailed log of any solicitation of donations from vendors or lobbyists of the City in excess of \$100. A copy of the log must be filed with the COE within 30 days of the event or solicitation, if no event is held.

Lastly, the City is not prohibited from soliciting funds for the benefit of the Centre, provided the City Commission designates continued support of the Centre to be a public purpose and donations are accepted and expended within the City revenue stream. In all instances, employees may not solicit any gift on behalf of the Centre in exchange for any special consideration or other "quid pro quo" in their official capacity.

RQO 11-117 Larry Cellon

A municipal advisory board member asked for clarification of RQO 11-067 and RQO 11-076. These opinions addressed voting conflicts and abstention requirements in relation to municipal licensure boards.

Staff submits the following for COE approval: An advisory board member may not use their appointed office to give themselves, their outside business or a customer or client of their outside business a special financial benefit, not shared with similarly situated members of the general public. When faced with a conflict, a board member must disclose the nature of that conflict, refrain from voting or participating and file the required conflict disclosure form 8b. Once a matter comes before their board, they are prohibited from working with dedicated board staff from that point forward. An advisory board member is not prohibited from working with non-board staff in their professional capacity before, during or after a conflict has arisen before their board.

Following final disposition of a matter by their board, a member is not prohibited from resuming work with board staff, so long as they do not use their official position in any way to obtain a special financial benefit for themselves, their client or their outside employer. The Code of Ethics does not prohibit a business associate or other individual from representing a client's interests before a member's board.

RQO 11-118 Lenny Berger

A County Attorney asked whether the contingent fee prohibition, as contained in the Palm Beach County Code of Ethics, applies, in bond underwriting matters, to investment or financial advisors, underwriters, investment banks, credit enhancers, sureties, bond, underwriter or issuer's counsel, bank or disclosure counsel, title insurers or ratings agencies, where the normal and customary compensation for these services are contingent upon an action or decision of government.

Staff submits the following for COE approval: When acting in the normal course of their profession, financial services professionals involved in the public issuance of bonds are not prohibited from contractual arrangements or compensation contingent upon the closing of the subject transaction. This arrangement is ordinary and customary in the bond underwriting industry. Bond underwriting professionals are regulated by State and Federal law and compensation paid under this sort of contract comes from the monies financed.

January 5, 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 on November 30, 2011 and again on January 4, 2012 and rendered its opinion at a public meeting held on January 4, 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 professional certifications derived from funds solicited by and for individual members of MCA are for the personal benefit of each member who receives them. Therefore, any funds solicited by a public employee *or any other person or business entity on his or her behalf*, from vendors, lobbyists, principals or employers of lobbyists who lobby, sell or lease to any of the MCA members' government employers are prohibited gifts under the Code of Ethics.

Additionally, while gifts from non vendors or lobbyists are not prohibited by the code, 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. Unsolicited gifts from vendors or lobbyists may not exceed \$100 annually in the aggregate. Lastly, if the individual benefit of an allowable gift exceeds \$100, it must be reported as required under the code.

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 funding 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 MCA by advising you of the requirements and prohibitions contained within the Code of Ethics related to 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.

(c) No ... *employee, or any other person or business entity on his or her behalf*, shall knowingly solicit a gift of any value from any person or business entity that the recipient knows is a vendor, lobbyist or any principal or employer of a lobbyist where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee. (Emphasis added)

(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 professional association it is not a "charitable" organization as defined under the Internal Revenue Code. Therefore, you may not accept a donation valued at more than \$100 from any 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, an employee of the county or any municipality within Palm Beach County, *or any other person or business entity on his or her behalf*, is prohibited from soliciting or accepting anything of value from a person or entity that the recipient knows is a vendor or lobbyist of the county or a municipality, for their personal benefit, the benefit of a relative or another public employee. They are further prohibited from soliciting a gift of any value from any person or entity, based on the past, present or future performance or non-performance of an official act or a legal duty. Lastly, even if unsolicited, a gift may not be accepted from a vendor or lobbyist if the value exceeds \$100, annually in the aggregate.

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

January 5, 2012

Anna Yeskey
Palm Beach County Intergovernmental Coordination Program
9835-16 Lake Worth Road, Suite 223
Lake Worth, FL 33467

Re: RQO 11-107
Jurisdiction/Officials and Advisory Boards

Dear Ms. Yeskey,

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 January 4, 2012.

YOU ASKED whether members of the Countywide Intergovernmental Coordination Program (the Program) boards are subject to the Palm Beach County Code of Ethics.

IN SUM, the Program was not created solely by the Palm Beach County Board of County Commissioners (BCC) or by a municipal governing body. Therefore, it is not an advisory board within the meaning of the Code of Ethics. However, members of the Program's three boards are officials, as defined under the Code of Ethics, if they are appointed by the BCC or one of the 38 municipal governing bodies subject to the jurisdiction of the Commission on Ethics.

THE FACTS as we understand them are as follows:

You are a part-time staff member of the Palm Beach County Intergovernmental Coordination Program (the Program). The Program was established in Palm Beach County in the fall of 1992 through the execution of two inter-local agreements as authorized by Chapter 163, Florida Statutes. The Program was established as a means of addressing inter-jurisdictional plan amendment review and countywide issues of multi-jurisdictional significance and designed as a replacement for the Palm Beach Countywide Planning Council.

The Comprehensive Plan Amendment Coordinated Review (CPACR) Inter-local agreement creates two bodies: 1) an Executive Committee consisting of representatives appointed by the League of Cities, Board of County Commissioners, the School Board, the South Florida Water Management District and the Regional Chair or the Florida Association of Special Districts and 2) an Inter-local Plan Amendment Review Committee comprised of full-time planning directors from local government participants.

The Executive Committee (EC) prepares an annual budget for the Program, oversees collection and expenditures of member fees, prepares an annual report detailing the activities and results from the

comprehensive plan amendments processed pursuant to the agreement, makes recommendations to the participants on ways to improve the coordination projects and oversees the operations of the various panels, committees and serves as a Clearinghouse created by the agreement.

The Inter-local Plan Amendment Review Committee (RC) is charged with the technical role in the comprehensive plan coordinated review process and is designed to provide planning staff notification of land use changes prior to the local government's public hearing to allow the opportunity to resolve conflicts prior to the hearing.

A second inter-local agreement establishes a Multi-Jurisdictional Issues Coordination Forum (Issues Forum) for participant governments to discuss issues of countywide significance and develop, through a consensus building process, a way to effectively identify and address these issues. Some of the issues addressed by this group include but are not limited to: affordable housing, industrial land use needs, school concurrency, a countywide water plan, aquifer storage and recovery, biosolids pelletization, hurricane shelter capacity, growth management reform, annexation, mediation, beach funding and population projects. For a municipality, the county or other entity to be a member of the Forum, they must first be a signatory to the CPACR. Each county or municipal member then appoints and designates a representative to exercise its responsibilities in the forum.

You serve as the only dedicated staff, part-time, as a contract employee of the Town of Lantana. The budget is set each year by the EC who determines the annual membership fee paid by all participant entities. In your experience as a staff member, there has only been one situation when the organization worked on a project in which outside consultants were used. In addition to the services described above, the day to day operations of the Program involve plan amendment distribution, monitoring countywide issues, and setting the agenda for quarterly meetings of these groups as well as any subcommittees that result from identified issues.

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 the board of county commissioners, by local municipal governing bodies, or by the mayors who serve as chief executive officers... of local municipal governing bodies." The two inter-local agreements that form the basis for the Program create three boards, 1) Comprehensive Plan Coordinated Review Executive Committee, (EC) 2) the Interlocal Plan Amendment Review Committee (RC) and 3) the Multijurisdictional Issues Coordination Forum (Issues Forum). While the Program was entered into by local municipal governing bodies, the boards it establishes are not created independently by any one entity subject to the jurisdiction of the Commission on Ethics. As a result, the three boards created by these agreements are not advisory boards as defined by the Code of Ethics.

