



Agenda

April 5, 2012 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Executive Session from 1:45pm to 2:00pm Regular Agenda will begin at 2:15pm

Palm Beach County

Commission on Ethics

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Commissioners

Manuel Farach, Chair

Robin N. Fiore, Vice Chair

Edward Rodgers

Ronald E. Harbison

Daniel T. Galo

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 March 1, 2012
- V. Executive Session
 - a. C11-026
- VI. Presentation to former ethics commissioner Bruce Reinhart
- VII. Presentation of 2011 Annual Report
- VIII. Rules and Procedure amendments
 - a. Section 2
 - b. Section 4.2
- IX. Boca Raton Voting Conflicts
 - a. RQO 11-116
 - b. RQO 11-120
- X. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 12-012
 - b. RQO 12-013
 - c. RQO 12-014
 - d. RQO 12-015
 - e. RQO 12-019
 - f. RQO 12-020
 - g. RQO 12-021
- XI. Items Pulled from Consent Agenda
 - a.
- XII. Proposed Advisory Opinions
 - a. RQO 12-011
 - b. RQO 12-016
 - c. RQO 12-017
 - d. RQO 12-018
 - e. RQO 12-022
 - f. RQO 12-023
 - g. RQO 12-024
- XIII. Procedural Matters Re: C11-027 (Scott Swerdlin)
- XIV. Executive Director Comments
- XV. Public Comments
- XVI. Adjournment

**OFFICIAL MEETING MINUTES
OF THE
PALM BEACH COUNTY COMMISSION ON ETHICS
PALM BEACH COUNTY, FLORIDA**

MARCH 1, 2012

**WEDNESDAY
1:30 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

(CLERK'S NOTE: At 1:15 p.m., Judge Peter Evans led a swearing-in ceremony for the reappointment of Manuel Farach, and the appointment of Daniel T. Galo to the commission. Judge Edward Rodgers announced that Commissioner Farach was reappointed for a second term and that Commissioner Galo was appointed by the Palm Beach County Police Chiefs Association.)

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Judge Edward Rodgers, Chair
Manuel Farach, Esq., Vice Chair
Robin N. Fiore, Ph.D.
Daniel T. Galo, Esq.
Ronald E. Harbison, CPA

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Senior Investigator
Alan S. Johnson, Esq., COE Executive Director
Gina A. Levesque, COE Executive Assistant
James A. Poag, COE Investigator
Megan C. Rogers, Esq., COE Staff Counsel

ADMINISTRATIVE STAFF:

Latoya Osborne, Deputy Clerk, Clerk & Comptroller's Office

(CLERK'S NOTE: Item IV. was taken at this time.)

IV. INTRODUCTORY REMARKS

Judge Edward Rodgers announced that fire alarm testing could take place at some point during the meeting. He asked anyone wishing to speak to submit a public comment card with the agenda item included. All public comments would be limited to three minutes and should be relevant to items on the agenda, he added.

(CLERK'S NOTE: Item XII. was taken at this time.)

XIII. PUBLIC COMMENTS

XIII.a.

DISCUSSED: Property Tax Increase.

B. Rezmick stated that after he had been unfairly charged 14.75 percent interest on his property taxes, he later found out that his property was in foreclosure. He said that he had not been able to get any assistance from County staff to resolve the issue.

Judge Rodgers informed Mr. Rezmick that he should speak with staff in the Tax Collector's Office to resolve his tax-related issue.

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

III. ELECTION OF CHAIR AND VICE CHAIR FOR NEW TERM

MOTION to nominate Manuel Farach as chair of the Commission on Ethics. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Manuel Farach abstained.

MOTION to nominate Judge Edward Rodgers as vice chair of the Commission on Ethics. Motion by Robin Fiore.

Judge Rodgers stated that he would respectfully decline the nomination as he did not have a full four years remaining in his term on the Commission on Ethics (COE).

III. – CONTINUED

**MOTION to nominate Robin Fiore as vice chair of the Commission on Ethics.
Motion by Daniel Galo, seconded by Manuel Farach, and carried 5-0.**

(CLERK’S NOTE: Manuel Farach assumed his position as chair.)

Alan S. Johnson, Esq., COE executive director, recommended that approval of the minutes be postponed until after the executive session. He said that no Sunshine Law requirement existed related to a specific start time of the executive session since it was not a publicly advertised meeting. He added that the executive session would be recorded with audio available to anyone who requested a copy.

IV. Page 2

V. Page 7

RECESS

At 1:38 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 5:13 p.m., the meeting reconvened with Manuel Farach, Robin Fiore, Daniel Galo, Ronald Harbison, and Judge Edward Rodgers present.

VI. EXECUTIVE SESSION

VI.a. C11-026 – Not discussed

VI.b. C11-027

Commissioner Robin Fiore read the public report and finding of probable cause in summary as follows:

Complainant, Carole Coleman, filed the above-referenced complaint on December 21, 2011, alleging a possible ethics violation involving respondent, Dr. Scott Swerdlin, Chairman of the Wellington Equestrian Preserve Committee (EPC). The complaint alleges three Code of Ethics violations involving a meeting of the EPC on December 14, 2011.

VI.b. – CONTINUED

Count 1 alleges that respondent misused his official position by participating in a matter before the EPC that would result in a special financial benefit to his customer or client, Equestrian Sports Production and/or Mr. Mark Bellissimo, applicant for the Equestrian Village Project, before the EPC for an advisory vote prior to consideration by the Village of Wellington Council. Respondent disputes this allegation.

Count 2 alleges that respondent corruptly attempted to secure a special privilege, benefit, or exemption for himself or his customer or client, Equestrian Sports Production and/or Mark Bellissimo, with wrongful intent, in a manner inconsistent with the proper performance of Respondent's public duties. Respondent disputes this allegation.

Count 3 alleges the respondent, after having been admonished by the Village of Wellington Attorney that a conflict of interest under the Code of Ethics requires abstention from both voting and participating in the matter before the EPC, did significantly participate prior to ultimately abstaining from the voting in the matter. In addition, after abstaining, respondent allegedly failed to file a state conflict of interest Form 8B as required under the Code of Ethics. Respondent disputes this allegation.

Pursuant to Chapter 8, Article XIII, Section 2-443(a), Misuse of public office of employment prohibits a public official or employee from using their official position to take any action, or to influence others to take any action, in a manner which he or she knows or should know will result in a special financial benefit not shared by members of the general public for any person or entity listed in Section 2-443(a)(1-7), including him or herself, an outside business or employer, or a customer or client of their outside business or employer.

VI.b. – CONTINUED

Article XIII, Section 2-443(b), Corrupt misuse of official position prohibits any 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. For the purposes of this subsection, corruptly means done with a wrongful intent and for the purpose of obtaining, or compensating, or receiving compensation for any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

Pursuant to Chapter 8, Article XIII, Section 2-443(c), an official shall abstain from voting and not participate in any matter that will result in a special financial benefit for him or herself, an outside business or employer, or customer or client of his or her outside business or employer. A customer or client is an entity to which the official's outside business or employer has provided goods or services in excess of \$10,000 in the aggregate during the 24 months preceding the official action taken. The official must not only publicly disclose the nature of the conflict when abstaining, but must also file a conflict of interest Form 8B pursuant to the requirements of Chapter 112.3143, Florida Statutes, and submit a copy to the Commission on Ethics.

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

On January 10, 2012, the complaint was determined by staff to be legally sufficient. The matter had been brought to the attention of the COE staff by a formal complainant, and pursuant to the Commission on Ethics Rule of Procedure 4.1.3 a preliminary inquiry was commenced. After obtaining sworn statements from material witnesses and documentary evidence sufficient to warrant a legally sufficient finding, a memorandum of legal sufficiency was filed, and a preliminary investigation commenced pursuant to Article V, Division 8, Section 2-260(d).

VI.b. – CONTINUED

Information obtained during the inquiry was adopted into the investigation and presented to the Commission on Ethics on March 1, 2012, with a recommendation that probable cause exists that a Code of Ethics violation occurred. At that time, the commission conducted a probable cause hearing in executive session. The commission reviewed and considered the investigative report, documentary submissions, recommendation of staff, written response of the respondent, as well as oral statements of the respondent and the advocate. At the conclusion of the hearing, the Commission on Ethics determined that there are reasonably trustworthy facts and circumstances for the Commission on Ethics to believe that the respondent may have violated Sections 2-443(a), (b), and (c) of the Palm Beach County Code of Ethics, and a final hearing will be set in order to determine whether a violation or violations occurred.

Therefore, it is ordered and adjudged that probable cause exists, and the complaint against respondent, Dr. Scott Swerdlin, is hereby set for final hearing on June 15, 2012. Done and ordered by the Palm Beach County Commission on Ethics in public session on March 1, 2012. Signed Manuel Farach, Chair.

VI.c. C11-028

Commissioner Fiore read the public report and final order of dismissal as follows:

Complainant, Carole Coleman, filed the above-referenced complaint on December 21, 2011, alleging a possible ethics violation involving respondent, Jeffrey Kurtz, Attorney for the Village of Wellington.

The complaint alleges Dr. Scott Swerdlin, Chairman of the Wellington Equestrian Preserve Committee, participated in a matter before the committee for which Dr. Swerdlin had a financial conflict of interest, and Mr. Kurtz failed to take action sufficient to prevent that participation.

VI.c. – CONTINUED

On January 30, 2012, after reviewing the recorded Equestrian Preserve Committee proceedings forming the basis of the complaint, the complaint was determined by staff to be legally insufficient, and presented to the Commission on Ethics on March 1, 2012, with a recommendation of dismissal as legally insufficient.

The Commission on Ethics reviewed the memorandum of inquiry and determined that the actions taken by the respondent, Jeffrey Kurtz, do not constitute a violation of the Code of Ethics and dismissed the complaint on March 1, 2012, due to no legal sufficiency.

Therefore, it is ordered and adjudged that the complaint against respondent, Jeffrey Kurtz, is hereby dismissed. Done and ordered by the Palm Beach County Commission on Ethics in public session on March 1, 2012. Signed Manuel Farach, Chair.

(CLERK'S NOTE: Item V. was taken at this time.)

V. APPROVAL OF MINUTES FROM FEBRUARY 2, 2012

Commissioner Farach stated that on page 8 of the February 2, 2012, meeting minutes, the third bullet should read, "Gold Coast Builder's Association."

MOTION to approve the minutes as amended. Motion by Judge Edward Rodgers, seconded by Ronald Harbison, and carried 5-0.

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

VII. PRESENTATION OF 2011 ANNUAL REPORT

Mr. Johnson said that although the annual report had been published, the presentation could be tabled until the April 2012 COE meeting and the commissioners agreed.

VIII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

(CLERK'S NOTE: Item VIII.b. was taken before item VIII.a.)

VIII.b. Request for Advisory Opinions (RQO) 12-011

Mr. Johnson stated that staff had received additional information regarding RQO 12-011, which changed the result of the opinion. He requested removing from the consent agenda and resubmitting it for discussion at the April 2012 COE meeting.

MOTION to remove RQO 12-011 from the consent agenda and to postpone discussion on the item until the April 2012 Commission on Ethics meeting. Motion by Judge Edward Rodgers, seconded by Ronald Harbison, and carried 5-0.

VIII.a. RQO 12-007

Mr. Johnson said that synopses were unnecessary for consent agenda items.

MOTION to approve the consent agenda. Motion by Ronald Harbison, seconded by Judge Edward Rodgers, and carried 5-0.

IX. ITEMS PULLED FROM THE CONSENT AGENDA – None

X. PROPOSED ADVISORY OPINION

X.a. RQO 11-118

Mr. Johnson stated that:

- Assistant County Attorney Leonard Berger had asked whether the contingent fee prohibition of the Code of Ethics (Code) applied 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 were contingent on an action or decision of government.

X.a. – CONTINUED

- Staff had submitted the following for COE approval:
 - When acting in the normal course of his or her profession, certain financial-services professionals were not prohibited from contractual arrangements or compensation contingent on the closing of the subject transaction.
 - The arrangement was ordinary and customary in the bond underwriting business.
 - The bond-underwriting professionals were regulated by State and federal law, and compensation paid under a similar contract came from the financed funds.

Mr. Berger said that:

- The contingent fee prohibition and the language in the Code came from State law.
- At one point, there were success fees or unstated arrangements between lobbyists and clients, for example, to pay an additional amount for completed work with an unspoken understanding that the money would be directed to the decision makers.
- Exemptions existed in industries such as real estate, bond underwriting, and certain types of sales where it was customary to receive compensation at the time of closing.
- The bond underwriter-selection process was currently formalized in response to a recently published grand jury report.
- The Code's contingent fee-prohibition language did not state all exceptions as it was not intended to be an exhaustive list.

MOTION to approve the proposed advisory opinion letter RQO 11-118. Motion by Daniel Galo, seconded by Judge Edward Rodgers, and carried 5-0.

X.b. RQO 11-121

Mr. Johnson stated that:

- City of West Palm Beach (City) Ethics Officer Norman Ostrau had asked whether procedures that were in place regarding solicitation of vendor donations for the City-sponsored Fourth of July event, which included a VIP tent area not open to the public, was in compliance with the revised Code effective June 1, 2011.
- The separate VIP tent area had been created for exclusive use by City officials, employees, and their invited guests. Tickets to the VIP tent area had a \$50 face value and were distributed to City officials and employees, but were not made available to the public.
- In-kind donations, which included food and beverages, were solicited from city vendors by City employees for the VIP tent area.
- For the 2011 event, approximately 700 tickets were printed and distributed. Despite the \$50 face value of each ticket determined by City staff, the actual value was less than that amount. No ticket was actually sold.
- Section 2-444(c) of the Code explained that no public employee or official, 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 knew was a vendor, lobbyist, or any principal or employer of a lobbyist where the gift was for the personal benefit of that employee, his or her family member, or his or her household member, or a fellow employee or official.
- An exception to the gift law stated that a gift was allowed if it was solicited for or accepted by a municipal official or employee on behalf of the municipality in the performance of his or her official duties for use solely by the municipality for a public purpose.
- Staff submitted that the current City staff procedure for soliciting VIP tent donations violated the Code since the benefit was received solely by City officials and employees, and was not open to the public.

PUBLIC COMMENTS: City Commissioner Isaac Robinson, Jr., City Administrator Ed Mitchell, and Mr. Ostrau.

X.b. – CONTINUED

Judge Rodgers said that he disagreed with Mr. Ostrau's comment that the arrangement was contractual rather than a gift since the special arrangement was not made available to the public. He said that the original 1998 City resolution was outdated compared to the current COE requirements.

Mr. Johnson clarified that the issue was not that City staff was soliciting donations for the event, but that City staff was soliciting for a benefit that was limited to City employees, officials, and their guests.

Judge Rodgers commented that today's decision would also affect 37 other municipalities.

Commissioner Fiore stated that the VIP tent opened an avenue for lobbyists, representatives of corporate sponsors, to meet with public officials outside the general public's eye.

Commissioner Harbison stated that he believed that a 1998 City resolution did not add credibility to the current argument. He said that the concept of the VIP tent could be perceived by the public as corrupt.

Commissioner Galo said that the City's granting of VIP tent tickets was a form of an employer rewarding its employees; however, the City could revise the content of the 1998 resolution to better match the Code's requirements.

Mr. Johnson clarified that the contributions from vendors were not automatic as it would be in a normal contract. The contracts were entered into after the solicitations had been made, he added.

Commissioner Farach stated that Mr. Ostrau's explanation of what constituted a contract between the City and the vendors was actually a gift since it was not covered by the Code's contract exclusion. He said that the City could discuss the specifics of the VIP tent area in a publicly advertised meeting with the opportunity for public comment and a required vote by the appropriate representatives.

MOTION to approve the proposed advisory opinion letter RQO 11-121. Motion by Robin Fiore, seconded by Judge Edward Rodgers, and carried 5-0.

X.c. RQO 12-008

Mr. Johnson said that:

- A County employee, Rebecca Caldwell, asked whether she could accept two tickets, with a face value of \$125 each, to a banquet given by a nonprofit trade organization that lobbied the Palm Beach County government, where she would receive a plaque honoring her work in creating a countywide “universal building permit application.”
- Staff had submitted the following for COE approval:
 - County and municipal employees were not prohibited from accepting awards for civic or professional achievements.
 - The Code prohibited employees from accepting a gift with a value, in the annual aggregate, of more than \$100 from a lobbyist or the principal of a lobbyist who lobbied the employee’s government entity.
 - Should the value of the event tickets exceed \$100, the employee must return the difference to the organization.
 - Since the nonprofit organization employed a lobbyist, the Code’s gift carveout no longer existed and was not acceptable.
 - Since Ms. Caldwell was receiving a personal award and not an award on the County’s behalf, the award was not viewed as serving a public purpose.