Section 2-442 defines "officials" as "... members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of (a) local municipal governing body, as applicable, to serve on *any advisory quasi-judicial, or any other board of the county, state or any other regional, local, municipal, or corporate entity.*"

First, members of the EC are appointed by the League of Cities, the BCC, the School Board, the South Florida Water Management District and the Regional Chair or the Florida Association of Special Districts. Of the appointing authorities, only the BCC is a governing body subject to the jurisdiction of the Code of

Ethics. Accordingly, only those members who are appointed by the BCC are subject to the jurisdiction of the Commission on Ethics, in their capacity as an official of the EC.

Second, members of the RC serve based upon their employment as a planning director with the county, municipality or other entity subject to the agreement. Therefore, municipal and county employees who serve on the RC are subject to the Code of Ethics as employees of their respective government entity *and* as officials if appointed by their governing bodies.

Third, once a local government or service provider has signed on to the CPACR, it may sign on to be a member of the Issues Forum. Each Forum member then designates a representative to exercise its responsibilities in the Issues Forum. Accordingly, those members appointed to the forum by the governing body of the county or municipality are considered officials as defined by the code of ethics.

Section 2-443 (a) *Misuse of office*, prohibits an official or employee from using their 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 themselves, relatives, members of their household or dependants, their outside employer, a customer or client of their outside employer, a substantial debtor or creditor of theirs, their spouse or domestic partner or a non-profit organization of which he or she or his or her spouse or domestic partner is an officer or director.

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 or employee 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.

A number of additional code provisions apply to both employees and officials. Section 2-443(d) *Contractual relationships*, prohibits officials and employees from entering into contracts with the county or the municipal government they serve, unless one of several exceptions applies. Section 2-443(f) prohibits officials and employees from accepting travel expenses from a contractor, vendor, service provider, bidder or proposer of the county or the municipality they represent, unless they obtain a waiver from the governing body that appointed the employee or official to the board. Section 2-443(h) prohibits officials and employees from making false statements, submitting false documentation, or knowingly withholding information in an application for employment or to provide goods or services to any entity subject to jurisdiction of the code. Section 2-443(i) prohibits officials and employees from disclosing or using information not available to members of the general public for personal gain.

Application of the Gift Law §2-444

Section 2-444(g) defines a gift as the transfer of anything of economic value, including hospitality, food and drink. Section 2-244(a) prohibits a public employee from soliciting or accepting, directly or indirectly, *"a 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 ...is a vendor, lobbyist or any principal or employer*

*of a lobbyist who lobbies, sells or leases to the ... municipality.*¹ Section 2-442 defines a *vendor* as a person or entity who sells or leases goods or real or personal property to the government or a person or entity with a pending bid proposal or an offer to sell or lease goods or real or personal property. There is no such prohibition for “officials” who are not members of an advisory board or elected members of the county or a municipal body. However, permissible gifts of a value in excess of \$100 must be reported pursuant to §2-444(f) of the code.

Notwithstanding that the prohibitions of §2-443(a) may not apply to officials, officials as well as public employees are still subject to §2-444(e) in the performance of an official act or legal duty related to their status as an official or employee.

Section 2-444(e) states as follows:

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.

IN SUMMARY, although boards created by the Program are not advisory boards as defined by the code, members appointed by the BCC or a municipal governing body are considered officials. Employees who serve as a result of their employment maintain their status as county or municipal employees and must comply with the Code of Ethics when acting in an official capacity for their government employer. Limitations and prohibitions relating to the solicitation or acceptance of gifts only apply to vendors, lobbyists, principals and employers of lobbyists who lobby, lease or sell to the appointing governments. Travel reimbursement from vendors of the County or municipality, as applicable, may be accepted provided the board member obtains a waiver his or her appointing body. Any gifts in excess of \$100, not otherwise prohibited or excluded, must be reported as required under 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,
Executive Director

ASJ/mr/gal

¹ §2-444(b) extends this prohibition to advisory board members, but not to officials appointed to boards that are not created by their governing body.

January 5, 2012

Chief Christopher Yannuzzi
Ocean Ridge Police Department
6450 North Ocean Blvd.
Ocean Ridge, FL 33435

Re: RQO 11-111
Holiday gifts

Dear Chief Yannuzzi,

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 January 4, 2011.

YOU ASKED in your letter of December 3, 2011 whether members of the Ocean Ridge Police Department may accept a \$50 gift card from a Town resident, who does not vend, lease or lobby the Town, as a holiday gift.

IN SUM, gifts of a value in excess of \$100, in the aggregate for the calendar year, 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, nor may anything of value be solicited by a public employee from a vendor or lobbyist if it is for the employee's benefit, the benefit of a relative or fellow employee. However, depending upon the facts and circumstances, a general holiday gift, not otherwise tied to a public act or duty, 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 gifts.¹

THE FACTS as we understand them are as follows:

You are the Chief of Police of the Ocean Ridge Police Department. Historically, a resident of Ocean Ridge provides all police officers and dispatchers with a \$50 debit card as a holiday gift. The gift cards are not solicited by the police department or individual employees, but are provided as an expression of appreciation. The cards are individually addressed to each staff member based on a list provided by the Police Department in response to the donor's request. The items are then delivered in bulk to the Police Department and distributed through interoffice mail. The donor is not a vendor or lobbyist of the Town. Gift cards are provided to Police department staff only, but to all Police department personnel including officers, dispatchers and clerks.

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

¹ RQO 11-055

Section-443 (a)

- (a) *Misuse of public officer 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

Section 2-444(e)

- (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 public employee or official may not use their official position to give themselves a special financial benefit. In addition, a public employee may not accept gifts valued in excess of \$100, in the aggregate for the calendar year, from vendors or lobbyists of his or her public employer.² Nor may an employee solicit anything of value from a vendor or lobbyist for his or her personal benefit, the benefit of a relative or household member, or another employee.³ Similarly, 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 a specific act, or given in anticipation of future action.

THE RATIONALE for regulating gifts to public employees is grounded in the desire to increase transparency and accountability and to remove the appearance that gifts are made to obtain access or engender the good will of those employees. Because the official acts of police officers are of a discretionary nature and the officers have the power and authority to sanction or detain citizens under the law, gifts such as these may create an appearance of impropriety. Therefore, municipalities may have policy and procedural rules banning such gifts. While holiday gifts such as these may not be prohibited under the code, officers and department personnel must take great care to not take an official action, or perform, fail to perform or violate a legal duty because of a gift accepted by them or on their behalf.⁴

Provided these gifts are not solicited, or given in exchange for the performance or non-performance of a specific official act or legal duty, or given in anticipation of future action, members of your department are not prohibited from accepting a \$50 gift card from a resident of the town, whether given in July or December. Department personnel may not accept gifts valued in excess of \$100, in the aggregate for the calendar year, from a vendor or lobbyist of the Town. 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. 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.⁵

IN SUMMARY, gifts of a value in excess of \$100, in the aggregate for the calendar year, 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

² §2-444(a)

³ §2-444(c)

⁴ For example, a Town police officer may not take an action during a traffic stop based upon his or her knowledge that this resident historically, has provided the department with a Holiday gift.

⁵ RQO 11-103 (depending upon the facts and circumstances presented, a general holiday gift, not tied to a public act or duty, is not prohibited under the code).

benefit, the benefit of a relative or household member, or the benefit of a fellow official or employee. A holiday gift of gift cards to all police department 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.