MOTION to approve the proposed advisory opinion letter RQO 12-008. Motion by Ronald Harbison, seconded by Judge Edward Rodgers, and carried 5-0.

Mr. Johnson said that Ms. Caldwell was being diligent in reaching out to the COE for answers since others may have accepted the tickets and award without any type of reporting. Commissioner Farach added that it was appropriate to commend Ms. Caldwell’s actions.

X.d. RQO 12-009

Megan Rogers, Esq., COE staff counsel, stated the following:

- The advisory opinion relied primarily on prior COE decisions in RQOs 11-056, 11-059, and 11-013.
- Delray Beach Police Department (DBPD) Chief Anthony Strianese had asked whether his employees could attend a nonprofit organization's sponsored employee awards dinner and if so, what was required of the nonprofit sponsor and the DBPD employees.
- Staff had submitted the following for COE approval:
 - A public employee, or any person or entity on his or her behalf was prohibited from soliciting a gift of any value from a vendor, lobbyist, principal or employer of a lobbyist who sold, leased, or lobbied his or her public employer if the solicitation was for his or her own personal benefit, the benefit of the employee's relatives or household members, or the benefit of another employee.
 - The prohibition did not extend to soliciting or accepting donations from persons and entities who were not vendors, lobbyists, or principals or employees who sold or lobbied his or her public employer as long as there was no quid pro quo or other benefit given for the past, present, or future performance of an official act or legal duty.
 - Gifts over \$100 were to be reported on an employee's annual Palm Beach County gift reporting form unless one of several exceptions applied.
 - The definition of the word, gift, specifically excluded awards for professional or civic achievement, and accordingly, did not need to be reported.
- Annual scholarships provided by the Delray Citizens for Delray Police (DCDP) were not excluded from the Code's gift prohibition. A scholarship received by an employee's child could not be provided by a vendor or lobbyist. Additionally, an employee could not solicit anything of value from a vendor or lobbyist on behalf of another employee. The scholarship would be a reportable gift if it was solicited by a nonprofit entity.

X.d. – CONTINUED

- A public employee would not be prohibited from receiving a training scholarship in most cases as long as the scholarship helped to fund training that was related to his or her official position, and taken on behalf of his or her official job.
- An additional exception to the Code's gift prohibition was when a government solicited for equipment for its own use.
- The DCDP was allowed to donate dollars raised on behalf of the DBPD so long as those funds were specifically earmarked for the use of public training or goods.
- Condolence gifts would potentially not be considered to be a public purpose, and would be reportable and not subject to a gift law exception. An employee could not raise those funds on behalf of another employee or his or her family member.

MOTION to approve the proposed advisory opinion letter RQO 12-009. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 5-0.

X.e. RQO 12-010

Mark Bannon, COE senior investigator, stated that:

- Vice President Nanci Simonson, who was in charge of Branch Banking & Trust Company (BB&T) customer relations, had asked whether her employer could provide discounted banking services as a reward to employees and officials of certain municipalities that were BB&T customers.
- She asked whether the better option would be to offer the discounts to every County employee rather than employees of certain municipalities so that it would be considered a public offering.

X.e. – CONTINUED

- Staff had recommended that the latter option was best by the requirements of the Code.
 - The BB&T was prohibited from offering personal benefits over \$100 annually to individuals whose employers were BB&T banking customers.
 - A similar offer to all local governmental employees, regardless of whether their public employer was a BB&T banking customer, would not be prohibited by the gift law.

MOTION to approve the proposed advisory opinion letter RQO 12-010. Motion by Ronald Harbison, seconded by Daniel Galo, and carried 5-0.

XI. BOCA RATON VOTING CONFLICTS

XI.a. RQO 11-116

XI.b. RQO 11-120

Mr. Johnson stated that staff had recommended that item XI. be tabled until the April 2012 COE meeting to allow Mr. Berger's participation.

Commissioner Farach agreed and said that the item could be addressed toward the beginning of the agenda.

Richard Radcliffe, League of Cities Director, said that he supported staff's recommendation.

Judge Rodgers asked staff to keep the COE informed on the issue so that members could provide suggestions once the ordinances were being revised.

MOTION to table item XI. until the April 2012 Commission on Ethics meeting for discussion at the beginning of the meeting. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 5-0.

XII. EXECUTIVE DIRECTOR COMMENTS – None

XIII. Page 2

XIV. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Judge Edward Rodgers, seconded by Daniel Galo, and carried 5-0.

At 6:45 p.m., the chair declared the meeting adjourned.

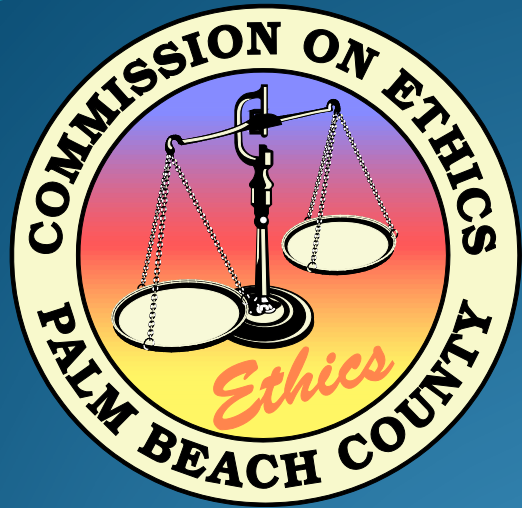
APPROVED:

Chair/Vice Chair

Item VII – Annual Report

Staff Analysis

COE staff has prepared and released its first calendar year annual report (2011). Distribution will be mainly electronic and is available to the public on our website at www.palmbeachcountyethics.com. A synopsis presentation of the report is attached and staff will make a brief presentation to the COE including budgetary, advisory opinion, community and government outreach and complaint processing activities undertaken during the past calendar year.



2011 Annual Report

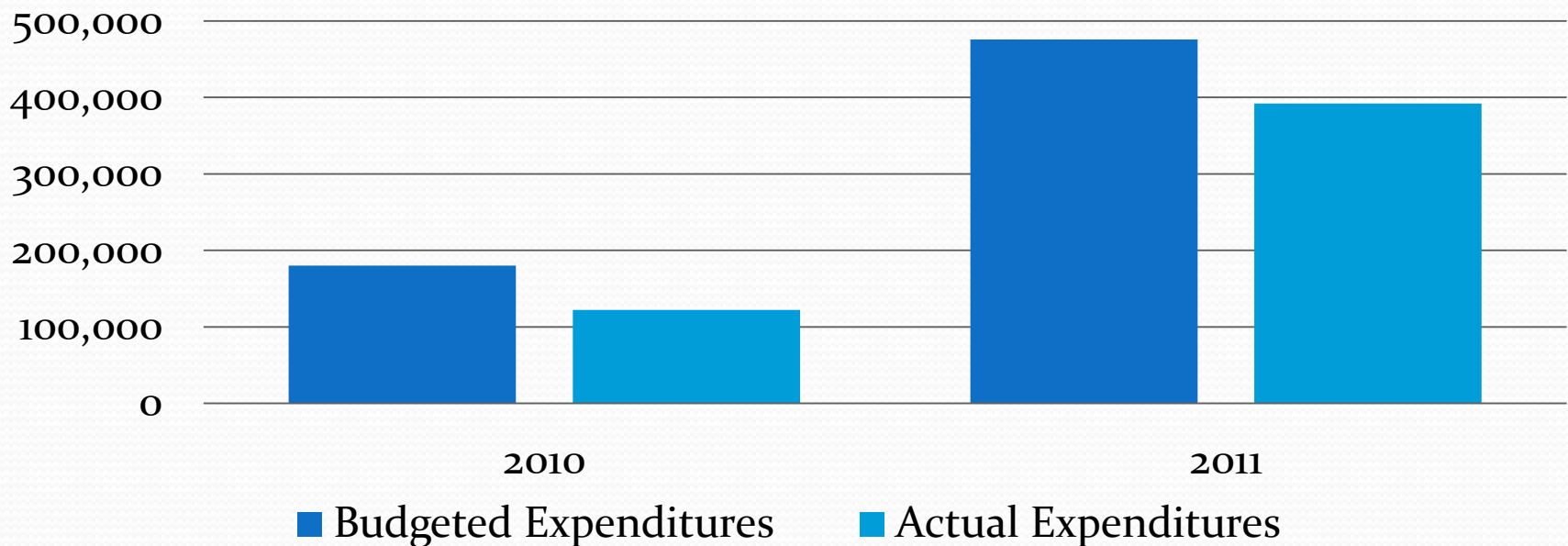
Palm Beach County Commission on Ethics

Alan S. Johnson

Executive Director

Fiscal Report

Commission on Ethics General Revenue Fund Expenditures



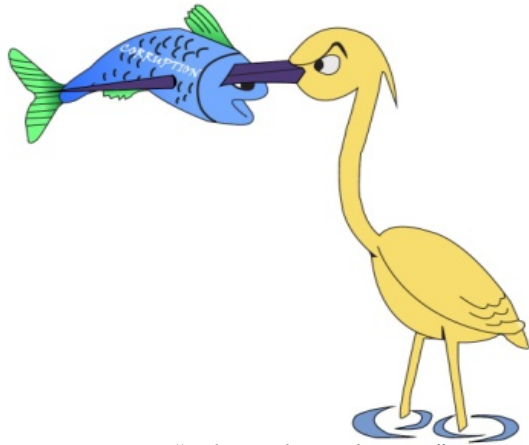
In 2010, the COE expended 62% of budgeted expenditures. In fiscal year 2011, the COE expended 82% of budgeted expenditures, a savings of 3% over projected savings. As of February 1, 2012 the COE has spent 16.47% of its budget, putting the department on track to spend approximately 66 % of its 2012 budget.

Education

- **92** in-person trainings with county and municipal employees, officials and advisory board members
- **150** DVD's to County and municipal departments
- **35** presentations to community organizations including:
 - Rotary Clubs of Boca Raton, Palm Beach and Palm Beach Gardens
 - Leadership Palm Beach County
 - Tri-Rail Commission Forum
 - Wilkes Honors College, FAU
 - Florida Institute of Certified Professional Accountants
 - Palm Beach County Bar Association
 - Lake Worth, Delray Beach, and Pahokee Chambers of Commerce


Education

- Ethics Awareness Day
 - Inaugural event: *Building Ethics*
 - November 18, 2011
- Interactive Ethics Quiz
 - Available at www.palmbeachcountyethics.com/ethics_quiz.htm



“Edgar the Ethigret”
Created by Ryan Watstein
Palm Beach State College-Graphic Design

Question 1



The Parks and Recreation Department is going to plant new trees in a local park. Dave, the procurement officer for the department, has a nephew with a landscaping business that can supply the trees. However, Dave's nephew is offering the trees at a slightly higher price than his competitors. What should Dave do?

- 1) Buy the lowest priced trees.
- 2) Buy the trees from his nephew because he could use the business.
- 3) Ask his nephew to lower the price so he could buy the trees from him.
- 4) Not participate in this procurement.

That is Correct!

Question 1 of 15

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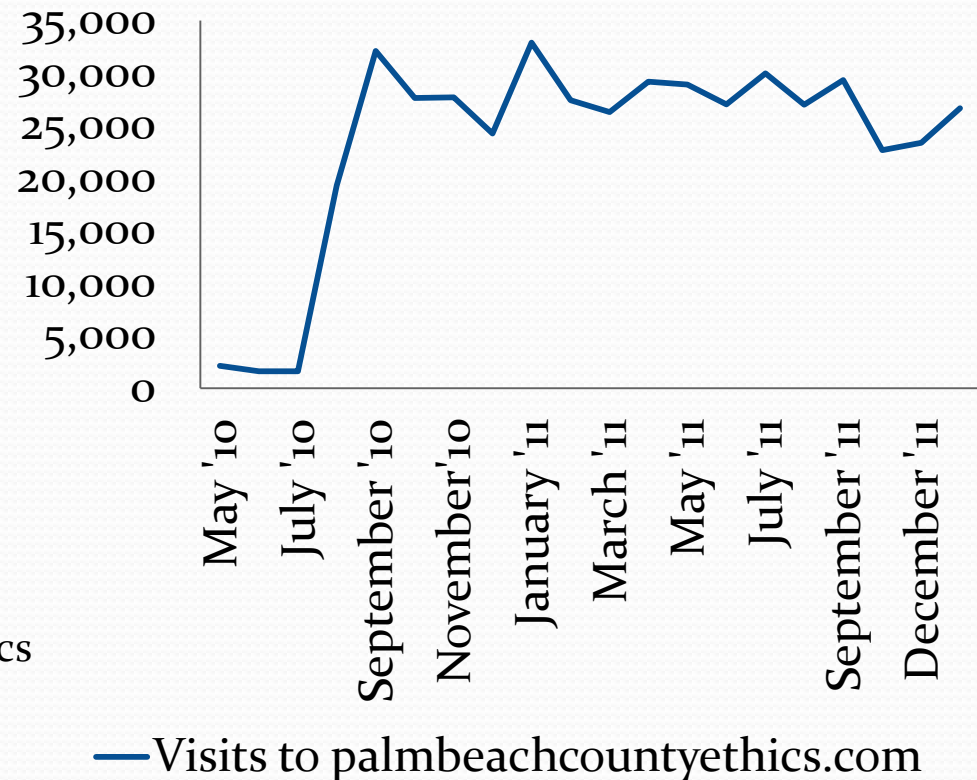
- Internship Program
 - Palm Beach State College
 - Palm Beach Atlantic University

Legislative Activities and Initiatives

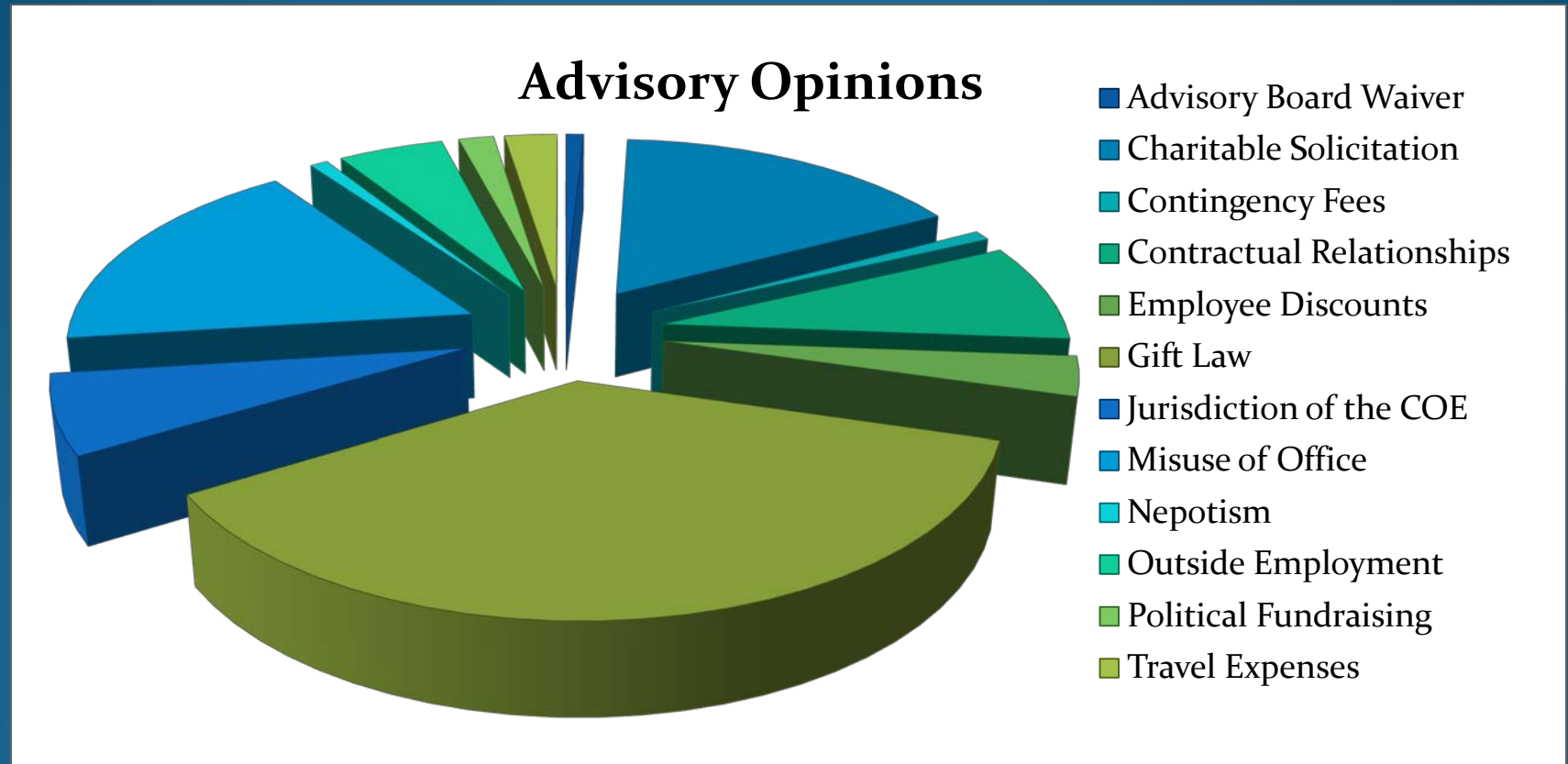
- Revised Code of Ethics and Commission on Ethics Ordinances
 - The Commission was actively involved in reviewing and revising the Commission on Ethics and Code of Ethics Ordinances to include municipal governments.
 - Effective June 1, 2011
- County-wide Lobbyist Registration Ordinance
 - Commission staff has worked with the Palm Beach County League of Cities and County administration to establish a county-wide lobbyist registration ordinance and streamline the lobbyist registration process.
 - Effective April 2, 2012