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/mcr/gal

PROPOSED

January 5, 2012

Chief Christopher Yannuzzi
Ocean Ridge Police Department
6450 North Ocean Blvd.
Ocean Ridge, FL 33435

Re: RQO 11-112
Misuse of Office/Gift Law

Dear Chief Yannuzzi,

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 January 4, 2012.

YOU ASKED in your email dated December 3, 2011, whether an Officer and Director of the Ocean Ridge Department of Public Safety Support Group (Support Group), a 501(c)3 organization, who is also an employee of the Ocean Ridge Police Department (ORPD), may solicit donations from the residents of Ocean Ridge for the benefit of the ORPD and its employees and if so, in what manner may they solicit such donations.

IN SUM, as a Town employee you are prohibited from using your official position as the Police Chief to give a special financial benefit, not shared with similarly situated charitable organizations in the community, to a non-profit organization of which you are an officer or director. Lending your name and official title to a fundraising effort would per se constitute using your employment to specially financially benefit the Support Group. Therefore, in order to use your official title to solicit donations on behalf of the Support Group, you would need to resign your position with the charity. In the alternative, should you remain as an officer or director, any solicitation would need to be in your name without any reference to your public title, including in the organization's letterhead.

In addition, because ORPD employees stand to receive a personal financial benefit from the Support Group, you may not solicit a gift of any value from a vendor, lobbyist, principal or employer or a lobbyist who sells, leases or lobbies the Town. This would apply directly to you, as well as anyone indirectly soliciting on your behalf.¹

THE FACTS as we understand them are as follows:

You are the Police Chief for the Town of Ocean Ridge (the Town) and as the Chief of Police you serve as the Director of the Ocean Ridge Department of Public Safety Support Group (the Support Group). The Support Group solicits donations from Town residents annually for uniform and equipment maintenance (cleaning reimbursements), an annual picnic for all Town employees and their families, retirement parties and gifts, and condolence gifts. In particular, the cleaning reimbursement is provided to all uniformed Town employees including maintenance personnel and it is used to reimburse the expense to the employee associated with cleaning and maintaining issued uniforms and equipment. Your department has tried to have this included in the public budget,

¹ RQO 11-056, RQO 11-081 (charitable fundraising involving scholarships to children of public employees)

however the Town has not done so. The amount of each reimbursement is primarily based on what it would generally cost to have "x" number of uniforms commercially cleaned multiplied by the number of work days in a year. On average Police Officers can receive up to \$840, Reserve Police Officers: \$300, Dispatcher/Clerks: \$599, Maintenance: Full-time -\$599 and Part-time - \$300.

In addition the Support Group funds training and equipment purchases for the department and the entire volunteer Reserve Officer Program. While cleaning reimbursements are provided directly to the officer, all training and equipment spending and decisions are made by the Police Department and all scheduling is done based on the needs of the Police Department. The support Group funds training opportunities that are outside those budgeted by the Town for employees.

The Support Group's membership includes all fulltime and reserve police officers and police dispatchers. In addition, there are non-police members; some of whom are employees of the Town. Currently the board consists of a reserve police officer, two fulltime police sergeants, yourself and a fulltime police dispatcher. The Support Group by-laws dictate that the sitting Chief of Police will serve as Director to the Support Group.

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

Sec. 2-443(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;
- (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

No employee or official may use their official position or title to obtain a special financial benefit for themselves, or a non-profit organization if they serve as an officer or director of the non-profit.² A financial benefit is defined as anything of value.³ Here, the fundraising performed by ORPD employees on behalf of the Support Group raises money in part for the officer and employee's personal financial benefit. Accordingly, lending your name and official title anywhere in the solicitation to fundraise on behalf of Support Group would constitute using your position to specially financially benefit yourself and the non-profit you serve as a director, resulting in a violation of the misuse of office section of the code.⁴ This prohibition applies even though you serve on the Support Group as a result of your public employment.

Section 2-444(c) states as follows:

No... employee, or any other person or business entity on his or her behalf, shall knowingly solicit a gift of any value from any person or business entity that the recipient knows is a vendor, lobbyist or any principal or employer of a lobbyist where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee. (emphasis added)

While the Code of Ethics ordinarily would allow a public employee to solicit or accept donations on behalf of a charitable organization provided vendor and lobbyist donations in excess of \$100 are recorded on a log and filed

² RQO 11-029 (an employee or elected official who serves as an officer or director of a charitable organization may not use their official title or elected office in soliciting donations; to do so would per se constitute using their employment or elected office to specially financially benefit that charity)

³ §2-442 *Financial Benefit* includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value...

⁴ RQO 11-051 (where it is foreseeable that an employee or official will receive a salary or other form of financial benefit from a non-profit organization they may not use their official title to specially financially benefit that charity)

with the COE⁵, the code prohibits such solicitation from vendors or lobbyists if the gift will benefit *any* Town public employee.⁶ Accordingly, solicitation of funds used for uniform cleaning reimbursements, the annual employee picnic, retirement gifts and condolence gifts from vendors or lobbyists of the Town would be prohibited.⁷

Based upon the information you provided, the cleaning reimbursements will always exceed \$100. As something of value, not subject to a gift exception, employees who receive reimbursements from non-vendor/lobbyist sources must report these amounts on their annual gift reporting form.

THE RATIONALE for limiting solicitation of donations by employees and officials from lobbyists and vendors of their public employer is grounded in the desire to avoid the appearance of obtaining a financial benefit through one's official position. As for gifts that do not involve lobbyists or vendors, general reporting requirements and other limitations serve to increase transparency and remove the appearance that donations are made to influence official decisions or improperly obtain access to public employees or officials.

However, §2-444(g)(1)e. creates an exception to the gift law for *gifts solicited or accepted by municipal officials or employees on behalf of the municipality in performance of their official duties for use solely by the municipality for a public purpose*. Therefore, regarding solicitation for training and equipment funds, Town employees are not prohibited from soliciting vendors or lobbyists for a public purpose, as provided by §2-444(g)(1)e, so long as those donations are specifically solicited and earmarked for the operational needs of the ORPD.⁸

Section 2-444(e) states as follows:

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.*

Gifts may not be solicited or accepted because of the past, present or future performance of a legal duty or official action. Therefore, employees must take great care to ensure that there is no future expectation or present quid pro quo contemplated because of the funds provided by the Support Group, or because of donations made to the group by individual donors.

IN SUMMARY, based on the information that you have provided, ORPD employees who serve as officers or directors of the Support Group may not use their official position in any way, including official title on the organization's letterhead, to give a special financial benefit to the charity not available to similarly situated charities in the community. As an officer or director of a charity, using both your name *and official title* to solicit donations on behalf of the Support Group would constitute a violation of the misuse of office section of the code.

Except for donations specifically earmarked to the ORPD solely for a public purpose, such as the purchase of equipment or training, employees may not solicit donations on behalf of the Support Group from vendors or lobbyists of the Town of Ocean Ridge as these solicited donations would financially benefit themselves or other employees. Nor may they solicit or accept any donation as a quid pro quo or other exchange for the past, present or future performance of an official act or a legal duty.

⁵ §2-444(h)(2)

⁶ §2-444(c)

⁷ Compare RQO 11-053 (public employee may accept a gift for outstanding performance or length of service donated by an *independent* civic organization as an award for civic or professional achievement as compared to here where a retirement gift would be solicited by a non-profit entity created by employees for the benefit of their fellow employees).

⁸ See RQO 11-056 (PD employees permitted to solicit funds for a Police foundation where the funds are specifically earmarked for purchase of police equipment) also, see RQO 10-027, RQO 10-040.

Any personal assistance provided by the Support Group to ORPD employees, including cleaning reimbursements and retirement gifts, in excess of \$100 must be reported on an employee's annual gift reporting form.