COE At Your Fingertips: *PalmBeachCountyEthics.com*

- Multimedia
 - Channel 20 programming
 - Interactive Quiz
- Training
 - Streaming videos for employees, advisory board members and officials
- Searchable Database of Opinions
- Lobbyist and Vendor Databases
- Building Ethics
 - Gateway to information on local ethics movements around the country
- Request an opinion or file a complaint
 - ethics@palmbeachcountyethics.com



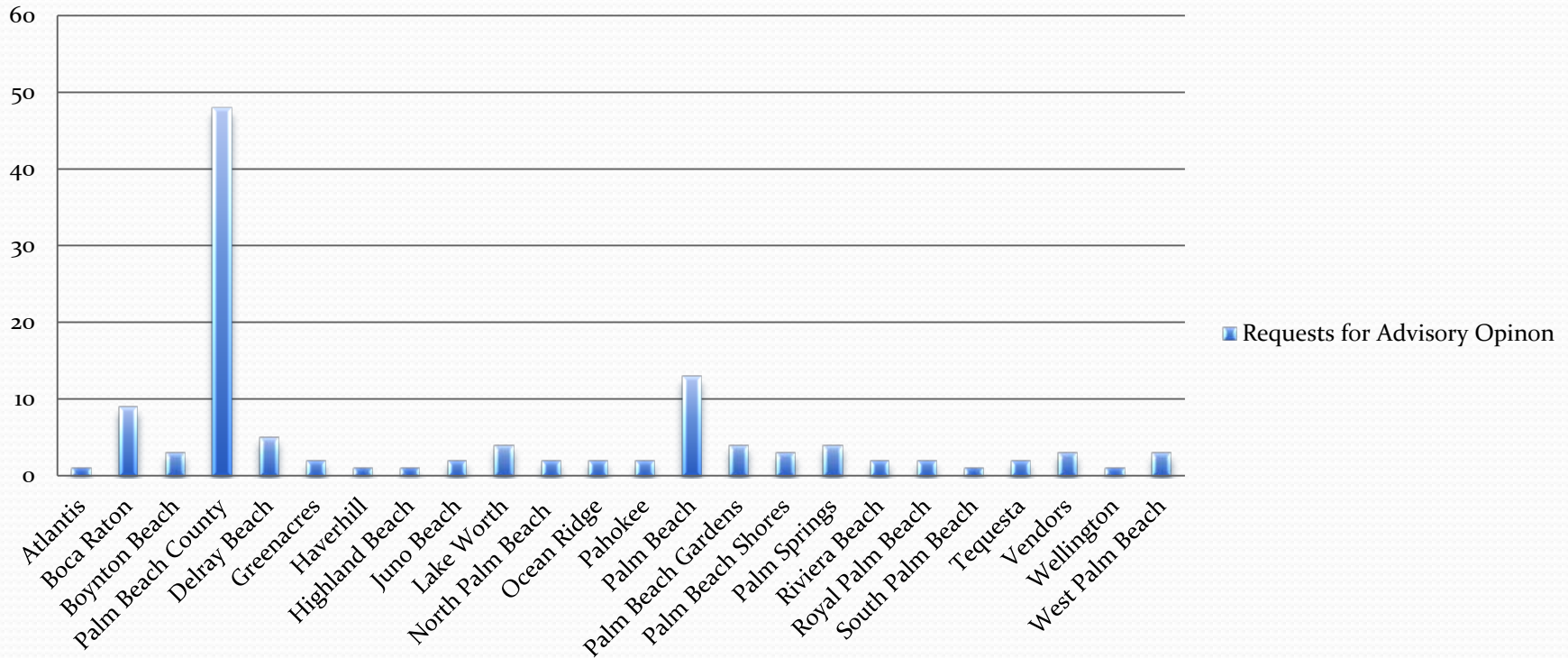
Advisory Opinions: Ask First, Act Later



In 2011, the COE issued 123 advisory opinions. Copies of every advisory opinion issued since the Commission's establishment are available in PDF format at www.palmbeachcountyethics.com/opinions.htm

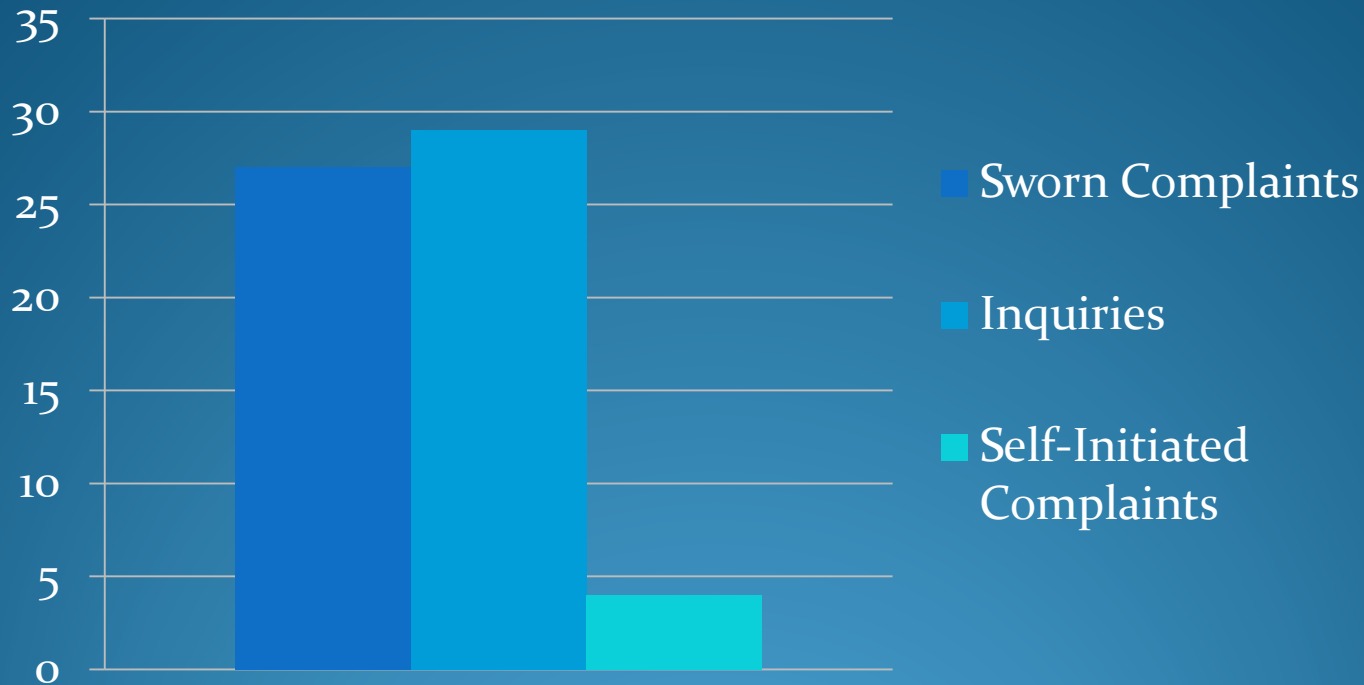
Advisory Opinions

Breakdown of Requests for Advisory Opinion by Entity



In June, 2011 the jurisdiction of the COE expanded by referendum to all 38 municipalities within Palm Beach County, doubling the number of public employees and volunteer officials within the Commission’s jurisdiction as reflected in the breakdown of requests for advisory opinion by entity.

Complaints and Investigations



- In 2011, the COE received 27 sworn complaints, 29 anonymous complaints and self-initiated 4 complaints.

- 20 sworn complaints were dismissed for lack of legal sufficiency, 2 cases are pending and 6 complaints were found to be legally sufficient.

Summary of Complaints Filed

January 1, 2011 through December 31, 2011



•Of the 6 cases found to be legally sufficient, 3 were dismissed at probable cause hearings. The COE found probable cause in 2 cases which resulted in settlement agreements.



Town of
Cloud Lake



ITEM VIII (a.) – REVISIONS TO RULES OF PROCEDURE, SECTION 2. ADVISORY OPINIONS (CHANGES MARKED)

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 2, 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 amend 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 Vice-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 this section would make 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 sections 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 (subsection (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 Vice Chairperson is required. If not approved, the opinion is removed from the consent agenda and placed on the regular agenda for discussion.

- 5) Section 2.9 currently provides that publication of opinions shall redact the name of the requesting party unless he or she authorizes publication. Notwithstanding this redaction, the name of the requestor is a public record and available for disclosure purposes.

Recommendation: Previous COE discussion regarding this section was tabled on November 30, 2011. Several Commissioners indicated that the current procedure, publishing the names of opinion requestors, continue and that rule 2.9 be amended. However, no vote was taken and the issue was tabled.

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.

ITEM VIII (b.) – REVISIONS TO RULES OF PROCEDURE, SECTION 4.2

Staff analysis:

Article V., Division 8, §2-260. Procedure on Complaints filed.

(d) *Preliminary investigation and public hearing.* A preliminary investigation shall be undertaken by the commission on ethics **of each legally sufficient complaint** over which the commission on ethics has jurisdiction to determine whether there is probable cause to believe that a violation has occurred. If, upon completion of the preliminary investigation, the commission on ethics finds no probable cause to believe that a violation has been committed, the commission on ethics shall dismiss the complaint with the issuance of a report to the complainant and the respondent. If the commission on ethics finds from the preliminary investigation probable cause to believe that a violation has been committed, it shall set the matter for a public hearing and notify complainant and respondent via certified mail, hand delivery, or courier. The commission on ethics may conduct such further investigation as it deems necessary, and may enter into such stipulations and settlements as it finds to be just and in the best interest of the citizens of the county. (emphasis added)

Rule 4.2 of the COE Rules of Procedure, promulgated in 2010, contains language requiring legally insufficient Complaints to be submitted to the COE for dismissal. The language of §2-260 requires only legally sufficient Complaints to be submitted to the COE for a probable cause finding or dismissal. Legally insufficient Complaints are not actionable as a matter of law.

Staff recommendation:

There is no provision within the Commission on Ethics ordinance that supports the current COE Rule requiring legally insufficient Complaints be brought before the Commission for dismissal. Requiring COE dismissal of legally insufficient Complaints creates unnecessary paperwork, an inefficient use of staff, and ultimately results in unwarranted financial expense and wasted resources. It should be noted that aside from the fact that the Complainant files a formal Complaint under oath, a sworn Complaint is no different from an anonymous or unsworn tip. The Commission on Ethics ordinance provides specific guidelines as to the legal sufficiency of a Complaint; it must be sworn, allege a violation of an ordinance within the jurisdiction of the COE occurring after the effective date of the code, filed within 2 years of the alleged violation and be based substantially on the personal knowledge of the Complainant. If a Complaint lacks legal sufficiency, the COE is prohibited from further action, other than to inquire further for purposes of a self-initiated Complaint. To require by rule that such a matter come before the COE merely for purposes of dismissal where no such requirement is found in the COE ordinance is unnecessary and wasteful.

Staff recommends that Rule 4.2 be amended as follows:

- d) The Executive Director or designee shall prepare a memorandum regarding the legal sufficiency of all complaints. If the Executive Director or designee finds the complaint to be legally insufficient, the ~~recommendation to dismiss the~~ complaint must be presented to the Commission.
- e) Upon a finding of no legal sufficiency by the Executive Director or designee, the complaint, memorandum of no legal sufficiency and all documents related thereto shall become a public record and constitute a public record.
- f) ~~(e)~~ Upon a finding of legal sufficiency and Pursuant to Section 112.324, Florida Statutes, the Commission may meet in executive session to determine whether probable cause exists. at any time prior to a finding of probable cause and may find the complaint to be insufficient Upon hearing the matter the commission may find probable cause; dismiss it, and ~~notify the complainant that no investigation will be made~~ or take such other action as may be appropriate. In any case where a complaint is ~~found legally insufficient and~~ dismissed, the public report and order dismissing the complaint together with the complaint itself and all documents related thereto shall become a public record and constitute a public record.

ITEM IX – Boca Raton Voting Conflicts

Staff Analysis:

Two opinion requests were received from the Boca Raton City Attorney, Diana Grub-Frieser.

Staff Analysis:

Two opinion requests were received from the Boca Raton City Attorney, Diana Grub-Frieser.

In **RQO 11-116 (MCR)**, the City Attorney asked how the \$10,000 threshold value of goods or services provided to a customer or client of an official or employee's outside employer is calculated when the employer is a large national financial institution. Secondly, in the event that an official or employee's outside employer is divided into operational departments and/or divisions, should all goods and services for all departments be included in the calculation of the threshold amount. Finally, does the reference in the code to the "previous 24 month period" suggest that each time a matter comes before a governing body, an official recalculate the aggregate value of goods or services provided to a customer or client of their outside employer to ascertain whether or not the \$10,000 threshold has been met.

Staff submits the following recommendation (attached proposed advisory opinion):

A customer or client is defined as a person or entity to which an official's outside employer or business has provided at least \$10,000 worth of goods or services during the past 24 months. With respect to a banking institution, \$10,000 means the value of the total goods or services provided to a customer or client over the course of a 24 month period whether in the form of goods, fees, or financial services, including mortgage interest costs if the mortgage is serviced by the bank.

There is no bright line regarding actual or constructive knowledge of the status of a customer or client, including the existence and amount of goods and services provided. Knowledge is determined by the facts and circumstances presented. Lastly, the existence of a conflict is determined at the time an official is required to act in his or her official capacity.

In **RQO 11-120 (ASJ)**, the City Attorney asked whether an elected official whose outside employer is a large national bank or financial institution, is required to abstain in every instance any client or customer of the outside employer appears before her board. A related request was submitted on November 1, 2011 and an opinion was published as to the reasonable care standard regarding knowledge of a conflict.¹ Subsequently, the City Attorney submitted additional requests on November 30, 2011 and December 19, 2011 asking whether the term *similarly situated members of the general public* would eliminate the customer or client conflict under certain circumstances.

The elected official's outside employer is Citibank, the 3rd largest banking company of the 53 FDIC-insured institutions operating within the County. Nationally, Citibank reported total assets of \$1.3 trillion dollars, 9.5% of the total assets reported by every FDIC-insured institution in the United States. In its 2010 Annual Report, Citibank states that it has 13.1 million retail customers in North America and over 21 million credit card accounts. Citibank has approximately 13 branches in Palm Beach County, 53 in Florida and 1,331 nationally located in 19 states. The elected official is a "business banker" at a local

¹ RQO 11-099 (knowledge of a conflict is either actual or constructive and there is no bright line definition of "the exercise of reasonable care" as required under the §2-443(a) misuse of office provision of the code.)

branch of Citibank within Boca Raton. She has no supervisory authority and is responsible for opening small business/customer accounts.

Staff submits the following recommendation (attached proposed advisory opinion):

An official who is employed by a large national bank as a “business banker” at a local bank branch and responsible for opening small business/customer accounts, does not automatically have a conflict under §2-443(a) (5) of the Revised Code of Ethics when customers of the bank appear before her due to the fact that the pool (i.e., number of similarly situated persons) of bank customers is sufficiently large to avoid a violation of the Code. The numerosity of the customer pool may be so large that a general customer, without more, is considered a member of the “general public.”

However, this rule does not offer complete protection. A significant customer or client may not be similarly situated to other normal and usual bank customers because of the benefit that may flow to the banker’s employer. Similarly, customers or clients who directly conduct business with the employee/official or do business within the official’s particular department, store or branch are not similarly situated to the large majority of nationwide customers or clients who have no such nexus to the official.

April 6, 2012

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

Re: RQO 11-116
Voting Conflicts/Misuse of Office

Dear Ms. Grub Frieser,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion and rendered its opinion at a public meeting held on April 5, 2012.

YOU ASKED how the \$10,000 threshold value of goods or services provided to a customer or client of an official or employee's outside employer is calculated when the employer is a national financial institution. Secondly, in the event that an official or employee's outside employer is divided into operational departments and/or divisions, should all goods and services for all departments be included in the calculation of the threshold amount. Finally, does the reference in the code to the "previous 24 month period" suggest that each time a matter comes before a governing body, an official recalculate the aggregate value of goods or services provided to a customer or client of their outside employer to ascertain whether or not the \$10,000 threshold has been met.

IN SUM, elected officials are prohibited from voting or participating in a matter that would financially benefit themselves, their outside employer, or a customer or client of their employer in a manner not shared with similarly situated individuals or entities. A customer or client is defined as a person or entity to which the official's business or outside employer has supplied goods or services during the previous 24 months of an aggregate value in excess of \$10,000.

The size, scope or internal organization of an entity may affect whether a customer or client is a similarly situated member of the general public.¹ However, for the purpose of calculating the \$10,000 threshold, so long as the employer has provided \$10,000 in goods or services, which department provided those services has no significance.

Lastly, the relevant threshold amount is determined at the time a matter comes before a council, board or commission. Therefore, should a customer or client return to petition the council, the value of goods or services provided over the previous 24 months is calculated at that time.

THE FACTS as we understand them are as follows:

You are the City Attorney for the City of Boca Raton (the City). A City councilwoman's outside employer is Citibank, the 3rd largest banking institution operating within the County. Matters may come before the City Council, including proposals from persons or entities who may meet the threshold definition of *customer or client* of her outside employer as defined by the Code of Ethics.

Nationally, Citibank reported total assets of \$1.3 trillion dollars, 9.5% of the total assets reported by every FDIC-insured institution in the United States. In its 2010 Annual Report, Citibank states that it has 13.1 million retail customers in North America and over 21 million credit card accounts. Citibank has approximately 13 branches in Palm Beach County, 53 in Florida and 1,331 nationally located in 19 states. The councilwoman is a "business banker" at a local branch of Citibank within Boca Raton. She has no supervisory authority and is responsible for opening small business/customer accounts.

¹ RQO 11-120

Among its many financial products, Citibank provides savings and checking accounts, credit, home and automobile loans, and securities and investment services to individuals, businesses, governments and institutional investors. Fees for goods and services received by the institution include but are not limited to, mortgage interest payments, checking fees, overdraft charges and service fees.

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 elected officials from using their official position to take or fail to take any action *if they know or should know with the exercise of reasonable care* that the action would result in a special financial benefit not shared with similarly situated members of the general public, for certain entities or persons, including the official, their outside business or employer, or a customer or client of their outside employer or business. A customer or client is defined as any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four months, having in the aggregate a value greater than \$10,000.²

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

Citibank provides valuable goods and services to their customers including but not limited to, mortgages, checking and savings accounts, and overdraft and other service fees. Should a person or entity appear before an official who has actual or constructive knowledge of their status of a customer or client of his or her outside employer³, whether the official works for a bank with a million clients or a local paving company with 100 clients, when aware of the status the official may need to reasonably determine the aggregate value of their employers' goods and services provided to that client. This calculation, \$10,000 in goods or services provided over the previous 24 months, is applicable every time a customer or client appears before an official.

To be sure, determining whether one client has met the \$10,000 threshold is far more complex in the context of a large national corporation as compared to a local small business. That being said, there is a reasonableness standard contained within the misuse of office provision; that an official *knows or should know with the exercise of reasonable care* that a person appearing before her is a customer or client (as defined by the code) of the official's outside employer. Knowledge may be constructive or actual and there is no bright line definition of reasonable care.⁴ In determining whether or not a conflict exists, the code does not require any particular degree of research or due diligence on the part of a public official. In cases involving a large national corporation, without a nexus between the official, his outside employer and a client who brings an issue or project before the Council, there are few practical ways to vet all possible transactions and relationships to determine financial benefit. Where there is no apparent financial nexus, and the circumstances indicate no direct or constructive knowledge on an official's part indicating a special financial benefit to their employer or client, then the likelihood of a violation is greatly diminished, if not eliminated.⁵

² §2-442. Definitions. *Customer or client*

³ See, RQO 11-099 (There is no bright line regarding the exercise of reasonable care in determining whether a person or entity is in fact a customer or client. The official must have actual or constructive knowledge of the status to be in violation of the misuse of office provisions)

⁴ RQO 11-101, RQO 11-099, *Commission on Ethics v. Barker*, 677 So2d 254 (Fla. 1996) (While constructive knowledge may be sufficient to pass constitutional muster, the court indicated "At the same time, however, we note that proof that something of value was given to a public official who might be in a position to help the donor one day, without more, would not establish a violation of §112.313(4)")

⁵ RQO 11-099

Furthermore, as a customer of client of a national corporation, the person appearing before the official may be similarly situated to the general public. When a group of consumers is so considerable, for example the 13.1 million Americans who bank with Citibank, it can be said that that group is sufficiently representative of the general public. Depending upon the facts and circumstances, there may be no inherent special benefit being exchanged.⁶ Again, there is no bright line as to when a customer or client of a large national entity is unique, but there are several factors that may assist an official in assessing whether there is a conflict.⁷ When in doubt about a specific factual scenario, you are encouraged to request an advisory opinion.

IN SUMMARY, a customer of client is defined as a person or entity to which an official's outside employer or business has provided at least \$10,000 worth of goods or services during the past 24 months. With respect to a banking institution, \$10,000 means the aggregate of total goods or services provided to a customer or client over the course of a 24 month period whether in the form of goods, fees, or financial services, including mortgage interest costs if the mortgage is serviced by the bank.

There is no bright line regarding actual or constructive knowledge of the status of a customer or client, including the existence and amount of goods and services provided. Knowledge is determined by the facts and circumstances presented. Lastly, the existence of a conflict is determined at the time an official is required to act in his or her official capacity.

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

⁶ RQO 11-120

⁷ *Id.* (for example, a significant customer or a client of the employer or one who conducts business with an official's branch may not be similarly situated to the large majority of nationwide customers or clients with no nexus to the official).

April 6, 2012

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

Re: RQO 11-120
Voting Conflicts/Misuse of Office

Dear Ms. Grub Frieser,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion and rendered its opinion at a public meeting held on April 5, 2012.

YOU ASKED whether an elected official whose outside employer is a large national bank or financial institution, is required to abstain in every instance any client or customer of the outside employer appears before her board. A related request was submitted on November 1, 2011 and an opinion was published as to the reasonable care standard regarding knowledge of a conflict.¹ Subsequently, you submitted additional requests on November 30, 2011 and December 19, 2011 asking whether the term *similarly situated members of the general public* would eliminate the customer or client conflict under these circumstances.²

IN SUM, based on the facts you have submitted, an official who is employed by a large national bank as a "business banker" at a local bank branch and responsible for opening small business/customer accounts, does not automatically have a conflict under §2-443(a) (5) of the Revised Code of Ethics when customers of the bank appear before her due to the fact that the pool (i.e., number of similarly situated persons) of bank customers is sufficiently large to avoid a violation of the Code. The numerosity of the customer pool may be so large that a general customer, without more, is considered a member of the "general public."

However, this rule is not complete protection. A significant customer or client may not be similarly situated to other normal and usual bank customers because of the benefit that may flow to the banker's employer. Similarly, customers or clients who directly conduct business with the employee/official or do business within the official's particular department, store or branch are not similarly situated to the large majority of nationwide customers or clients who have no such nexus to the official.

THE FACTS as we understand them are as follows:

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

¹ RQO 11-099

² An additional advisory opinion request is being processed regarding the calculation of goods and services in the context of banking fees for service. RQO 11-116

A member of the City Council is an employee of a large national bank with a vast number of customers/clients in the City and around the country. The official is employed in one division and generally has knowledge of matters or clients within her division. Matters may come before the City Council, including proposals from persons or entities who may meet the threshold definition of *customer or client* provided by the Code of Ethics.³

The councilwoman's outside employer is Citibank, the 3rd largest banking company of the 53 FDIC-insured institutions operating within the County. Nationally, Citibank reported total assets of \$1.3 trillion dollars, 9.5% of the total assets reported by every FDIC-insured institution in the United States. In its 2010 Annual Report, Citibank states that it has 13.1 million retail customers in North America and over 21 million credit card accounts. Citibank has approximately 13 branches in Palm Beach County, 53 in Florida and 1,331 nationally located in 19 states. The councilwoman is a "business banker" at a local branch of Citibank within Boca Raton. She has no supervisory authority and is responsible for opening small business/customer accounts.

As the City attorney, you are requesting an interpretation as to the misuse of public office or employment section of the code, specifically whether or not the size and volume of customers of a national banking institution eliminates a conflict of interest in the context of similarly situated members of the general public.

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

Sec. 2-443. Prohibited conduct.

(a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:

- (1) Himself or herself;
- (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
- (5) A customer or client of the official or employee's outside employer or business;

Section 2-443(a) prohibits elected officials from using their official position to take or fail to take any action *if they know or should know with the exercise of reasonable care* that the action would result in a special financial benefit not shared with similarly situated members of the general public, for certain entities or persons including themselves, their outside business or employer, or a customer or client of their outside employer or business. A customer or client is defined as any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four months, having in the aggregate a value greater than \$10,000.⁴

³ §2-442 Definitions. *A customer or client is defined as any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having in the aggregate, a value greater than ten thousand dollars (\$10,000).*

⁴ §2-442

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

In a prior opinion, this commission addressed the issue of voting conflicts involving customers or clients of an elected official's outside employer.⁵ In that instance, the employer was Florida Power and Light (FPL) and the commission determined that normal and usual customer or clients of FPL would be similarly situated and therefore there would be no special financial benefit conflict of interest. The COE stated as follows:

FPL is a publicly regulated utility and maintains an effective monopoly among users of electric power in the Town of Jupiter and throughout the State of Florida. As such, most, if not all persons and entities coming before your council would be similarly situated members of the general public, insofar as their being customers or clients of your outside employer. Therefore, under these circumstances, there is not inherent special financial benefit. Notwithstanding, depending upon the facts, there could be a scenario where a specific customer or client is not similarly situated with other customers of FPL. Additionally, you must take care to avoid using your official position to give a special financial benefit to FPL. In that regard, this commission cannot opine as to speculative factual scenarios.

The question then becomes whether or not the FPL opinion should extend to a national banking institution with a significant customer base, but not a monopoly as was the case with FPL. A number of Florida Commission on Ethics opinions focus "on the size of the group or class of persons to be affected by a measure in determining whether the gain or loss to a public officer within the group would be "special" within the meaning of section 112.3143, unless there are circumstances that are unique to the officer which would distinguish the public officer's gain or loss from that of other members of the group..."⁶ Using this matrix, a number of opinions have found groups of several hundred or more similarly situated individuals who stand to benefit from a measure would be sufficient to eliminate a "special" gain or loss.⁷ While the Florida COE issued its opinions in the context of personal financial benefit to the voting member, the concept is analogous to the issues involving customers or clients of an official. If the similarly situated group of affected persons is large, and the person benefiting is not a unique customer or client, the appearance of conflict is diminished.

There is no bright line as to when a customer or client of a large national entity is unique, and the COE will not opine as to speculative factual scenarios, there are some factors that may assist assessing conflict. For example, a significant customer or client may not be similarly situated to others. Likewise, customers or clients who directly conduct business with the employee/official or are known within the official's particular department, store or branch may not be similarly situated to the large majority of nationwide customers or clients with no nexus to the official.

⁵ RQO 11-038

⁶ CEO 93-12 (April 22, 1993), CEO 90-71 (October 19, 1990), CEO 91-72 (December 6, 1991), CEO 96-62 (March 16, 1996).

⁷ RQO 10-013 (the COE determined that aviation and airports advisory board members were similarly situated to the approximately 600 airport users and therefore no conflict of interest existed in voting on an airport tax issue)

In this instance, the councilwoman is a business banker at an individual branch of Citibank. Customers or clients of Citibank who deal directly with her or her branch may not be similarly situated to other customers who have no direct or indirect nexus or connection to her. Therefore, personal or branch clients may present a conflict. Normal and regular bank customers with no nexus or personal connection to the councilwoman may not present such a conflict.

IN SUMMARY, under the specific facts presented, where a normal and usual customer or client of a large national bank with over 13 million customers in 19 states appears before a municipal official who works in one local branch of the bank, a conflict may not exist where there is no nexus between the official or the official's branch office and the customer, and the customer is not otherwise unique and therefore not similarly situated with other ordinary and usual customers of the bank.

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

ITEM X – SYNOPSIS OF PROCESSED ADVISORY OPINIONS

RQO 12-012 – Ginger Pedersen

A member of the Boynton Beach Historic Resources Preservation Board asked whether she could enter into a publishing agreement with a publishing company that is a former vendor of the City of Boynton Beach to write a book about the history of Palm Beach County.

Staff submits the following for COE approval: the advisory board member is not prohibited from contracting with a former vendor of her municipality. Based upon the facts submitted, the publishing company is not an active vendor of the City, and does not sell or offer goods or services to the subject advisory board. An agreement to publish a book does not constitute outside employment as defined in the Code of Ethics. Notwithstanding, an official may not use his or her official position to give a special financial benefit to themselves or their publishing company in the promotion of the book.

RQO 11-013 – Michael Cantanzaro

An employee of the Palm Beach County Water Utilities Department asked whether a county department may provide employees with a stipend for training and licensing costs, where such training and licensing is required by an employee's position, and if so, does such a stipend constitute a prohibited or reportable gift.

Staff submits the following for COE approval: A "gift" refers to the transfer of anything of value without adequate and lawful consideration. However, a license fee or training costs paid by the county for an employee's registration fees or other related costs associated with educational seminars where attendance is for governmental purposes (as determined by supervisory personnel), related to an employee's official duties and responsibilities, is excluded from the definition of gift under the code of ethics and is therefore neither prohibited nor reportable.

RQO 12-014 – Nancy Albert

The Director of Electronic Services and Security for Palm Beach County (ESS) asked whether planning employees are permitted to attend an educational seminar provided by a vendor of the county. The attendance was determined by supervisory personnel to be for educational purposes in their official capacity.

Staff submits the following for COE approval: County employees are not prohibited from attending a tuition free educational seminar in their official capacity as County employees, for a public purpose, as determined by supervisory personnel, notwithstanding the fact that the training is provided by a vendor of the County. Registration fees associated with educational conferences where attendance is for governmental purposes and related to an employee's official duties and responsibilities are excluded from the definition of gift. However, employees may not accept anything else of an aggregate value in excess of \$100 from a vendor, lobbyist, principal or employer of a lobbyist who sells, leases to, or lobbies the County.

RQO 12-015 – Journey Beard

The Director of Contract Development and Quality Control for Palm Beach County Department of Economic Stability asked whether it would violate the code of ethics for a Palm Beach County Community Development Project Coordinator to accept part-time employment as consultant to a local

community redevelopment agency where the County employee would be working with county vendors on the CRA project.

Staff submits the following for COE approval: The code of ethics prohibits public employees from working for an outside employer who contracts with their public employer, unless one of several exceptions apply. Based upon the information provided, the County does not have contracts with this CRA. In addition, the code of ethics specifically exempts other governmental entities from the definition of “outside employer or business.”

Accordingly, a county employee is not prohibited by the code of ethics accepting outside employment with a municipal redevelopment agency. Notwithstanding, the county may apply more stringent conditions or regulations concerning outside employment, by merit rule or other internal policy or procedure. Public employees must at all times keep in mind that they may not use their official position in a corrupt manner or a manner that will result in a special financial benefit to themselves.

RQO 12-019 – Vince Bonvento

An Assistant County Administrator asked whether hosting a software program, available at no cost to Palm Beach County and for the benefit of the Emergency Operations Department (“EOD”), violates the Palm Beach County Code of Ethics.

Staff submits the following for COE approval: The code of ethics does not prohibit a county department from using a free software program that is available to any governmental entity, corporation or other institution without a fee. The COE cannot opine as to internal county or departmental policy and procedure regarding such an arrangement.

RQO 12-020 – Liz Moritis

A municipal employee asked whether she could solicit local restaurants for donations to provide lunch and dinner to municipal 911 operators in recognition of National Telecommunicator week.

Staff submits the following for COE approval: While solicitation of donations from non-vendors or lobbyists of an employee’s municipality may not be prohibited, provided there is no quid pro quo involved, public employees are prohibited from soliciting donations from vendors, lobbyists, principals or employers of lobbyists of the City if the solicited donations will personally benefit themselves, a relative or household member or a fellow employee.