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/mcr/gal

PROPOSED

January 5, 2012

Ms. Lydia Littlefield
Palm Beach County Medical Examiner's Officer
3126 Gun Club Road
West Palm Beach, FL 33406

Re: RQO 11-113
Holiday Gifts

Dear Ms. Littlefield,

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 January 4, 2011.

YOU ASKED in your email of December 6, 2011, whether County Employees may give vendors gifts as an expression of appreciation.

IN SUM, the Code of Ethics prohibits municipal and county employees from soliciting or accepting anything of value in exchange for the past, present or future performance of an official act or a legal duty. No gift may be accepted, if valued in excess of \$100, in the aggregate over the course of the calendar year, from a vendor or lobbyist of their government employer. Conversely, a vendor or lobbyist who lobbies, sells or leases to the county or a municipality is prohibited from giving gifts in excess of \$100, in the aggregate over the course of the calendar year. However, an employee is not prohibited from giving personal gifts to a vendor of the county or the municipal government they serve.

THE FACTS as we understand them are as follows:

You are a county employee who works for the medical examiner's office. In the course of your employment, you have frequent contact with vendor personnel who are responsible for transporting bodies to the medical examiner's facility, including at death scenes. You have had an excellent relationship with the transport personnel and appreciate the services they have performed for your office. Accordingly, you would like to send a holiday gift to the employees of the vendor in your personal capacity as a means of expressing your appreciation for their professional and efficient service.

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

Section 2-444(a)(1) prohibits an elected official or employee of government from *soliciting or accepting* any gifts 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. Similarly, §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. Finally, §2-444(e) prohibits an official, advisory board member, or an employee from *accepting* anything of value in exchange for the past, present or future performance of an official act or a legal duty.

The code of ethics prohibits certain gifts given to officials and employees by those who vend or lobby their government employer. There is no prohibition against an employee or official giving a gift to a vendor or lobbyist.

IN SUMMARY, as a county employee, you are not prohibited from giving a county vendor a gift as an expression of appreciation.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/mcr/gal

PROPOSED

January 5, 2012

Lori LaVerriere, City Manager
City of Boynton Beach
100 E. Boynton Beach Boulevard
P. O. Box 310
Boynton Beach, FL 33425

Re: RQO 11-115
Misuse of Office/Gift Law

Dear Ms. LaVerriere,

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 January 4, 2012.

YOU ASKED in your email dated December 6, whether serving on the board of directors of the Schoolhouse Children's Museum and Learning Centre (the Centre) created a conflict of interest with your service to the City of Boynton Beach (the City), and additionally, whether you could continue to fundraise on behalf of the Museum.

IN SUM, as a City employee you are prohibited from using your official position as City Manager to give a special financial benefit, not shared with similarly situated charitable organizations in the community, to a non-profit organization of which you are an officer or director. Lending your name and official title to a fundraising effort would per se constitute using your public office to specially financially benefit the Centre. Therefore, in order to use your official title to solicit donations on behalf of the Centre, you would need to resign your director position with the charity. In the alternative, should you remain as an officer or director, participation in fundraising would need to be in your name without reference to your public title. This would apply directly to you, as well as anyone indirectly soliciting on your behalf.

Insofar as the gift law is concerned, provided you are not an officer or director of the charity, you are not prohibited from using your official title in soliciting or accepting donations on behalf of Centre. If you solicit donations, directly or indirectly, in excess of \$100 from a vendor, lobbyist, or principal or employer of a lobbyist of the City of Boynton Beach, you (or the charity if solicitations are made in your name) must maintain a record of the solicitations from City vendors, lobbyists, principals or employers of lobbyists, and submit a log to the Palm Beach County Commission on Ethics within 30 days of the event, or if no event is held, within 30 days of the solicitation.

THE FACTS as we understand them are as follows:

The Schoolhouse Children's' Museum and Learning Centre (the Centre) is a non-profit charitable organization, as defined under the Internal Revenue Code.

You are the interim City Manager for the City of Boynton Beach. In 2010, the City of Boynton Beach and the Centre entered into a management agreement providing for joint maintenance and operation of the 1913 Schoolhouse Museum in Boynton Beach. Under this agreement the City provides the building, utilities, maintenance, and insurance to the Centre and the Centre is responsible for funding and operation of the Centre, including exhibits, designs, programs, hours of operation, schedule of events, publicity, advertising and fund raising. The City provides salaries and benefits to any city employees the city assigns to the Centre as well as support funds in an amount that has yet to be determined for the coming year. Historically, the City has provided the Centre with approximately \$200,000 per year.

In addition, this agreement requires the Centre to appoint the City Library Director and the City Manager to serve on its Board of Directors as permanent voting members of the Board of Directors and the Board Executive Committee.

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

Misuse of Office

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:

(7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

As an employee of City of Boynton Beach, you may not use your official position to give "*a special financial benefit, not shared with similarly situated members of the general public*" to a non-profit organization of which you are an officer or director.¹ A financial benefit is defined as anything of value.² Moreover, as an officer or director of a charitable organization, lending your name and official title to fundraise for that charity would *per se* constitute using your position to specially financially benefit the Centre, to the exclusion of all other similarly situated charitable organizations, resulting in a violation of the misuse of office section of the code.³ In order to solicit for the Centre, you would need to do so solely in your personal and not your official capacity or title.

¹ RQO 11-029 (an employee or elected official who serves as an officer or director of a charitable organization may not use their official title or elected office in soliciting donations; to do so would per se constitute using their employment or elected office to specially financially benefit that charity)

² §2-442 Financial Benefit includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value...

³ RQO 11-051 (where it is foreseeable that an employee or official will receive a salary or other form of financial benefit from a non-profit organization they may not use their official title to specially financially benefit that charity)

Gift Law: Solicitations on behalf of the Centre

Under the gift law provisions, §2-444(a) prohibits a public employee from soliciting or accepting more than \$100 from a *vendor or lobbyist* who sells, leases or lobbies their government employer. The revised Code of Ethics provides an exception to this prohibition to allow participation by officials and employees in charitable fundraising.⁴ This exception requires that fundraisers maintain a log of all solicitations and donations in excess of \$100 from *vendors or lobbyists* doing business with or lobbying their public employer. Furthermore, in soliciting donations in excess of \$100 from these persons or entities under the log exception, a public employee *may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions from vendors or lobbyists.*⁵ The log form is available on the COE website and you or the organization must complete and file this form with the Commission on Ethics office within 30 days of the charitable event or solicitation, if not related to an event. You may not solicit any person or entity with a pending application before Boynton Beach. Most importantly, you must take great care that donations accepted on behalf of Centre do not result in a *quid pro quo* for your “official action” as city commissioner.

Gift Law: Solicitations on behalf of the City

Section 2-444(g)(1)e. specifically exempts, from the prohibitions and limitations of the gift law, gifts solicited or accepted by municipal employees on behalf of their municipality “in performance of their official duties for use solely by the county or municipality for a public purpose.” Here, the City not only owns the 1913 Schoolhouse building, but provides over \$200,000 a year in staffing and donations to Centre operations. Much like RQO 10-027, where funds were solicited by county employees for use in erecting an awning at a county pool for the benefit of a non-profit entity, City employees may solicit funds on behalf of the city, so long as the City Commission determines future support of the Centre to be a public purpose and the donations are accepted by the City into the public funding stream.⁶ Therefore, the City is not prohibited from using staff resources in soliciting on behalf of the City for the ultimate benefit of the Centre.

Notwithstanding any gift law provisions or exceptions, the misuse of office section specifically prohibits using your official position to directly or indirectly specially financially benefit a charity, if you are an officer or director.