RQO 12-021 Wally Majors

A municipal parks and recreation Director asked whether giving resident-only public facilities discounts or other resident privileges to municipal employees who are not City residents violates the Code of Ethics.

Staff submits the following for COE approval: The Code of Ethics does not prohibit a public employer from offering its non-resident employees enhanced access to public facilities and reduced fees for such access. Depending upon the facts and circumstances, if the value of the discount received by an employee exceeds \$100, it may be a reportable gift.



Palm Beach County Commission on Ethics

Commissioners

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Robin N. Fiore, *Vice Chair*
Edward Rodgers
Ronald E. Harbison
Daniel T. Galo

Executive Director

Alan S. Johnson

March 15, 2012

Dr. Ginger Pedersen, Historic Resources Preservation Board
City of Boynton Beach
100 East Boynton Beach Blvd.
Boynton Beach, FL 33425

Re: RQO 12-012
Gift Law/Vendor Gifts

Dear Dr. Pedersen,

Your request for advisory opinion from 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 Tuesday, February 21, 2012, whether as a member of the Boynton Beach Historic Resources Preservation Board, you may enter into a publishing agreement with a publishing company that is a former vendor of the municipality you serve.

IN SUM, while you may not use your official position to obtain a financial benefit not available to similarly situated members of the general public, the Code of Ethics does not prohibit you from entering into a book publishing contract with a company that formerly provided goods and services to Boynton Beach.

THE FACTS as we understand them are as follows:

You are a member of the Boynton Beach Historic Resources Preservation Board (the Board), a municipal advisory board created by the Boynton Beach City Commission in late 2011. The Board recommends and nominates properties for historic designation, advises property owners on historic preservation matters and acts upon applications to renovate/rehabilitate structures listed on the historic register.

You are a full-time faculty member at Palm Beach State College where you serve as the Dean of Curriculum, Planning and Research. You have been offered a publishing contract from The History Press (THP) to write a book on Palm Beach County Pioneers, namely Fred S. Dewey and Byrd Spilman Dewey. THP was a vendor of Boynton Beach (the City) in fiscal years 1990-2000, but has not provided goods or services to the City since that time. You anticipate that the book will be published in the fall and will contain one chapter that discusses the history of the City. You have no ownership interest in THP and are not a THP employee.

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

Section 2-443(a) prohibits an official or employee from using his or her official position to obtain a special financial benefit, not shared with similarly situated members of the general public, for him or herself, or his or her outside business or employer, or a customer or client. Section 2-443(b) prohibits an employee from using an official position to *corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others*. In view of these provisions, you may not use your position as a board member to give a special financial benefit to yourself or THP.

The use of one's government service in a biographical statement or curriculum vitae as one of a number of employment, social and community accomplishments and awards does not trigger this provision. However, specifically trading on one's official position or using one's official title to promote personal or outside business interests may violate the code.

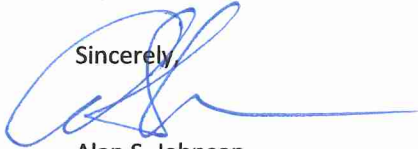
Section 2-443(d) prohibits an official from entering into contracts or other transactions for goods or services with their respective municipality. This prohibition includes contractual relationships between the municipality and the officials outside business or employer. The term employer includes any non-governmental entity *of which the official is a member, official, director, proprietor, partner or employee, and from which he or she receives compensation for services rendered or goods sold or produced.*¹ You have been offered a publishing contract to produce a book. You have no other ownership or ongoing compensatory relationship with THP. Such an agreement does not constitute employment within the meaning of the code.

IN SUMMARY, based on the facts and circumstances you have submitted, the Palm Beach County Code of Ethics does not prohibit you from contracting with THP to write a book about the history of Palm Beach County. THP is not a vendor of the City for the purposes of the Code of Ethics. Compensation received in accordance with your publishing contract with THP does not constitute employment as defined by the Code of Ethics. However, you may not use your official position to give a special financial benefit to yourself or THP in the promotion of your book.

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

¹§ 2-443(d)



Palm Beach County Commission on Ethics

Commissioners

Manuel Farach, *Chair*
Robin N. Fiore, *Vice Chair*
Edward Rodgers
Ronald E. Harbison
Daniel T. Galo

Executive Director

Alan S. Johnson

March 15, 2012

Michael P. Catanzaro, Utility Regulatory Compliance Specialist
Safety and Training Officer
Palm Beach County Water Utilities
8100 Forest Hill Boulevard
West Palm Beach, FL 33416

Re: RQO 12-013
Gift Law/Training Reimbursement

Dear Mr. Catanzaro,

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

YOU ASKED in your email of February 13, whether a county department may provide employees with a stipend for training and licensing costs where such training and licensing is required by an employee's position and if so, whether such a stipend would be considered a gift under the code of ethics.

IN SUM, a "gift" refers to the transfer of anything of economic value, without adequate and lawful consideration. However, a license fee or training costs paid by the County for an employee's registration fees or other related costs associated with educational seminars where attendance is for governmental purposes, related to an employee's official duties and responsibilities, is not considered a gift under the code of ethics and is neither prohibited nor reportable.

THE FACTS as we understand them are as follows:

You are a safety and training officer for the Palm Beach County Water Utilities Department. As a condition of employment with the department, employees must obtain a Commercial Drivers License (CDL) within 11 months of their hiring date. The department would like reimburse new employees the \$100 to \$150 cost of obtaining the license and CDL training at an approved school.

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

Sec. 2-444. Gift law.

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

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

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;

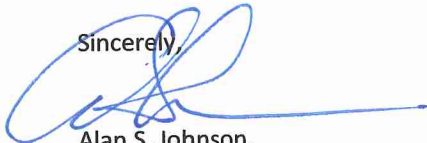
County and municipal employees subject to the Code of Ethics are prohibited from soliciting or accepting gifts in excess of \$100 from vendors and lobbyists who vend, lease or lobby their government employer.¹ If an employee receives an allowable gift in excess of \$100, it is reportable unless one of several exceptions applies.² One such exception exists where the county makes a determination to spend county resources on employee education and training so long as the training is for governmental purposes and attendance is related to an employee's duties and responsibilities as an employee of the county. Accordingly, county employees may be reimbursed for educational and training expenses as deemed appropriate by department administrators. If awarded, these stipends are not reportable because they are not considered gifts under the code of ethics.

IN SUMMARY, county employees are not prohibited from accepting training and licensing stipends from the County. Educational fees and costs related to an employee's governmental duties and responsibilities are not gifts as defined by the Code of Ethics and thus are neither prohibited nor reportable.

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,

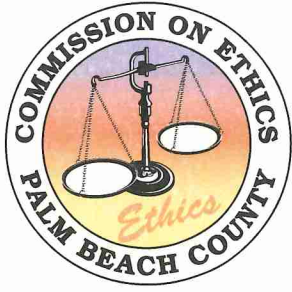


Alan S. Johnson,
Executive Director

ASI/gal/mcr

¹ 2-444(a)(1)

² 2-444(f)(2)



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

February 28, 2012

Nancy Albert, Director
PBC Facilities Development and Operations
Division of Electronic Services & Security
2601 Vista Parkway
West Palm Beach, FL 33411

Re: RQO 12-014
Gift Law/Vendor Conference

Dear Ms. Albert,

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

YOU ASKED in your email of February 24, 2012, whether County planning employees are permitted to attend an educational seminar provided by a vendor of the County. Their attendance is for educational purposes and will be in their official capacity.

IN SUM, County employees are not prohibited from attending a tuition free educational seminar in their official capacity as County employees, notwithstanding the fact that the training is provided by a vendor of the County. However, employees may not accept anything else of an aggregate value in excess of \$100 from a vendor, lobbyist, principal or employer of a lobbyist who sells, leases to, or lobbies the County.

THE FACTS as we understand them are as follows:

You are the Director of Electronic Services and Security for Palm Beach County (ESS). ESS supports electronic systems within County government. ADI, a national supply house for electronic supplies such as cable, security monitors and cameras, is a county vendor. ESS Department employees have been invited to attend a "South Florida Expo" (Expo) training given by ADI on Thursday, March 22nd. There is no charge for the Expo and all area government and private sector clients of ADI are invited to attend. The one day training will be held in Ft. Lauderdale, Florida. Food and beverages will be available at no charge. There is no overnight stay and ESS employees will car pool to the training in a County vehicle. The governmental purpose in attending this training series is to further expand County Staff's existing knowledge of current products and introduce them to new technology coming onto the market. As

Director, you would like to send the County's planning group who can then pass this information on to the rest of your division.

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

Sec. 2-444. Gift law.

(a) No... employee...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 or reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county...

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

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

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;

County and municipal employees subject to the Code of Ethics are prohibited from soliciting or accepting gifts in excess of \$100 from vendors and lobbyists, who vend, lease or lobby their government employer.¹ The definition of "gift" specifically excludes registration fees and other related costs associated with educational or governmental conferences or seminars where attendance is for governmental purposes and attendance is related to an employee's duties and responsibilities as an employee of the county.

In this instance, there are no fees attached to the Expo training, however, even if there were such a fee, based upon the facts and circumstances you have submitted, such a tuition, fee or cost would not be considered a gift under the code. Accordingly, County employees are not prohibited from attending the training session provided at the March 22nd Expo. This exception extends only to training expenses. While attending the seminar an ESS employee may not accept a gift from ADI, including food and beverage, if the aggregate value exceeds \$100.² Lastly, employees may not accept anything of value in exchange for "an official action taken" or "legal duty performed."³

IN SUMMARY, county employees are not prohibited from attending the no cost ADI Expo, provided the attendance is for governmental purposes related to their duties and responsibilities as employees of the County. Should an ESS employee receive anything at the Expo from a vendor, lobbyist, principal or

¹ §2-444(a)(1)

² RQO 11-047, RQO 11-071, RQO 12-011

³ §2-444(e)

employer of a lobbyist of the County, with an aggregate value in excess of \$100, such a gift or gifts would be prohibited.

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.

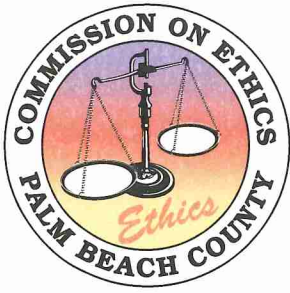
Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson
Executive Director

ASJ/gal



Palm Beach County Commission on Ethics

Commissioners

Manuel Farach, *Chair*
Robin N. Fiore, *Vice Chair*
Edward Rodgers
Ronald E. Harbison
Daniel T. Galo

Executive Director

Alan S. Johnson

March 16, 2012

Journey Beard, Director
Department of Economic Stability
100 Australian Avenue, 5th Floor
West Palm Beach, FL 33406

Re: RQO 12-015
Outside Employment/Government Employer

Dear Ms. Beard,

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 February 22, whether it would violate the code of ethics for a Palm Beach County Community Development Project Coordinator to accept part-time employment as Construction Consultant administering NSP-2 grant monies on behalf of the Lake Worth CRA (LWCRA) where the County employee would be working with county vendors on the LWCRA project.

IN SUM, the code of ethics prohibits public employees from working for an outside employer who contracts with the government the employee serves, unless one of several exceptions apply. Based upon the information you provided, the County does not have contracts with LWCRA. In addition, the code of ethics specifically exempts other governmental entities from the definition of "outside employer or business."

Accordingly, a county employee is not prohibited by the code of ethics accepting outside employment with a municipal redevelopment agency. Notwithstanding, the county may apply more stringent conditions or regulations concerning outside employment, by merit rule or other internal policy or procedure. Public employees must at all times keep in mind that they may not use their official position in a corrupt manner or a manner that will result in a special financial benefit to themselves.

THE FACTS as we understand them are as follows:

You are the Director of Contract Development and Quality Control for the Palm Beach County Department of Economic Sustainability. A department employee has been offered a position as an independent housing rehab professional with the City of Lake Worth CRA (LWCRA). The LWCRA is currently in the process of building and rehabbing over fifty new residential properties in the City as part of a grant from the United States Department of Housing and Urban Development (HUD). The housing rehab professional will review work, change orders, invoices, and determine the degree (i.e. 30%, 60%, and 90%) to which overall work on a property has been completed.

Palm Beach County does not contract with the LWCRA. County vendors such as Habitat for Humanity have partnered with the LWCRA in applying for the HUD funds and will assist in the proposed renovations and build out. As an independent special district, the LWCRA was not subject to the countywide referendum that brought cities and municipalities under the jurisdiction of the Commission on Ethics (COE) and ethics codes. However, on October 4, 2011 the LWCRA and the COE entered into a memorandum of understanding bringing the LWCRA within the jurisdiction of the COE for the following year. Accordingly, a contract employee of the LWCRA is also subject to the provisions of the revised code of ethics in his capacity as an employee of the CRA.

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

Section 2-443(d) prohibits a public employee from entering into contracts with his or her public employer directly or through an outside business or employer. Under the facts and circumstances presented here, the LWCRA does not contract with the County. Furthermore, even if the LWCRA were to maintain contracts with the County, the code excludes other governmental entities from the definition of outside employer.¹

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.

Where employees have direct influence and control over financial matters, they must take great care not to use their official position to give themselves a special financial benefit. In these circumstances, an employee must be careful not to use their county position to give a special financial benefit to LWCRA and vice versa. 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.²

Lastly, notwithstanding the requirements of the Code of Ethics, county employees must comply with 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, a department may decline to allow such employment under its own rules.

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 11-123

IN SUMMARY, 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 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,



Megan Rogers,
Staff Counsel

MR/gal



Palm Beach County Commission on Ethics

Commissioners

Manuel Farach, *Chair*
Robin N. Fiore, *Vice Chair*
Edward Rodgers
Ronald E. Harbison
Daniel T. Galo

Executive Director

Alan S. Johnson

March 21, 2012

Vince Bonvento, Assistant County Administrator
Department of Public Safety
Division of Emergency Management
20 S. Military Trail
West Palm Beach, FL 33415

Re: RQO 12-019
Prohibited Conduct

Dear Mr. Bonvento,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion. The opinion rendered is as follows.

YOU ASKED in your letter dated February 27, 2012, whether hosting a software program, available at no cost to Palm Beach County and for the benefit of the Emergency Operations Department ("EOD"), violates the Palm Beach County Code of Ethics.

IN SUM, the code of ethics does not prohibit a county department from using a free software program that is available to any governmental entity, corporation or other institution without a fee. The COE cannot opine as to internal county or departmental policy and procedure regarding such an arrangement.

THE FACTS as we understand them are as follows:

Several years ago the Division of Emergency Management (DEM) began using a web application called "Moodle." Moodle, an abbreviation for Modular Object-Oriented Dynamic Learning Environment, is an open source, free to use e-learning software platform. It is a learning management service which allows DEM to provide computer-based training to staff. All learning and testing content is created internally by the department and applied to this platform.

The basic version currently in use by the DEM is available free of charge to any user, including for-profit companies and governmental entities. 911 Coordinator Dan Koenig contacted Moodle to ensure that DEM's use of the software was appropriate. Moodle partner/manager Michael Blake responded "No problem using Moodle for the purpose you outline. Moodle sounds like the right tool for you." Programs with similar capabilities such as the "Blackboard" learning system would cost the department upwards of \$7,000. There are other versions of Moodle which upgrade the capabilities of the software or provide additional features which are available for a fee, none of which upgrades are required by the county at this time.

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

The Code prohibits an employee or official, and certain related persons or entities, from specially financially benefiting from an official action.¹ Under the facts you have submitted, there is no personal special financial benefit to DEM employees by the county using this free training software platform.

Corrupt misuse of official position² extends the prohibition against using one's official position for financial benefit to *any benefit*, financial or otherwise, if done with wrongful intent, inconsistent with the proper performance of the employee's duties. Under the facts presented here, there is no indication that use of this free software by employees of the county, available to any corporate or governmental entity, is corrupt or inconsistent with the proper performance of an employee's public duties. That being said, should a county employee misrepresent or use their official position to gain some benefit for the county where the county is ineligible to receive that benefit, such as using a "home version" or non-commercial or unauthorized version of software, such use of one's official position may potentially be considered to be inconsistent with the proper performance of one's public duties.

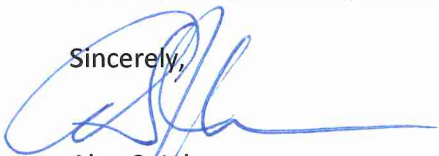
Lastly, although the use of free software could be considered a gift as that term is defined under the code³, the definition of gift excludes *gifts solicited or accepted by county employees on behalf of the county in performance of their official duties for use solely by the county for a public purpose*. The use of the Moodle platform by the county is a public use. So long as no special benefit is obtained by employees, this exception applies and the free software would not be considered a gift.