The misuse of office and gift law provisions are two separate and distinct sections of the code. Accordingly, while a solicitation may be allowable under the gift law, it may be prohibited under misuse of office. This includes the listing of your official position on the Centre’s letterhead when used to solicit donations for the Centre. Therefore, in order to fundraise, you would need to resign your position as a director of the Centre to avoid violating the misuse of office restrictions or, in the alternative, should you choose to remain as a director, all solicitation, direct and indirect, must be made without the use of your official title as Interim City Manager.

THE RATIONALE for limiting the manner of solicitation is grounded in the desire to avoid the appearance that these solicitations and donations are being made to obtain access to, or otherwise ingratiate the

⁴ §2-444(h), PBC Code of Ethics

⁵ §2-444(h)(3), PBC Code of Ethics

⁶ See RQO 11-056 (PD employees permitted to solicit funds for a Police foundation where the funds are specifically earmarked for purchase of police equipment); RQO 10-040 (County employees permitted to solicit funds for county department, where funds are for use solely by the county in conducting its official business).

donor to, the elected official. Similarly, by prohibiting officials and employees from using their public office to give a special financial benefit to a particular charity of which they are an officer or director, the code further attempts to limit potential misuse of the public duty to treat all citizens and entities on an equal footing.

IN SUMMARY, while serving as an officer or director of the Centre you may not use your public employment to give the Centre a special financial benefit, not shared with similarly situated charitable organizations, despite the fact that you serve on the board by direction of your government employer. As an officer or director of a charity, soliciting donations on behalf of that charity using your official title would constitute a violation of the misuse of office section of the code.

If you choose to resign your position as an officer or director, or use only your name and not your official title to solicit on behalf of the charity, you must keep a detailed log of any solicitation of donations from vendors or lobbyists of the City in excess of \$100. A copy of the log must be filed with the COE within 30 days of the event or solicitation, if no event is held.

Lastly, the City is not prohibited from soliciting funds for the benefit of the Centre, provided the City Commission designates continued support of the Centre to be a public purpose and donations are accepted and expended within the City revenue stream. In all instances, you may not solicit any gift on behalf of the Centre in exchange for any special consideration or other "quid pro quo" in your official capacity as the Interim City Manager.

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

January 5, 2012

Mr. Larry Cellon
JMW Construction Corporation
4163 Artesa Drive
Boynton Beach, Florida 33436

Re: RQO 11-117
Voting Conflicts/Misuse of Office

Dear Mr. Cellon,

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 January 4, 2012.

YOU ASKED in your letter dated December 11, 2011 for clarification of RQO 11-076 and RQO 11-067 which addressed voting conflicts and the Boca Raton Community Appearance Board.

IN SUM, as an appointed official you are prohibited from using your official position as an advisory board member to give a special financial benefit, not shared with *similarly situated members of the general public*, for yourself, your outside business, or a customer or client of your outside business. Voting on a client's proposal, participating in conversations or attempting to influence CAB members would therefore constitute a misuse of office. The prohibition extends to you, or someone using your official position on your behalf. The financial misuse and voting conflicts sections of the Code of Ethics do not prohibit a member of your outside business from representing a customer or client provided that you *publicly disclose the nature of the conflict*, file the required state disclosure form, refrain from voting and do not participate in, or influence the process.

THE FACTS as we understand them are as follows:

You are a General Contractor with JMW Construction Corporation and have served on the Boca Raton Community Appearance Board (CAB) for 23 years. The CAB is a "licensure board" as permitted by state statute and requires its members to have certain professional licenses. After reading the Commissions' advisory opinions, RQO 11-076 and RQO 11-067, you requested further guidance regarding specific scenarios that you may be presented with while serving on the CAB. First, as a General Contractor all permits you apply for in your professional capacity will end up before the CAB. You noted that you understand that you cannot vote or participate on these matters and once your project comes before the board, you cannot work with CAB staff. However, because you will have separate permitting matters that go before other boards, you asked whether you may work with city staff on non-CAB matters to complete the permitting process and continue working with them after the matter before the CAB is concluded.

Additionally, when you have a large project that requires Community Redevelopment Agency authorization, that authorization process requires the applicant to come before the CAB on a preliminary basis. This review process requires the CAB to make comments on the project but no vote is taken. You asked for clarification as to whether you may present your project to the CAB where no vote is taken and/or if you are prohibited from working with CAB staff during the entire period between the preliminary non-voting meeting and the regular CAB voting meeting.

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 from using your official position to give yourself, your outside business, or a customer or client of your outside business a financial benefit, in a manner which you *know 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*. A customer or client is defined as a person or entity to whom your outside business has supplied goods or services in excess of \$10,000 over the previous 24 months.

Section 2-443(c) similarly prohibits you from voting on an issue or participating in a manner that would result in a special financial benefit attributable to yourself, outside business or customer as previously described. Essentially, the voting conflict section addresses the scenario whereby in voting you would violate the misuse of office prohibitions of the code. In such a scenario you are required to 1) disclose the nature of your conflict before your board discusses the issue; 2) abstain from any discussion or vote or otherwise participate in the matter; and 3) File a state voting conflict form (8B), submitting a copy to the CAB clerk and to the Palm Beach County Commission on Ethics (COE).

In this context, “participate” means that you may not present your client’s project to the CAB or take part in any presentation or discussion regarding your client’s project with your fellow CAB board members.¹ Accordingly, you are prohibited from presenting your client’s project to the CAB board at any point in time.² You are prohibited from working with *CAB staff* once a matter has come before the CAB board no matter whether the matter will be revisited or whether it is at a preliminary review hearing.

However, this provision does not prohibit other owners or employees of your outside business from representing your client’s interest in these matters. Once a matter before the CAB has been concluded and is no longer subject to its decision-making authority, you are not prohibited from working with CAB staff in the normal course of business and during construction.

Insofar as working with other non-CAB City staff, you are not prohibited from meeting with and presenting to Zoning staff and other related city advisory boards before or after a vote is taken by the CAB, so long as you do so in your professional and not official capacity. To use your official title or position to obtain any special financial benefit for yourself, your outside employer or customer or client would violate the misuse of office prohibitions of the code.

¹ RQO 11-067 (“participate” includes presenting a client’s project to the CAB or taking part in any discussion regarding a client’s project with CAB board members).

² Please note that contacting CAB members about a matter coming before the board may result in a Sunshine Law violation.

IN SUMMARY, based on the facts and circumstances presented, you may not use your appointed office to give yourself, your outside business or a customer or client of your outside business a special financial benefit, not shared with similarly situated members of the general public. When faced with a conflict, you must disclose the nature of that conflict, refrain from voting or participating and file the required conflict disclosure form 8b. Once a matter comes before the CAB, you are prohibited from working with dedicated CAB staff from that point forward. You are not prohibited from working with non-CAB staff in your professional capacity before, during or after the CAB approval process. Following final disposition of a plan by the CAB, you are not prohibited from resuming work with staff, so long as you do not use your official position in any way to obtain a special financial benefit for yourself, your client or your outside employer. The Code of Ethics does not prohibit a business associate or other individual from representing your client's interests before the CAB separate and apart from you or your official office.

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

PROPOSED

January 5, 2011

Leonard Berger, Senior Assistant County Attorney
Palm Beach County Governmental Center
301 North Olive Avenue
West Palm Beach, FL 33401

Re: RQO 11-118
Contingency Fees

Dear Mr. Berger:

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 January 4, 2012.

YOU ASKED in your email dated December 14, 2011 whether the contingent fee prohibition, as contained in the Palm Beach County Code of Ethics, applies to investment or financial advisors, underwriters, investment banks, credit enhancers, sureties, bond, underwriter or issuer's counsel, bank or disclosure counsel, title insurers or ratings agencies, where the normal and customary compensation for these services are contingent upon an action or decision of government.

IN SUM, when acting in the normal course of their profession, financial services professionals involved in the public issuance of bonds are not prohibited from contractual arrangements or compensation contingent upon the closing of the subject transaction. This arrangement is ordinary and customary in the bond underwriting industry as compensation paid under this sort of contract comes from the monies financed.

THE FACTS as we understand them are as follows:

As an Assistant County Attorney you have been asked whether bond underwriting services compensated after approval amount to a prohibited contingency fee, prohibited under §2-443(g) of the code of ethics.

Palm Beach County, like many other government entities, approves issuance of bonds in a variety of contexts. The county approves both general and revenue bonds to fund capital projects. It also approves industrial development bonds on behalf of third parties to fund certain projects. Lastly, the county must approve bonds that are issued in the name of other government agencies, such as the Educational Facilities Authority and the Housing Finance Authority to fund the projects of these agencies.

In each case, the entity seeking project financing enters into multiple contractual arrangements with persons in the financial services industry to assist with the financial structuring and funding of the project. These persons include but are not limited to investment advisors, financial advisers, underwriters, investment banks, credit enhancers, sureties, bond counsel, underwriters counsel, issuer counsel, bank counsel, disclosure counsel, title insurers and ratings agencies. According to the terms of these contractual arrangements, compensation for financial services occurs only upon the closing of the transaction. This arrangement is ordinary and customary in the industry as compensation paid under this sort of contract comes from the monies financed.

However, before the closing of the transaction and the compensation that comes with it, one or more government approvals are required. At the very least, the County Commission must approve issuance of the bond and in some circumstances, must approve an application for development order or other development permit before a project can move forward. Therefore, compensation for the individuals described above is contingent upon approval of one or more Board of County Commission votes.

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

Section 2-443(g) *Contingent fee prohibition.*

No person shall, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person shall, in whole or in part, receive or agree to receive a contingency fee. As used herein, "contingency fee" means a fee, bonus, commission, or nonmonetary benefit as compensation which is dependent on or in any way contingent on the passage, defeat, or modification of: an ordinance, resolution, action or decision of the board of county commissioners or local municipal governing body as applicable, any employee authorized to act on behalf of the board of county commissioners or local municipal governing body as applicable, the county administrator or municipal administrator as applicable, or any action or decision of an advisory board or committee. *This prohibition does not apply to real estate brokers when acting in the course of their profession as regulated by §§475.001-475.5018, Florida Statutes, as may be amended. Nothing in this section may be construed to prohibit any salesperson from engaging in legitimate government business on behalf of a company from receiving compensation or commission as part of a bona fide contractual arrangement with that company provided such compensation or commission is ordinary and customary in the industry...*(emphasis added)

Compensation contingent upon government action is generally prohibited, however, there are exceptions if the fee is ordinary and customary in a given industry. While §2-443(f) specifically excludes real estate agents and salespersons *receiving compensation or commission as part of a bona fide contractual arrangement provided such compensation or commission is ordinary and customary in the industry*, it does not *ipso facto* include all other potential arrangements similar in nature to the specified exempted industries. Bond underwriting operates in a like manner to the real estate industry in that there is no compensation or commission unless and until the applicable governmental entity approves both the project and the issuance of the bond.

When reviewing the applicability of the Florida Code of Ethics as it pertains to contingency fees the Florida Supreme Court held that the prohibition did not extend to real estate agents, notwithstanding

the fact that they were not specifically excluded by state statute. Where there was no evidence of corruption or improper influence and the contingent commission was not contrary to public policy, the Court found the arrangement not to have violated the state contingency statute.¹ The court noted that real estate brokerage agreements have traditionally provided for fees contingent on the consummation of a sale, and that the industry is highly regulated under state statutes.² Similarly, bond underwriting is regulated by the Municipal Securities Rulemaking Board (MSRB), created by Congress in 1975, as well as by federal regulation under the Code of Federal Regulation.³

Additionally, considering the similarity between contingencies involving real estate agents, salespersons on commission and bond underwriting professionals, where the ordinary and customary manner of payment is upon completion of the contract or transaction, there is a rational basis for interpreting the code so as not to “lead to an unreasonable conclusion or defeat legislative intent or result in a manifest incongruity.”⁴

IN SUMMARY, based on the information you have provided, bond underwriting professionals are exempted from the contingency prohibitions of §2-443(g) from receiving compensation or commission as part of a bona fide contractual arrangement provided such compensation or commission is ordinary and customary in the bond underwriting industry.

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

¹ Rotemi Realty, Inc. v. Act Realty Co., Inc., 911 So.2d 1181 (Fla. 2005), s112.3217, Florida Statutes.

² §§475.001-475.5018

³ CFR Title 17, Part 240

⁴ Las Olas Tower Company v. City of Ft. Lauderdale, 742 So2d 308 (4th DCA 1999), RQO 11-066 (extending the law enforcement outside employment filing exemptions of sec.2-443(e)(5)g to fire-rescue extra duty details)

January 5, 2011

Bill Johnson, Director
Palm Beach County Emergency Management
20 S. Military Trail
West Palm Beach, FL 33415

Re: RQO 11-123
Outside Employment/Government Employer

Dear Mr. Johnson,

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 January 4, 2012.

YOU ASKED in your email dated December 27, 2011 whether it would violate the code of ethics for Palm Beach County Emergency Management/Department of Public Safety personnel to accept part-time employment as dispatchers with a municipal police department where the county employees have a direct influence over financial and budget matters that could potentially impact the municipal dispatch centers.

IN SUM, the code of ethics specifically exempts other governmental entities from the definition of "outside employer or business." Therefore, the prohibition against a public employee working for an outside employer who has contracts with their government employer does not apply to employees working part-time for other governmental agencies. Notwithstanding, the county or municipal government may apply more stringent conditions or regulations concerning outside employment, by merit rule or other internal policy or procedure.

At all times however, a public employee may not use his or her official position in a corrupt manner or a manner that will result in a special financial benefit to him or herself.

THE FACTS as we understand them are as follows:

You are Director of Palm Beach County Emergency Management (EM) and have received notification that three EM employees have sought work as part-time dispatchers with municipal police departments. The three EM employees work full-time in the 9-1-1 section of the Division of Emergency Management/Department of Public Safety (EMPS). The municipal police departments serve as 9-1-1 dispatch centers, technically referred to as Public Safety Answering Points (PSAPs)

The job responsibilities of the three county employees are as follows:

One employee is section manager with a job classification of Senior Manager Emergency Management Programs, and is responsible for managing the entire 9-1-1 Program, including implementation of the new Next Generation 9-1-1 installation contracts/project, as well as overseeing the 9-1-1 budget reimbursement requests.

A second employee is the 9-1-1 Coordinator and is responsible for preparing budgets for both county and municipal PSAPs, preparing PSAP budget reimbursement requests, and serves as the county/liaison between the Florida Division of Emergency Management, the Statewide 9-1-1 Coordinator, and the E9-1-1 Board.

A third employee is a 9-1-1 specialist and is responsible for 9-1-1 public outreach and training.

As EM Director, you are concerned with potential conflict of interest with regard to the first two employees since both are in county positions that have a direct influence over financial and budget matters that could potentially impact the municipal dispatch centers. Therefore, the Director of the Department of Public Safety rescinded authorization for the first two employees to work part-time as dispatchers for the municipal police departments. Since the third employee has no fiduciary responsibilities in her county job classification, county administration has permitted her to accept employment as a part-time dispatcher.