IN SUMMARY, under the facts you have submitted, the Palm Beach County Code of Ethics does not prohibit a county department, through its employees, from taking advantage of free software available to corporate, government and home users alike. The COE cannot opine as to any internal county policy or procedure regarding this use.

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

¹ §2-443(a)

² §2-443(c)

³ §2-444(g) "...gift shall refer to the transfer of anything of economic value..."



Palm Beach County Commission on Ethics

Commissioners

Manuel Farach, *Chair*
Robin N. Fiore, *Vice Chair*
Edward Rodgers
Ronald E. Harbison
Daniel T. Galo

Executive Director

Alan S. Johnson

March 15, 2012

Ms. Liz Moritis, 911 Operator
201 West Palmetto Park Road
Boca Raton, FL 33432

Re: RQO 12-020
Gift Law

Dear Ms. Moritis,

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

YOU ASKED in an email dated March 6, 2012 whether you could solicit local restaurants for donations providing lunch and dinner to 911 operators in recognition of National Telecommunicator week.

IN SUM, public employees, or any person or entity on their behalf, are prohibited from soliciting a gift of any value from a vendor, lobbyist, principal or employer or a lobbyist who sells, leases or lobbies their public employer, if the solicitation is for their own personal benefit, the benefit of their relatives or household members or the benefit of another employee.

This prohibition does not extend to soliciting or accepting donations from persons and entities who are not vendors, lobbyists, or principals or employees who sell lease or lobby their public employer, as long as there is no *quid pro quo* or other benefit given for the past, present or future performance an official act or legal duty.

If the value of an individual meal received by an employee exceeds \$100 it is a reportable gift unless specifically exempted under the code.

THE FACTS as we understand them are as follows:

You are employed by the City of Boca Raton as a 911 Telecommunicator. National Telecommunicator Week (NTW) is from April 8-14th, 2012 and honors 911 operators across the country. You would like to solicit area restaurants for donations in order to provide special lunches and dinners for your co-workers. Telecommunicators work either day or evening shifts and you intend to provide a meal for each day of the week. Examples of restaurants you intend to solicit are Publix, Cheesecake Factory, TooJays, Rotellis, Panera Bread and Mississippi Sweets.

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

Section 2-444(c) states as follows:

No county commissioner, member of a local governing body, mayor or chief executive officer 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 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)

As an employee of the City you may not solicit anything of value from a vendor or lobbyist of the City if that solicitation is for the benefit of any City employee. Accordingly, solicitation of donations for employee meals from vendors or lobbyists who vend, lease or lobby the City is prohibited.¹ Solicitation of residents or any other person or entity that is not a vendor or lobbyist of the city is not prohibited, provided there is no *quid pro quo* or other benefit given for the past, present or future performance an official act or legal duty in exchange for the gift.

THE RATIONALE for limiting solicitation of donations from lobbyists and vendors by public employees and officials 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.

Section 2-444(g) defines a gift as "*the transfer of anything of economic value*" and §2-444(f) requires employees to complete an annual gift disclosure report if the value of the gift exceeds \$100, unless one of several exceptions apply. The ethics commission has previously addressed valuation issues and has determined that for purposes of valuation, Florida Statute §112.3148 is applicable to these situations². In addressing valuation of gifts, Florida Statute §112.3148(7) states:

(f) Food and beverages which are not consumed at a single sitting or meal and which are provided on the same calendar day shall be considered a single gift, and the total value of all food and beverages provided on that date shall be considered the value of the gift. Food and beverage consumed at a single sitting or meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift.

Accordingly, if the value of a gift of food and beverage received from non-vendor donors exceeds \$100/day, City employees must report the meal on their annual gift reporting form.

IN SUMMARY, employees are prohibited from soliciting donations from vendors, lobbyists, principals or employers of lobbyists of the City if the solicited donations will personally benefit themselves, a relative or household member or a fellow employee. Solicitation of donations from residents or other persons or entities who are not vendors or lobbyists of the City is not prohibited, provided there is no official *quid pro quo* offered in exchange for the donation. Gifts of a value in excess of \$100 must be reported as required under the Code of Ethics.

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

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

Sincerely,

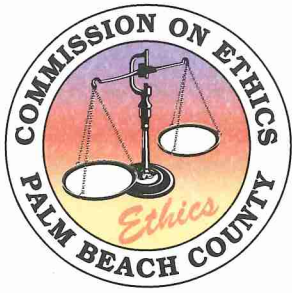


Alan S. Johnson,
Executive Director

ASJ/mcr/gal

¹ See RQO 11-079, RQO 11-080, RQO11-121, 12-009.

² RQO 10-005, RQO 10-024, RQO 11-017, RQO 11-022, §2-444(f) Gift reports.



Palm Beach County Commission on Ethics

Commissioners

Manuel Farach, *Chair*
Robin N. Fiore, *Vice Chair*
Edward Rodgers
Ronald E. Harbison
Daniel T. Galo

Executive Director

Alan S. Johnson

March 16, 2012

Wally Majors, Director
Boynton Beach Parks and Recreation Department
P.O. Box 310
Boynton Beach, FL 33425-0310

Re: RQO 12-021
Gift Law

Dear Mr. Majors,

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

YOU ASKED in an email dated February 6, 2012 whether giving resident-only public facilities discounts or other resident privileges to employees of the City of Boynton Beach (the City) who are not City residents violates the Code of Ethics.

IN SUM, the Code of Ethics does not prohibit a public employer from offering its non-resident employees enhanced access to public facilities and reduced fees for such access. Depending upon the facts and circumstances, if the value of the discount received by an employee exceeds \$100, it may be a reportable gift.

THE FACTS as we understand them are as follows:

You are the Director of the City of Boynton Beach Recreation and Parks Department. Until 2010 the City allowed City employees that were not residents of the City to purchase parking permits for the municipal beach area (Oceanfront Park) at the City resident rate. Non-residents of the City generally pay a fee twenty-five percent (25%) higher than residents for these permits. Further, non-resident City employees had been allowed to purchase these parking permits at the same time as City residents, which was earlier than non-residents. Parking permits are limited. There are 260 parking spots at Oceanfront Park.

According to City Ordinance 16-82, which governs parking permits for the municipal beach, "All city employees, classified, nonclassified and retired, regardless of residency, shall be eligible to receive one (1) parking permit." Notwithstanding this ordinance, in 2010 the City ended the availability of parking permits for non-resident City employees, although the City ordinance itself remained unchanged. The City is interested in reinstating this benefit, but is concerned that it may violate the Code of Ethics.

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

The Palm Beach County Code of Ethics does not prohibit a public employer from extending preferred access to its recreational facilities to non-resident employees, or doing so at a reduced cost. The following portions of the Gift law section of the Code are relevant to this analysis:

Section 2-444. *Gift law:*

- (f) Gift reports. Any official or employee who receives a *gift* in excess of one hundred dollars (\$100) shall report that gift in accordance with this section. (Emphasis added)
- (g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration. (Emphasis added)

Section 2-444(f), requires that any gift valued at greater than \$100 be reported in accordance with this section. Depending upon the facts and circumstances, a benefit received from an employer may or may not be considered a gift. For example, when a benefit is part of an employee's compensation, employment would be considered as lawful and adequate consideration for the benefit.¹ However, if there is no clear nexus to an employee's employment or compensation package, the benefit may constitute a gift and is therefore subject to transparent reporting requirements.²

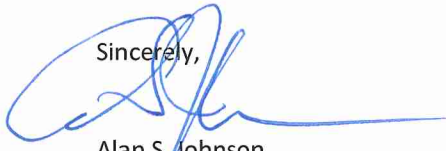
Based upon the facts and circumstances presented, it does not appear that these benefits are part of a non-resident employee compensation package and are therefore reportable should the value of the benefit exceed \$100. If the benefit received does not exceed \$100, it is not reportable.

IN SUMMARY, the City of Boynton Beach is not prohibited under the Code of Ethics from offering a benefit to its non-resident employees, such as reduced fees or special access for parking at its municipal beach, otherwise only available to City residents. If the value of the benefit received by an employee exceeds \$100, it would be a reportable gift under the facts you have submitted.

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

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

Sincerely,



Alan S. Johnson,
Executive Director

ASJ/meb/gal

¹ RQO 11-028 (tips, when ordinary and customary compensation for public employee are not considered gifts), RQO 11-022 (free or reduced airfare to employees and their families considered part of the airline employees' employment compensation, and thus not a gift under the Gift law.)

² RQO 11-021 (tickets to VIP area), RQO 11-069 (concert tickets)

ITEM XII – PROPOSED ADVISORY OPINIONS

RQO 12-011 – Brian Berke

A County employee asked whether he was permitted to attend a professional development conference and receive travel and related expense reimbursement where attendance is for educational purposes, will be in his official capacity, and has been reviewed and approved by his supervisor.

Staff submits the following for COE approval: A county employee is not prohibited from attending a professional development conference in his or her official capacity so long as they are attending for County purposes and the trip is approved by the employee's supervisor. Where travel expenses are not provided directly or indirectly by a county contractor, vendor, service provider, bidder or proposer, county employees are not required to obtain a travel expenses waiver from the BCC. Lastly, registration fees and other related costs associated with educational or governmental conferences or seminars and travel expenses are not subject to gift reporting requirements if an employee's attendance is for governmental purposes, related to their duties and responsibilities as a county employee and approved by supervisory staff.

RQO 12-016 – Chief Ray Carter

A municipal fire rescue chief asked whether including the cost of employee travel expenses for pre-build conferences and acceptance conferences for high cost Fire-Rescue and other Fire Apparatus Vehicles in the contract price of the vehicles violates the prohibition on accepting travel expenses from vendors section of the Code of Ethics.

Staff submits the following for COE approval: while public employees may not accept, directly or indirectly, travel expenses from a municipal vendor, service provider, bidder or proposer, this prohibition does not apply to expenses ultimately paid by the municipality from municipal funds pursuant to a contract for the purchase of goods, where the purpose of the travel is to ensure that the terms of the contract are fulfilled.

RQO 12-017 – Norm Ostrau

A municipal ethics officer asked whether city employees may accept reduced tuition to attend a Florida International University online MBA program. Discounted tuition is not available to all members of the general public but only to students whose employer or family member's employer has enrolled in a corporate partnership program with the university. FIU does not vend, lease or lobby the City.

Staff submits the following for COE approval: City employees are not prohibited from accepting a tuition discount or scholarship from Florida International University (FIU) based upon their status as a city employee provided that there is no quid pro quo or special treatment or privileges given to FIU or its agent, Academic Partnerships, in exchange for offering these scholarships. For purposes of gift law reporting, tuition discounts or scholarships received by public employees or their family members for degree programs, when based on their public employment status, are reportable gifts under the Code of Ethics.

RQO 12-018 – Paulette Burdick

A county commissioner asked whether she may receive travel reimbursement from a Robert Wood Johnson Foundation (RWJF) and a Quantum Foundation (QF) grant to the School Board of Palm Beach County (School Board) for attendance at an annual training for the Healthy Kids, Healthy Communities Project (Project) as a community partner with the School Board.

Staff submits the following for COE approval: neither RWJF nor QF is a vendor or principal of lobbyists of Palm Beach County Government. Therefore, the Code of Ethics does not prohibit an elected official from attending and receiving travel reimbursement for the event. Local elected officials and advisory board members who are state reporting individuals are required to report gifts quarterly, in accordance with state law, and are not subject to the annual gift reporting requirements under §2-444(f)(2) of the Palm Beach County Code of Ethics. A state reporting individual is responsible to comply with those reporting requirements as contained within state law.

RQO 12-022 – Jess Santamaria

A county commissioner asked whether an elected official whose outside business provides rental space to a municipality may participate and vote on inter-local agreements, annexation issues and lawsuits between the county government he serves and his municipal customer or client.

Staff submits the following for COE approval: Officials whose outside business or employer contracts with other governments are not prohibited from voting on issues between their government-client and the government they serve, provided that the matter is unrelated to their business relationship with the government-client. Voting or participating on issues that may result in a special financial benefit to their outside employer or business would violate the misuse of office provisions of the Palm Beach County Code of Ethics.

When presented with a situation that would benefit themselves, or their outside employer or business, an official must publicly disclose the nature of the conflict, file the required state disclosure form, refrain from voting and not participate in, or influence the process.

RQO 12-023 – Burt Aaronson

A county commissioner asked whether the revised code of ethics permits an elected official to be an honoree at nonprofit charitable fundraising events.

Staff submits the following for COE approval: testimonial functions, held as a fundraiser honoring a public servant, do not violate §2-443 of the Code of Ethics (misuse of public office) unless the honoree, or his or her spouse or domestic partner, is an officer or director of the organization or the covered honoree otherwise uses his or her official position to obtain a special financial benefit.

The Code of Ethics prohibits the solicitation or acceptance of a gift in excess of \$100 annually in the aggregate, from a vendor, lobbyist, principal or employer of a lobbyist, unless a transparent solicitation log is maintained and submitted as specified in §2-444(h). This prohibition extends, directly or indirectly, to the public official, *or any other person or business entity on his or her behalf*. If the

charitable organization solicits from vendors or lobbyists of county government, the organization, on behalf of the honoree, must comply with these provisions.

Lastly, great care must be taken that all state statutes are adhered to, including strict requirements involving registration and disclosure for testimonial events.

RQO 12-024 – James Sugarman

The Executive Director of a local non-profit asked whether his foundation may give tickets valued in excess of \$100 to municipal library employees to attend a fundraising event.

Staff submits the following for COE approval: Non-profit organizations who do not vend, lease or lobby an employee's public entity are not prohibited from distributing tickets to City employees, so long as there is no *quid pro quo* or other special consideration, and the gift is not given for the past, present or future performance or non-performance of a legal duty or official action. The value of the gift is the face value (public cost) of the ticket. A separate item, given as an event favor, must be reported separately if valued at more than \$100.

April 6, 2012

Mr. Brian H. Berke
100 Australian Ave., Suite 200
West Palm Beach, FL 33406

Re: RQO 12-011
Accepting Travel and Related Expenses

Dear Mr. Berke,

The Palm Beach County Commission on Ethics has considered your request for an advisory opinion, and rendered its opinion at a public meeting on April 5, 2012.

YOU ASKED in your email of February 17, 2012, whether you are permitted to attend a professional development conference and receive travel and related expense reimbursement. You have stated in your email attendance is for educational purposes and will be in your official capacity, and has been reviewed and approved by your supervisor.

IN SUM, you are not prohibited from attending a professional development conference in your official capacity so long as for County purposes and your trip has been approved by your supervisor. Additionally, there is no requirement that you obtain a waiver from the BCC for travel expenses that are not given, directly or indirectly, by a county contractor, vendor, service provider, bidder or proposer. Lastly, registration fees and other related costs associated with educational or governmental conferences or seminars and travel expenses are not subject to gift reporting requirements if your attendance is for governmental purposes and related to your duties and responsibilities as a county employee and your trip has been approved by your supervisor.

THE FACTS as we understand them are as follows:

You are a Manager of Employee Safety and Loss Control for Palm Beach County. You and several members of your staff are members of the American Society of Safety Engineers (ASSE), and your memberships are paid for by the County.

According to its website, ASSE represents more than 34,000 safety, health and environmental professionals... Through outreach, advocacy, standards development and education, ASSE takes the lead in providing expertise and insight on occupational safety, health and environmental issues and practices.

In order to increase member participation in meetings, the local chapter of the ASSE is offering a \$1,550 stipend for a current member to attend the ASSE's national professional development conference in Denver, Colorado, June 3-6th. In order for a member to be eligible for this stipend, they must participate in at least three Gold Coast Chapter Meetings between October 2011 and May 2012. The recipient will be chosen by a random drawing from a list of all interested, qualified members during the chapter's May meeting and the recipient must accept or decline the grant offer within one week. In order to receive the stipend, the recipient must provide the chapter with evidence of participation in the conference and submit a copy of all travel receipts for reimbursement.

If you receive the stipend, you would be attending this educational conference in your official capacity as Manager of Employee Safety and Loss Control for Palm Beach County for governmental purposes related to your duties and responsibilities as a county employee.

ASSE is listed as a “registered vendor” on the county vendor list. However, the County Finance Department confirmed through “special payables” that the only reason ASSE is so listed is due to the fact that the county paid for employee memberships, i.e., anyone to whom the County delivers a check or money is considered a “vendor” for County purposes whether or not the “vendor” actually sells goods or services to the County. While ASSE may be a “vendor” for accounting purposes, it is not considered a “vendor” under the Code. Therefore, ASSE is not considered a vendor for goods or services.