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

Section 2-443(d) prohibits a public employee from entering into contracts with his or her public employee directly or through an outside business or employer. Section 2-443(e) provides exceptions and waivers, including outside employment waivers when the employee or relative of the employee does not work in the county department which will *enforce, oversee or administer the subject contract* or maintain job responsibilities or descriptions that require involvement in the outside contract.

In the facts you submitted, the individual employees would not be directly contracting with the county. However, their part-time government employer does maintain such contracts. If the outside employment was with a private entity, they would be prohibited from such employment. The code excludes other governmental entities from the definition of outside employer.¹ Therefore, the prohibition against working for an outside employer who contracts with a government employer does not apply if the outside employer is another government.²

Section 2-443(a) states as follows:

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;

Section 2-443(b) prohibits an official or employee from using 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. "Corruptly" means done with a wrongful intent and for the purpose of obtaining *any benefit* resulting from some act or omission which is inconsistent with the proper performance of his or her public duties.

Although working as a dispatcher for another governmental entity may not be prohibited under the code, depending upon the facts and circumstances actions taken by county employees who have direct influence over financial and budget matters could result in either a personal financial benefit or an action inconsistent with the proper performance of their county duties. In these circumstances, a special benefit to an outside government employer may result in a violation of the code if the facts indicate a *quid pro quo* or other benefit to the individual employee or a more general corrupt misuse. The first two employees are in a supervisory role with county EMPS.

¹ §2-442 Outside employer or business includes: (1) *Any entity, other than the county, state, or any other federal regional, local, or municipal government entity...*

² RQO 10-028 OE, RQO 10-037 OE, RQO 11-031 OE

More importantly, they have the capacity to use their county office to specially benefit one municipality over another. Even if the facts do not rise to a violation, the appearance that their impartiality is compromised is present.³ The third employee has no supervisory, financial or budgetary influence based on her county job classification. The potential for misuse therefore is greatly diminished if not eliminated for this employee.

Lastly, notwithstanding the requirements of the Code of Ethics, the county and municipalities may act based upon merit rules or other policies and procedures that are not in conflict with the code. Therefore, even if the code does not prohibit an outside employment, the individual governmental entity may decline to allow such employment under its own rules.

IN SUMMARY, a governmental entity is not considered an outside employer as defined by the Code of Ethics. Therefore, the contractual relationship section of the code does not apply to a public employee whose outside employer is another government entity. Notwithstanding, financial and corrupt misuse of office sections apply to public employees who use their official position to financially benefit themselves or otherwise corruptly use their office to obtain any benefit for themselves or any other persons.

County or municipal merit rules or other policies and procedures may impose a stricter standard of conduct upon public employees and officials.

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

³ §2-441. Title; statement of purpose. Officials and employees in the public service shall be conscious that public service is a public trust, shall be impartial and devoted to the best interests of the people of Palm Beach County

ITEM IX – VOTING CONFLICTS INVOLVING CUSTOMERS AND CLIENTS OF INSTITUTIONAL OUTSIDE EMPLOYERS

Staff Analysis:

An issue came before the commission on November 30, 2011, involving the definition of “the exercise of reasonable care” as it relates to actual or constructive knowledge that an applicant before a governing body is a customer or client of an elected official. A second advisory opinion request has been submitted using the same factual scenario requesting an interpretation of §2-443(a)(5) and (c) for an employee of an institutional employer such as a national retailer or bank. The issue is whether this section of the code ought to apply in all circumstances, even those that present little or no opportunity for private gain or abuse.

The rationale behind regulating official acts that will financially benefit a customer or client of an official’s outside business or employer is to prevent the use of office for private gain. There need not be an actual quid pro quo exchange for there to be a rational basis behind the regulation and limitation of official action where there is a personal or financial nexus apparent in the relationship. The prohibition against specially financially benefiting a customer or client, therefore, does not hinge on the financial nexus between the official and the matter being publicly decided.

However, the more attenuated the relationship, coupled with the absence of a financial nexus between the issue presented for official action and the parties, the less likely there is to be a need to regulate the action. The following factors are submitted by staff for discussion. The current code provision requires abstention and non participation automatically, when an official knows by actual or constructive knowledge that a matter under consideration will specially financially benefit a customer or client, i.e., a person or entity to which the official’s outside business or employer has provided more than \$10,000 in goods or services in the prior 24 month period.¹

The conflict is apparent where the official is directly affected by the loss of business, if the customer or client were to take his or her business elsewhere. Likewise, if there is some financial nexus between the status of the customer or client’s issue and the official’s outside business or employer. In that instance, there would be a potential conflict under §2-443(a)(4) by directly specially financially benefiting the official’s outside business or employer. The issue becomes less clear when the relationships become more attenuated, most notably where the official is employed by an institutional employer such as a national retailer or bank. In such a circumstance, the relationships may be so attenuated as to negate even the appearance that a vote or action may be influenced, even if the official is aware of the applicant’s status.

There may be circumstances where an employee or official knows that their outside employer provides more than \$10,000 in goods or services to a client. Even if that client comes before the official, the harm intended to be prevented, personal financial gain, may be unlikely to occur based upon the size of their outside employer or the scope of their outside employment. Therefore, when analyzing this section in the context of an employee or official who works for a large institutional employer, the following factors could be considered.

¹ RQO 11-099

1. Is there a personal relationship between the customer or client and the public official or employee?
2. Whether the public official or employee deals personally with the customer or client, or works with other business associates or subordinates who do so.
3. Whether the public official or employee would ever be in a position to exercise discretion over a customer or client, e.g., - is the task before them ministerial or does it involve an exercise of discretion.
4. Is the person appearing before the public official or employee in a position to benefit the official or employee, or their business or employer?
5. Given the size of the outside employer and the nature of the business, is the official or employee in a position to know of any interaction between a customer or client and the official or employee's government agency?
6. Whether the public employee or official has a substantial financial interest in the private entity.
7. What is the extent of the employee or official's involvement with or control over the private entity?

Inherently, a small business presents a more compelling nexus between the benefit to a customer or client by an official action and the potential benefit to the official or employee, through his or her outside business or employer. Likewise, the more direct the connection between the customer or client and the official or employee, or the more significant the position of the official in the outside business, the more likely the potential is for personal gain. In the case of an institutional employer, the nexus can be so attenuated as to virtually eliminate the potential for such gain and thereby vitiate the public purpose behind the prohibited actions.

Staff Recommendation:

Staff is seeking guidance, specifically in the factual context presented previously in RQO 11-099. The opinion involved an elected official who works as a local branch loan officer for a national bank. Staff requests that the Commission discuss these issues as they relate to an official or employee who works for an institutional employer. While there can be no bright line as to when a customer or client relationship with an institutional outside employer, such as a national retailer or bank, rises to the level of an inherent conflict, the Commission should consider an interpretation of the code that takes into account circumstances that present little or no potential for private gain or abuse. The factors mentioned above should be considered in this context.

ITEM X – REVISIONS TO RULES OF PROCEDURE, SECTION B. ADVISORY OPINIONS – STAFF ANALYSIS

Issue: When promulgating the COE Rules of Procedure, several sources were reviewed. The Code of Ethics section 2-260.9 is a general statement establishing jurisdiction to interpret the code through advisory opinions and specific procedures were to be promulgated pursuant to section 2-257(b). One source of information used was Miami-Dade County Commission on Ethics and Public Trust. The Advisory Opinion section contains protocols similar to those in use by Miami-Dade County at the time. A review of Section B, 2.1-2.9 reveals a number of these protocols are not consistent with the current process in use in Palm Beach County. Staff is requesting a review of our protocols and to conform the Rules of Procedure accordingly.