THE LEGAL BASIS for this opinion may be found in the travel reimbursement and gift law sections of the Code of Ethics:

Section 2-443(f) Accepting travel expenses, prohibits reimbursement of travel expenses from *any county or municipal contractor, vendor, service provider, bidder or proposer* of your government employer. This prohibition may be waived by the Board of County Commissioner. However, the definition of vendor includes any person or entity who offers to sell or sells goods or services, or sells or leases real or personal property. ASSE receives membership fees from the county for county employees who are members of the society. It has no other relationship with Palm Beach County which would constitute that of a vendor. Therefore, the prohibition and limitation imposed by this section does not apply.

In addition, if your attendance is in your official capacity, approved by your supervisor, related to your official duties and for educational or governmental purposes, reimbursement in excess of \$100 is not considered a gift as defined by §2-444(g) of the gift law and therefore does not need to be reported.¹

While attending the seminar, you may not otherwise accept a gift in excess of \$100, from a vendor, lobbyist, principal or employer of a lobbyist who lobbies, sells or leases to the County.² Lastly, you may not accept anything of value in exchange for the past, present or future *official action taken or legal duty performed*.³

IN SUMMARY, based upon the facts and circumstances you have submitted, you are not prohibited from attending the ASSE’s annual professional development conference, and receiving travel reimbursement from ASSE as this entity is not considered a vendor as defined by 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/gal

¹ §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 section 2-443(f), provided that the attendance is for governmental purposes, and attendance is related to their duties and responsibilities as an official or employee of the county or municipality

² RQO 11-047, 2-444(a)(1)

³ §2-444(e)

April 6, 2012

Fire Chief Ray Carter, CFO, EFO
Director of Fire and Emergency Medical Services
Boynton Beach Fire Rescue
100 East Boynton Beach Blvd.
Boynton Beach, FL 33435

Re: RQO 12-016
Travel Expenses/Contract

Dear Chief Carter,

The Palm Beach County Commission on Ethics has considered your request for an advisory opinion, and rendered its opinion at a public meeting on April 5, 2012.

YOU ASKED in your e-mail of February 28, 2012, whether including the cost of employee travel expenses for pre-build conferences and acceptance conferences for Fire-Rescue and other Fire Apparatus Vehicles in the contract price of the vehicles violates the prohibition on accepting travel expenses from vendors section of the Code of Ethics.

IN SUM, while public employees may not accept, directly or indirectly, travel expenses from a municipal vendor, service provider, bidder or proposer, this prohibition does not apply to expenses ultimately paid by the municipality from municipal funds pursuant to a contract for the purchase of goods and where the purpose of the travel is to ensure that the terms of the contract are fulfilled.

THE FACTS as we understand them are as follows:

You are the Fire Chief of the City of Boynton Beach Fire Rescue Department. When purchasing ALS Fire Rescue and Fire Apparatus Vehicles, it has been a long standing practice of the City of Boynton Beach (the City) to include the cost of sending City employees to a "pre-build" as well as an "acceptance" conference with the City vendor at the vendor's place of business where these conferences are within the contract specifications for these high dollar purchases. Two persons from the Fire Rescue Department are required to go to these conferences with the manufacturer and their function is to ensure compliance with the contract specifications as written and to make any necessary adjustments to any design issues that arise as the result of engineering conflicts or design flaws that may have caused maintenance issues with these vehicles in the past.

The conferences typically last two days including travel time. The cost of airfare, hotel rooms and meals are included as a line item in the Bid Documents and final invoice when the vehicle price is paid by the City. The manufacturer makes the travel arrangements based on the vehicle production schedule. The practice of including the travel conferences as a line item in the Bid Document was to ensure transparency and to avoid any perception that a vendor was independently *wining and dining or paying travel expenses for city personnel as part of a quid pro quo to ensure continued utilization as a vendor for these high dollar pieces of equipment*. All vendors are required to include these costs as part of their price quotes during the bid process.

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

Section 2-443(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. The provisions of this subsection shall not apply to travel expenses paid by other governmental entities or by organizations of which the county or municipality as applicable is a member if the travel is related to that membership.

In most instances, the payment of travel expenses by a vendor is prohibited unless an employee obtains a waiver from the governing body. The purpose of the waiver process is to make any such payment, even for governmental purposes, an open and transparent matter. However, under the facts and circumstances you have submitted, the contract/quality related conferences are an inseparable part of the cost associated with the emergency vehicles and, as such, are borne by the City as a line item included into the price of the units. Therefore, the costs are identified and ultimately paid by the City per contract, although the initial payment is provided by the vendor. The costs paid by the City are identified as a line item and become the responsibility of the City upon acceptance of the bid contract. As a line item, the travel cost is identified and quantified transparently. In essence, the vendor is paying the cost of these quality conferences on behalf of the City and is reimbursed by the purchasing department as per contract.

Any other cost associated with travel that is paid by the vendor and is not specifically identified and quantified in the bid contract would require a waiver by the City Commission. Any gift not associated with contractual travel expenses is subject to the limitations and prohibitions of the gift law. For example, §2-444(a) prohibits a public employee from accepting a gift of a value in excess of \$100, annually in the aggregate, from a vendor or lobbyist of his government employer, unless one of several exceptions apply. In addition, an employee may not accept anything of value as a *quid pro quo*, or in exchange for the past, present or future performance of an official act or legal duty.

IN SUMMARY, based on the facts and circumstances you provided, where specific municipal employee travel expenses are made part of a transparent bid process to ensure compliance with contract specifications as written, and the contract includes specific provision for these expenses, the identified and quantified line item travel cost is effectively a payment by the City and not the vendor. The bid process provides transparency and the restrictions against accepting travel expenses do not apply.

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

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

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/gal

April 6, 2012

Norm Ostrau, Ethics Officer
401 Clematis Street, 5th Floor
West Palm Beach, FL 33401

Re: RQO 12-017
Gift Law/Scholarships

Dear Mr. Ostrau,

The Palm Beach County Commission on Ethics has considered your request for an advisory opinion, and rendered its opinion at a public meeting on April 5, 2012.

YOU ASKED in an email dated March 5, whether West Palm Beach Employees may accept reduced tuition to attend a Florida International University online MBA program.

IN SUM, City employees are not prohibited from accepting a tuition discount or scholarship from Florida International University (FIU) based upon their status as a city employee provided that there is no quid pro quo or special treatment or privileges given to FIU or its agent, Academic Partnerships, in exchange for offering these scholarships.

For purposes of gift law reporting, tuition discounts or scholarships received by public employees or their family members for degree programs, when based on their public employment status, are reportable gifts under the Code of Ethics.

THE FACTS as we understand them are as follows:

You are the ethics officer for the City of West Palm Beach (the City). Florida International University (FIU) offers an online Masters in Business Administration (MBA) program. The MBA program is administered by a private company, Academic Partnerships (AP). FIU is a public university and is established by state statute as a part of the executive branch of state government. AP is not a vendor of the City. As an agent of FIU, AP seeks out and offers tuition discounts to businesses and governmental entities with over 100 employees. Current corporate partners include the City of Miami Beach, Miami-Dade County, Performance Food Products, Coral Gables, First Bank Florida, Enterprise Bank of Palm Beach and the Pahokee Chamber of Commerce. Corporate partners are required to send a program announcement to all of their employees, but otherwise there is no financial or contractual commitment between the university and the partner entity. Were the City to become a corporate partner, a city employee or their family members would pay \$27,500 for the MBA degree while a student whose employer is not a corporate partner would pay \$37,500.

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

Sec. 2-442 Definitions.

Vendor means any person or entity who has a pending big proposal, an offer or request to sell goods or services, sell or lease real or personal property, or who currently sells goods or services, or sells or leases real or personal property, to the county or municipality involved in the subject contract or transaction as applicable.

Here FIU and AP are arguably offering a good or service, an MBA degree, to employees of the City. Because the benefit of FIU's offer goes directly to an employee in their personal capacity as compared to the city, FIU and AP are not vendors as defined by the code of ethics.

Sec. 2-444. Gift law.

- (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...

Section 2-444(g) defines a gift as "*the transfer of anything of economic value*" and §2-444(f) requires employees to complete an annual gift disclosure report, reporting any gift in excess of \$100 unless one of several exceptions apply. If accepted to the MBA degree program, City employees are not prohibited from accepting the FIU scholarship offered to them based upon their employment with the City of West Palm Beach. For those employees whose chose to take advantage of the tuition discount, the \$10,000 value of the scholarship must be reported on their annual gift reporting form.¹

Under the facts and circumstances presented by the City, employees' family members are also eligible to receive the \$10,000 tuition discount. The Florida Administrative Code suggests that when a gift is provided indirectly with the intent to benefit a public employee, it may be considered a gift to that employee.² As is the case here, where scholarship eligibility is contingent upon a spouse's or parent's public employment, scholarship funds provided to a spouse or child are considered an indirect gift to the public employee.³ Therefore, these scholarships must also be included on an employee's annual gift reporting form.

In addition to the reporting requirement discussed above, no employee may take, fail to take or influence other to take or fail to take any official action in exchange for the scholarships provided by FIU.⁴

IN SUMMARY, based on the information that you have provided, City employees and their relatives are not prohibited from accepting scholarships from FIU so long as there is no quid pro quo or special treatment or privileges given to either organization in exchange for offering these scholarships. In addition, should the value of these scholarships exceed \$100 they must be reported as required by 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 Compare RQO 12-002, RQO 11-106 (attendance at educational or governmental *conference or seminars* as compared to a degree program where attendance was for governmental purposes, related to an employee's official duties and responsibilities as determined by employee's supervisor).

² In addressing the gift law requirements, the Commission on Ethics adheres to the Florida state standards outlined in §112.3148, Florida Statutes, and Chapter 34 of the Florida Administrative Code.

³ Compare RQO 11-057 (scholarships available to all residents of the Town are not contingent on public employment and therefore, do not constitute indirect gifts to the public employee parent); See RQO 11-079 (where scholarship eligibility is contingent upon a parent's public employment, scholarship funds provided to a child are considered an indirect gift to the parent).

⁴ Sec. 2-444(e)

April 6, 2012

Paulette Burdick, District 2 County Commissioner
Palm Beach County Governmental Center
301 North Olive Avenue
West Palm Beach, FL 33401

Re: RQO 12-018
Travel expenses

Dear Commissioner Burdick,

The Palm Beach County Commission on Ethics has considered your request for an advisory opinion, and rendered its opinion at a public meeting on April 5, 2012.

YOU ASKED, through your staff, in e-mails of March 5th, 2012, whether you can receive travel reimbursement from the Robert Wood Johnson Foundation (RWJF) and the Quantum Foundation (QF) grant to the School Board of Palm Beach County (School Board) for attendance at an annual training for the Healthy Kids, Healthy Communities Project (Project) as a community partner with the School Board.

IN SUM, neither RWJF nor QF is a vendor or principal of lobbyists of Palm Beach County Government. Therefore, the Code of Ethics does not prohibit you from attending and receiving travel reimbursement for the event. You are an official identified by state law as a reporting individual. Therefore, you are required to adhere to all standards and requirements imposed under state law regarding the reporting of gifts.¹

THE FACTS as we understand them are as follows:

You are a Palm Beach County Commissioner and former School Board Commissioner. As a County Commissioner, you are identified by state law as a reporting individual for purposes of gift law reporting.

The School Board has received a RWJF, Project grant in January 2010. One of the requirements of this grant is to attend the annual grantee meeting in Chapel Hill, North Carolina. As a part of the meeting the Project Director and Project Coordinator are requested to bring a community partner. You have been asked by the School Board to attend this training as a community partner. The School Board, through the HKHC grant monies, will pay airfare and other miscellaneous travel expenses. The HKHC national program will pay lodging expenses during the training and extend the room reimbursement to "three days before and after the meeting, providing an opportunity for an early summer vacation with family or friends for those who wish to stay." The conference room rate is \$162 per night.

A search of the county vendor and lobbyist databases shows that neither HKHC nor QF is a vendor or principal of lobbyists who sell to, lease or lobby Palm Beach County Government.

¹ §2-444(f)(1), §112.3148, Florida Statutes, Chapter 34-13, Florida Administrative Code.

THE LEGAL BASIS for this opinion may be found in the travel reimbursement and gift law sections of the Code of Ethics:

Section 2-443(f) *Accepting travel expenses*; prohibits reimbursement of travel expenses from *any county or municipal contractor, vendor, service provider, bidder or proposer* of your government employer. This prohibition can be waived by a vote of the Board of County Commissioners. However, the RWJF and QF are not vendors of the county. In addition, the prohibitions and limitations of this section do not apply to expenses paid by other governmental entities. Therefore, even if the foundations were vendors, depending upon the facts, those travel expenses paid directly by the School Board would not be prohibited.

Section 2-444(f)(1) *Gift reports for officials identified by state law as reporting individuals*. Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. A copy of each report shall be filed with the county commission on ethics.

As a County Commissioner, you are a state reporting individual and must comply with the transparency requirements of state law. The Palm Beach County Code of Ethics annual reporting requirements only apply to non state reporting individuals.²

While attending the seminar, you may not otherwise accept a gift in excess of \$100, from a vendor, lobbyist, principal or employer of a lobbyist who lobbies, sells or leases to the County.³ Lastly, you may not accept anything of value in exchange for the past, present or future *official action taken or legal duty performed*.⁴

IN SUMMARY, based upon the facts and circumstances you have submitted, you are not prohibited from attending the HKHC conference, and receiving travel expenses from the School Board, RWJF or QF as these entities are neither vendors nor lobbyists of Palm Beach County. Reimbursement is reportable as required by state law.

This opinion construes the Palm Beach County Code of Ethics Ordinance. Other than state law requirements referenced within the code, it is not applicable to any other potential 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

² RQO 11-089

³ RQO 11-047, 2-444(a)(1)

⁴ §2-444(e)

April 6, 2012

Commissioner Jess Santamaria
Palm Beach County Board of County Commissioners
301 North Olive Avenue, 12th Floor
West Palm Beach, FL 33401

Re: RQO 12-022
Voting Conflicts

Dear Commissioner Santamaria,

The Commission on Ethics considered your request for an advisory opinion and rendered its opinion at a public meeting held on April 5, 2012.

YOU ASKED in your letter of March 26, 2012, whether a County Commissioner whose outside business provides rental space to a municipality may participate and vote on inter-local agreements, annexation issues and lawsuits between the county government he serves and his municipal customer or client.

IN SUM, Officials whose outside business or employer contracts with other governments are not prohibited from voting on issues between their government-client and the government they serve, provided that the matter is unrelated to their business relationship with the government-client. However, voting on issues that may result in a special financial benefit to their outside employer or business would violate the misuse of office provisions of the Palm Beach County Code of Ethics.

When presented with a situation that would benefit themselves, or their outside employer or business, an official must publicly disclose the nature of the conflict, file the required state disclosure form, refrain from voting and not participate in, or influence the process.

THE FACTS as we understand them are as follows:

You are a Palm Beach County Commissioner. In addition, you are a partner in a business that leases space to the Village of Wellington (the Village). The amount of lease payments exceeds \$10,000 over a 24 month period, and as such, makes the Village a customer or client of your outside business. The lease with the Village extends through March 31, 2014.

In your capacity as County Commissioner, issues arise involving municipalities within the county. Currently, the Village is seeking to annex two parcels of property owned by Palm Beach County. The Village is the only municipality with contiguous boundaries, and therefore, is the only municipality that is in a position to annex the County property.

The parcels to be annexed are located within the boundaries of a larger conceptual project, known as the Medical Arts District (the District), being advanced by the Village. The District, still in its conceptual planning stage, requires the consolidation of nine separate properties totaling approximately 210 acres. In advancing the District, the Village has sought traffic concurrency approvals from the County in the past and will likely do so in the future.

Additionally, the Village is currently involved in a lawsuit filed against the County, seeking to invalidate the payment allocation portions of the Inspector General Ordinance. The Board of County Commissioners will likely need to vote on issues involving settlement and other negotiations involved in this ongoing lawsuit.

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 officials and employees from using their official position to give themselves, their outside business, or a customer or client of their outside business a financial benefit, in a manner which they *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*. While §2-442 exempts governmental entities from the definition of outside employer or business, no such exemption exists within the definition of customer or client. A customer or client is defined as a person or entity to which an employee or official's outside business has supplied goods or services in excess of \$10,000 over the previous 24 months. Therefore, the Village is a customer or client of the Commissioner's real estate business.