Staff Analysis and Recommendation:

The following Rules of Procedure are inconsistent with current application of sec. 2-260.9 by the COE and COE staff:

- 1) Section 2.5(b) requires all draft opinions to be reviewed by the Chairperson or Co-Chairperson before submission to the COE while section 2.5(d) gives the Executive Director discretion in submitting a draft or initial request directly to the COE.

Recommendation: 2.5(b) and (d) be amended to require The Executive Director to write or review (if written by a designee) draft opinions. Submission of all advisory opinions to the COE is mandatory, not discretionary. Since all opinions are submitted to the COE for review, section (c) is stricken since it makes submission discretionary.

- 2) Section 2.7 permits the Executive Director to respond to a request for advisory opinion without conferring with the COE where the facts of the request involve issues substantially similar to previously reviewed opinions or is answered by the plain language of the code. The ED does not have independent authority to issue opinions under sec. 2-260.9 which requires “an advisory opinion shall be rendered by the commission on ethics on a timely basis...”

Recommendation: Section 2.7 be stricken.

- 3) Section 2.5(f) references section 2.7 and 2.5(c) as to processing of opinions.

Recommendation: If all opinions must be reviewed by the ED and submitted to the COE, reference to alternative dispositions is inappropriate. Staff recommends striking the language of section 2.5 referencing sections 2.7 and 2.5(c).

- 4) After striking section 2.7, there is no protocol reflecting opinions that are currently reviewed under consent agenda, i.e., those opinions directly answered by prior opinions or the plain language of the applicable code section.

Recommendation: Creation of a new section (section (d)) which sets forth protocols for regular agenda and consent agenda opinions. With regard to consent agenda opinions, review and approval by the Chairperson or Co Chairperson is required.

ITEM X – REVISIONS TO RULES OF PROCEDURE, SECTION B. ADVISORY OPINIONS (CHANGES MARKED)

SECTION B. ADVISORY OPINIONS

2.1 Subject of an Advisory Opinion

- a) The Commission will issue a written advisory opinion on the following laws to a person qualified to make a request under paragraph 2.3 of this section (relating to Persons Eligible to Receive an Advisory Opinion):
 - 1. CODE OF ETHICS, ARTICLE XIII SECTION 2-441 to 2-448 (Ordinance no. 2009-051)
 - 2. COMMISSION ON ETHICS, ARTICLE V SECTION 2-254 to 2-260 (Ordinance no. 2009-050)
 - 3. LOBBYIST REGISTRATION, ARTICLE VIII SECTION 2-351 to 2-357 (Ordinance nos. 2003-018/2005-055)
 - 4. POST EMPLOYMENT, ARTICLE VI SECTION 2-141 to 2-146 (Ordinance no. 88-30)
- b) The Commission will not issue an advisory opinion that concerns the subject matter of pending litigation known to the Commission.

2.2 Persons Eligible to Receive an Advisory Opinion

A person who is subject to any of the laws listed in paragraph 2.1 (a) of this section may request an opinion regarding the interpretation or application of any of the ordinances under the Commission's jurisdiction to himself or herself.

2.3 Request for an Advisory Opinion (Form Requirements)

All requests of advisory opinions must be in writing and contain the following information:

- a) Name, address and telephone number of the requesting party.
- b) Status of the requesting party through which jurisdiction of the Commission is invoked.
- c) A brief fact scenario forming the basis of the request for the advisory opinion. The fact scenario must contain all relevant information for which the requesting part seeks ethical guidance. This includes, but is not limited to, all relationships, personal and contractual, relevant to the requested advisory opinion.
- d) Advisory opinion may be submitted via U.S. Mail, fax, hand-delivered or e-mail directed to ethics@palmbeachcountyethics.com. No request will be processed that does not contain sufficient factual or identification information as required by this section.

2.4 Advisory Opinion Intake

- a) All requests for advisory opinions will be initially reviewed by the Executive Director or staff designee in a timely manner.

- b) A written acknowledgment of receipt will be sent to the requesting party by U.S. Mail, fax or e-mail response.
- c) An initial determination of jurisdiction will be made during the intake process.
- d) If jurisdiction is lacking, the requesting party will be sent a declination letter due to the lack of jurisdiction.
- e) If valid jurisdiction is determined, but the face of the request contains insufficient factual information, the requesting party will be contacted and asked for additional relevant information. Response is required within 30 days. The failure of the requesting party to respond with additional information will result in closure of the file.
- f) An advisory opinion request may be withdrawn by the submitting party in writing no later than ten days prior to the public meeting wherein the commission on ethics is to consider the request.

2.5 Processing Advisory Opinions

- a) Once jurisdiction and sufficient factual information are determined to exist on the face of the request, the Executive Director or his designee will make an initial substantive determination based on the Code of Ethics, Lobbyist Registration or Post Employment Ordinances.
- b) Once an initial determination has been made a draft advisory opinion letter will be written and reviewed by the Executive Director (when written by a designee). ~~and the Chairperson or Co-Chairperson of the COE.~~
- ~~c) The Executive Director and Chairperson or Co-Chairperson of the COE will then determine whether to submit the advisory opinion to the COE for review at the next regularly scheduled meeting.~~
- ~~d)c) The Executive Director will ~~may, at his/her discretion,~~ submit a draft advisory opinion or, in the alternative, the initial request for advisory opinion directly to the COE for advice, guidance or approval.~~
- ~~e)d) When the facts of the request involve issues substantially similar to previously reviewed advisory opinions, or the plain language of the appropriate County Ordinance directly answers the request without ambiguity, the Executive Director will submit a draft advisory opinion to the Chairperson or Co-Chairperson of the COE who will review the opinion and approve or recommend that it be submitted to the COE for advice, guidance or approval in accordance with rule 2.5(c). If preliminary approval is given, the Executive Director will respond prior to the next regular meeting, subject to consent agenda approval at that meeting.~~
- ~~f)e) Opinions set on the consent agenda may be removed during a COE meeting by request of a Commissioner. The opinion will then be discussed and voted on individually in a manner consistent with rule 2.5(c).~~
- ~~g)f) All requests for advisory opinion will be processed within a reasonable time. ~~and, unless otherwise processed as per subsection c above and/or paragraph 2.7 below, the written response is to be submitted to the COE for approval at the next regular meeting.~~~~

2.6 Expedited Responses

When the requesting party so indicates, and the facts support an expedited review of a request for advisory opinion, the Executive Director will confer with the COE Chairperson or Co-Chairperson to determine whether: to set the matter for review at the next scheduled meeting; to set a special meeting of the COE to review the request; or to have the Executive Director respond prior to the next regular meeting.

2.7 Response by the Executive Director

~~The Executive Director, or his designee, may respond to a request for advisory opinion without conferring with the COE when: the facts of the request involve issues substantially similar to previously reviewed advisory opinions; or the plain language of the appropriate County Ordinance directly answers the request without ambiguity.~~

2.8 Advisory Opinion Letter Form

- a) All advisory opinion letters shall contain the following:
- b) A brief recitation of the factual scenario as contained in the written request.
- c) The applicable sections of the relevant County Ordinance.
- d) An opinion as to whether the County Ordinances apply to the requesting party.
- e) An opinion as to whether the requesting party is/would be in compliance with the applicable County Ordinance.
- f) If deemed appropriate by the COE, additional comment regarding ethics, appearance of impropriety or similar advice to the requesting party based upon the factual scenario as presented.
- g) Signatures of the Executive Director or COE Staff Counsel.

2.9 Publication of Advisory Opinions

Each advisory opinion issued by the Commission shall be numbered, dated and published. All opinions shall be published with the name of the requestor redacted unless the requestor authorized the use of his or her name. Notwithstanding, the name of the requestor may be subject to public records disclosure pursuant to chapter 119, Florida Statutes.