Section 2-443(c) similarly prohibits officials from voting on an issue or participating in a manner that would result in a special financial benefit attributable to themselves, their outside business or a customer or client as previously described. Essentially, the voting conflict section addresses the scenario whereby an official would violate the misuse of office prohibitions of the code by voting. In such a scenario officials are required to 1) disclose the nature of their conflict before the Council discusses the issue; 2) abstain from any discussion or vote and not participate in the matter; and 3) File a state voting conflict form (8B), submitting a copy to the board, council or commission clerk and the Palm Beach County COE.¹

The plain language of the code requires abstention when a vote would result in a *special financial benefit* to any of the enumerated persons or entities. This issue was previously addressed by the COE in regard to a municipal elected official whose outside business provided services to the County.² In that scenario, the issue of a special financial benefit turned on whether the financial benefit was shared with similarly situated members of the general public. While Palm Beach County was a customer or client of the Councilperson's outside business or employer, the COE decided that voting on matters unrelated to her outside business but benefiting the County would not result in a special financial benefit to her public customer or client, as a government entity represents all residents within its political boundaries. Since any benefit or loss obtained by the County would apply to all residents of the County, the financial benefit, should one exist, rests universally with all residents of Palm Beach County. A prohibited financial benefit would have resulted only if there were circumstances unique to the Councilperson

¹ §2-443(c)

² RQO 11-092

which would enable her, her husband or his or her outside business or employer to gain more than other county residents.

Likewise, in this instance, a benefit to the Village which is shared equally among all Village residents, and not uniquely beneficial to the Commissioner, or his outside business, would not constitute a special financial benefit, in violation of the Code. The Commission on Ethics cannot opine on speculative matters not inherent in the facts presented. For example, should the Village be in active competition with other municipalities on an issue that would specially benefit the Village over other competing entities, there may present a circumstance whereby the Village could potentially receive a special benefit not available to similarly situated municipalities within the county. It is recommended that you submit a separate request for opinion if such a factual circumstance were to arise.

IN SUMMARY, based on the facts you have submitted, you are not prohibited from voting on issues involving the annexation of county property or other development issues involving the District where the Village is the only municipality with boundaries contiguous to the property and the Village itself is not specially financially benefited in a manner unlike similarly situated entities in the county, so long as the decision does not give a special financial benefit to you personally, or your outside business.

In addition, your actions regarding the Inspector General lawsuit are in the context of a countywide lawsuit involving 15 municipalities. As such, County Commission decisions would likewise not present a special financial benefit to the Village.

When presented with a situation that would result in a special financial benefit for you or your outside business, you must publicly disclose the nature of the conflict, file the required state disclosure form, refrain from voting and not participate in, or influence the process.³

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 Sec. 2-442 definitions exclude a government entity from the definition of *outside employer*. Where an official's outside employer is another government entity sec. 2-443(4) does not apply. RQO 10-026, RQO 11-036 OE, RQO 11-045

April 6, 2012

Commissioner Burt Aaronson
Palm Beach County Board of County Commissioners
301 North Olive Avenue, 12th Floor
West Palm Beach, FL 33401

Re: RQO 12-023
Testimonial Fundraising

Dear Commissioner Aaronson,

The Commission on Ethics considered your request and rendered its opinion at a public meeting held on April 5, 2012.

YOU ASKED in your email of March 26, 2012, whether the revised Code of Ethics permits you to be an honoree at nonprofit fundraising events.

IN SUM, testimonial functions, held as a fundraiser honoring a public servant, do not violate §2-443 of the Code of Ethics (misuse of public office) except under limited circumstances wherein the honoree, spouse or domestic partner is an officer or director of the organization or the covered honoree otherwise uses his or her official position to obtain a special financial benefit.

The Code of Ethics prohibits the solicitation or acceptance of a gift in excess of \$100 annually in the aggregate, from a vendor, lobbyist, principal or employer of a lobbyist, unless a transparent solicitation log is maintained and submitted as specified in §2-444(h). This prohibition extends, directly or indirectly, to the public official, *or any other person or business entity on his or her behalf*.

Lastly, great care must be taken that all state statutes are adhered to, including strict requirements involving registration and disclosure.

THE FACTS as we understand them are as follows:

You have been a sitting Palm Beach County Commissioner since 1993 and your current term ends in January, 2013. Your position is term limited and you are not seeking re-election. A number of nonprofit organizations have asked to hold events in your honor "as a show of appreciation for my many years in service as a County Commissioner." These events are fundraisers for the nonprofit organizations. You will not serve as chairman or honorary chairman for any fundraising activities on behalf of these organizations and, other than your name appearing on the invitations, you will not "participate in any way in any fundraising activities connected to these events." Additionally, you are neither an officer nor director of any of these nonprofit organizations.

THE LEGAL BASIS for the allowance of testimonial fund raisers for charitable or religious organizations, provided the honoree or spouse/domestic partner is not an officer or director, is found in the following relevant sections of the Palm Beach County Code of Ethics:

Section 2-443(a) prohibits a public official from using his or her official position to financially benefit, in a manner not shared with similarly situated members of the general public, *a nongovernmental civic group, union, social, charitable, or religious organization of which he or she (or his or her spouse or domestic partner) is an officer or director.* Since neither you nor your spouse is an officer or director of any of the organizations in question, the above prohibition does not apply. Section 2-443(b) prohibits any corrupt arrangement whereby an official uses his or her office “with a wrongful intent...which is inconsistent with the proper performance of his or her public duties.” Therefore, you may not use your official position to benefit donors as a *quid pro quo* based upon contributions or donations to these charitable events.

Previously, the Commission on Ethics (COE) opined that §2-444(a) of the gift law prohibited the acceptance of gifts in excess of \$100, annually in the aggregate, from a vendor, lobbyist or principal or employer of a lobbyist at these charitable events, where the solicitation or acceptance is by the official, directly or indirectly, *or any other person or business entity on his or her behalf.*¹ Subsequently, the Code of Ethics has been revised.

According to section 2-444(h)1 of the revised Code of Ethics, solicitations may be made by a *non-profit charitable organization, as defined under the Internal Revenue Code,* on behalf of a public official, provided a detailed log is maintained of *all donations* from vendors, lobbyists, principals and employers of lobbyists of that official’s governmental entity, or board or department in the case of advisory board members, and the log is submitted within 30 days of the event to the Commission on Ethics. No public resources may be used in these solicitations and *no person or entity with a pending application for approval or award of any nature before the County* may be solicited.²

You have maintained that you do not intend to solicit directly on behalf of any of these organizations, but they will be using your name and your public title on the invitation and in promotion of the event. Anything that you are authorized to do directly may also be done on your behalf. Therefore, IRS recognized charitable organizations are permitted to solicit vendors and lobbyists using your name, but it must keep a log of *all solicitations and donations* from these persons or entities, and submit the log accordingly. The code revision was intended to allow members of the community, who are also elected officials, advisory board members, or municipal or county employees to solicit on behalf of religious, civic or other charitable organizations while maintaining appropriate transparency.

THE RATIONALE for limiting the manner of solicitations and donations is grounded in the desire to avoid the appearance that these solicitations and donations are made to obtain access or otherwise ingratiate the soliciting party to the honoree. As we previously noted in RQO 10-004:

“...in soliciting donations, it is not unusual for the charitable entity to sell advertising in a journal or other honorary publication as well as soliciting a business entity for the purchase of multiple tickets at significant cost. State ethics statutes prohibiting solicitation of gifts from lobbyists specifically exclude lobbyist gifts accepted on behalf of a governmental entity *or charitable*

¹ RQO 10-004 (testimonial event)

² RQO 11-041, RQO 11-075

*organization*³, and maintain strict reporting requirements; however, no such exclusion for charitable organizations or other limiting language appears in the Palm Beach County Code of Ethics.”

In this instance, you have made clear that you will not personally take part in any solicitation. Additionally, as previously noted, the Code of Ethics has been revised to permit such solicitations provided the logging process is followed. To that extent, RQO 10-004 is modified in accordance with the revisions contained in §2-444(h).

Albeit not within the jurisdiction of the Palm Beach County Code of Ethics, there is one more consideration that you will need to address. The following is contained in RQO 10-004 and remains current state law.

Section 111.012, Florida Statutes (2010) (Testimonials for public officers) states that strict records keeping must be maintained for any testimonial, including “any breakfast, dinner, luncheon, rally, party, reception, or other affair held to honor or raise funds on behalf of any elected public officer, except a campaign fund raiser...” Florida law requires that any organization hosting such a fundraiser for a locally elected official file a notice of intent with the supervisor of elections, set up a “testimonial account...in a depository” and appoint a treasurer before any money can be accepted.

Detailed information regarding all donations and other activity within the depository account must be maintained by the treasurer. Notice of the testimonial must provide “the date and place the testimonial is to be held, the name and address of the person or persons in charge of the testimonial, the name and address of the officer in whose honor or on whose behalf the testimonial is to be held, the purpose for which the testimonial is to be held, and the purpose for which the funds raised are to be used.”

The state statute further requires a report be filed by the organization with the local elections supervisor by the person in charge within 90 days after the date the testimonial is held. Each report must contain the following information: the full name and address of each person who purchases one or more tickets or gives any money or donation with respect to such testimonial, together with the amount and date of the donation; a detailed list of entities receiving payment for expenses or entities receiving charitable funds. Lastly, violation of s. 111.012 by “any person or officer who holds a testimonial, or who consents to a testimonial being held...” or “who fails to dispose of the funds in the manner provided...” by statute is guilty of a first degree misdemeanor.

IN SUMMARY, the Palm Beach County Code of Ethics does not prohibit you from being honored by non-profit organizations as part of a fundraising event, provided the organization is recognized as a charitable non-profit organization as defined under the Internal Revenue Code, and complies with the transparency requirements and limitations contained in the revised Code of Ethics. Although you will not personally solicit or accept donations for these events, a solicitation log must be maintained by the

³ “A reporting individual or procurement employee or any other person on his or her behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a...lobbyist who lobbies the reporting individual’s or procurement employee’s agency...if he or she knows or reasonably believes that the gift has a value in excess of \$100: however, such a gift may be accepted by such person on behalf of a governmental entity or a charitable organization...” F.S. 112.3148 (4)

organization, including any solicitation or donation made of or by a vendor, lobbyist, principal or employer of a lobbyist who does business with Palm Beach County government.

Additionally, you must be mindful of any requirements and limitations imposed under §111.012, Florida Statutes, regarding testimonial reporting under state law.

This opinion construes the revised Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inclusion of §111.012, Florida Statutes, in this opinion is for informational purposes so that you, and the requesting non-profit organizations avoid any violation of state criminal law. Inquiries regarding possible conflicts or requirements under state law should be directed to the State of Florida Commission on Ethics or the Attorney General.

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

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/gal

PROPOSED

April 6, 2012

Mr. James Sugarman
West Palm Beach Library Foundation
411 Clematis Street, 3rd Floor
West Palm Beach, FL 33401

Re: RQO 12-024
Reportable Gifts

Dear Mr. Sugarman,

The Commission on Ethics (COE) considered your request for an advisory opinion and rendered its opinion at a public meeting held on April 5, 2012.

YOU ASKED in your email dated March 26, 2012 whether the West Palm Beach Library Foundation (WPBLF), a 501 (c) (3) non-profit organization, may give tickets with a face value in excess of \$100 to library employees to attend a WPBLF event.

IN SUM, you are not prohibited from distributing tickets to City library employees, so long as there is no *quid pro quo* or other special consideration, and the gift is not given for the past, present or future performance or non-performance of a legal duty or official action. If the face value of the ticket received by an employee is more than \$100, it must be reported pursuant to the reporting requirements of the code. Any additional gifts received at the event are likewise subject to the limitations and reporting requirements of the code.

The FACTS as we understand them are as follows:

The West Palm Beach Library Foundation (WPBLF) is a 501 (c) (3) non-profit organization established in 2000. WPBLF is independent of the City of West Palm Beach (the City). It raises funds to pay for certain library related expenses. As ongoing operational expenses are supported by West Palm Beach residents' tax dollars, WPBLF support provides furnishings and technology, acquisition and maintenance of books and other media collections, and library programming that are not covered by the library's budget.

WPBLF hosts annual fundraising campaigns, writes grants and proposals and holds events which raise awareness and funding for the Foundation and Library. The Foundation has an agreement with the City of West Palm Beach which includes the offering of "Naming Opportunities."

On April 14, 2012 the foundation will be hosting its "We Love Our Library Gala" event. Tickets have a face, or public, value of \$250. The WPBLF event cost per ticket is \$90. WPBLF would like to invite library and city staff to this event. In addition, the WPBLF will provide votive candle holders, courtesy of Tiffany & Co., as gifts to guests at the event. Each candle holder has an approximate retail value of \$50 each. Tiffany's does not sell to, lease from, or lobby the City.

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 (a) (1) prohibits a public official or employee from soliciting or accepting a gift of greater than \$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.” A vendor is defined in §2-442 as follows.

Vendor means any person or entity who has a pending bid proposal, an offer or request to sell goods or services, sell or lease real or personal property or who currently sells goods or services, or sells or leases real or personal property, to the county or municipality involved in the subject contract or transaction as applicable. For the purposes of this definition a vendor entity includes an owner, director, manager, or employee.

WPBLF does not sell goods or services to the City, accordingly it is not a vendor and §2-444 (a) (1) does not apply.

Section 2-444 (g) defines a gift as “the transfer of anything of economic value” and §2-444 (f) requires employees and officials to complete an annual gift disclosure report, reporting any gift in excess of \$100 unless one of several exceptions apply. Generally, under state valuation rules, the value of a ticket to a charitable event, where a portion of the proceeds goes to charity, is the value expressed on the face of the ticket.¹ There is a specific exemption in state law regarding tickets provided directly by the charitable organization. In those circumstances, the value of the admission ticket only includes the cost of the event and not the portion of the face value which represents a charitable donation.² Ordinarily, this Commission will *consult, among other sources, section 112.3148, Florida Statutes and the Florida Administrative Code*, to determine the value of a gift, however, we are not mandated to do so.³ As permitted under state law, local ordinances may impose additional or *more stringent standards of conduct and disclosure requirements*.⁴ The Palm Beach County Code of Ethics emphasizes transparency and contains strict disclosure requirements in addition to vendor and lobbyist prohibitions against solicitation and acceptance of certain gifts. In fact, the code recognizes an exception to the gift law involving tickets *in connection with public events, appearances or ceremonies related to official county or municipal business, if furnished by a nonprofit sponsor organization*.⁵ Notwithstanding this exception, the value of such a ticket is reportable under this section. Recognizing the emphasis placed on vendor or lobbyist gift limitations and disclosure of regulated gifts to ensure transparency, we consider the appropriate valuation of such gifts to be the face value, or public value, of the tickets given by charitable organizations, and not the hard costs associated with the event.

Gala tickets valued at \$250 are a reportable gift and must be included on a city employees’ annual gift reporting form. Candle holders valued at \$50 provided specifically by Tiffany & Co. as favors for event guests are neither prohibited, nor reportable as these gifts are below the \$100 reporting threshold.

IN SUMMARY, based on the information you provided, City employees and officials are not prohibited from accepting tickets and attending events hosted by the WPBLF. WPBLF is not a vendor as defined

¹ §2-444(g), §112.3148(7), Florida Statutes, §34-13.500(5), Florida Administrative Code.

² §112.3148(7)(k), Florida Statutes, §34-13.500(9)

³ §2-444(g)

⁴ §112.326, Florida Statutes

⁵ §2-444(g)(i)

under the Code of Ethics and does not lobby the City. Where, as here, the per person face value of the tickets exceed \$100, they must be reported as required by 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/mcr/gal

PROPOSED

ITEM XIII – PROCEDURAL MATTERS C11-027

Staff Analysis:

C11-027, In Re Scott Swerdlin, is set for final hearing on June 15, 2012. There are several procedural matters that need to be addressed prior to the final hearing.

- 1- Pursuant to §§2-260(i), (k) & (l), the Chair, or another Commissioner designated by the Chair, may conduct discovery matters, including pre-hearing conferences, motions, subpoenas, settlement issues, examining exhibits and documents, witness lists and other procedural matters. The Chair will need to designate himself or another member of the Commission for this task.
- 2- Pursuant to COE Rule of Procedure 6.1, Public Hearings may be conducted by the full Commission on Ethics or by a three member panel of the Commission designated by the Chair or his or her designee. The composition of the panel will need to be determined.
- 3- For planning purposes, the COE may wish to set a date in addition to the current final hearing date of June 15, 2012, in the event that this matter exceeds one day in length. Staff will discuss potential dates with the Respondent and provide alternative dates to the Commission on April 5, 2012.¹

Staff recommendation;

The COE Chair designate, for purposes of discovery and final hearing panel, a pre-hearing Commissioner and, if appropriate, a 3 member panel for final hearing in the matter. In addition, for planning purposes, a second date of final hearing should be determined.

¹ Staff will schedule a public workshop at the June, 2012 regular COE meeting to review the COE ordinance and rules regarding the conduct of a final hearing.