

Agenda

June 7, 2012 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

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 May 3, 2012
- V. Scheduling Update (C11-027)
- VI. Reconsideration of prior opinion
 - a. RQO 11-060
- VII. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 12-042
 - b. RQO 12-047
- VIII. Items Pulled from Consent Agenda
 - a.
- IX. Proposed Advisory Opinions
 - a. RQO 12-032 b. RQO 12-033 c. RQO 12-034
 - d. RQO 12-035 e. RQO 12-036 f. RQO 12-037
 - g. RQO 12-040 h. RQO 12-041 i. RQO 12-043
 - j. RQO 12-044 k. RQO 12-045 l. RQO 12-046
- X. Executive Director Comments
 - a. Update RQO 11-121 and WPB Resolution 103-12 (Sponsorship of City Produced Events/Public Purpose)
- XI. Commission Comments
- XII. Public Comments
- XIII. Adjournment

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

MAY 3, 2012

**THURSDAY
1:36 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

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

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:

Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Commissioner Robin Fiore stated that it appeared that a quorum was not present, and consideration of the minutes approval would be deferred. She added that the meeting would adjourn for the executive session.

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

III. – CONTINUED

Commission on Ethics (COE) Executive Director Alan S. Johnson, Esq. said that the commission chambers would be cleared to begin the executive session.

IV. APPROVAL OF MINUTES FROM APRIL 5, 2012

MOTION to approve the April 5, 2012, minutes. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Judge Edward Rodgers absent.

RECESS

Mr. Johnson asked for the room to be cleared to begin the executive session. He added that the audio recording would continue; however the live broadcasting would be turned off.

At 1:39 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 2:23 p.m., the meeting reconvened with Manuel Farach, Robin Fiore, Ronald Harbison, and Judge Edward Rodgers present.

V. EXECUTIVE SESSION

VI.a. C12-002

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

The Complainant, Leonard Corrigan, filed the above-referenced complaint on February 28, 2012, alleging a possible ethics violation involving Respondents, City of West Palm Beach officials and employees, Jeri Muoio, Mayor; David Hanks, Director of Public Utilities; Anthony Carrabis, Human Resources; and Pat Cooney, Human Resources.

VI.a. – CONTINUED

The basis of this Complaint was that Leonard Corrigan was improperly terminated from employment with the City of West Palm Beach on April 12, 2011. All alleged actions regarding Mr. Corrigan's termination from employment occurred prior to June 1, 2011, the date at which the City of West Palm Beach came under the jurisdiction of the Commission on Ethics. Therefore, the Commission on Ethics dismissed the Complaint on May 3, 2012, due to no legal sufficiency.

Therefore, it is ordered and adjudged that the Complaint against Respondents is hereby dismissed. Done and ordered by the Palm Beach County Commission on Ethics in public session on May 3, 2012. Signed by Manuel Farach, Chair.

Mr. Johnson recommended that roll call should be taken again.

(CLERK'S NOTE: Roll call was taken at this time with Manuel Farach, Robin Fiore, Ronald Harbison, and Judge Edward Rodgers present.)

Mr. Johnson stated that a quorum was present.

VI. SETTLEMENT CONFERENCE

VI.a. C11-027 (Dr. Scott Swerdlin)

Mr. Johnson said that Pro Bono Advocate Joseph D. Small, Esq. would present an overview regarding the item.

Mr. Small said that the Respondent's Representative, Craig Galle, Esq., had informed him that Dr. Scott Swerdlin had a medical emergency and would not be present; however, he had Dr. Swerdlin's full authority to proceed with the settlement conference. He continued by stating that:

- Three counts existed against the Respondent.
- The negotiated settlement stated that the Respondent would admit to violating count 3, which was the disclosure of voting conflicts, and that he would be assessed a \$500 fine and a public letter of reprimand.

VI.a. – CONTINUED

- With the COE's approval, counts 1 and 2 would be dismissed, and they would determine whether count 3's violation was intentional or unintentional.
- Dr. Swerdlin was the chairman of the Equestrian Preserve Committee (EPC), which was an advisory board of the Village of Wellington (Village). All EPC members were appointed by the Village council and were under the COE's jurisdiction as of June 1, 2011.
- On or about December 14, 2011, Dr. Swerdlin, in his EPC commissioner capacity, substantially debated and participated in a matter involving Equestrian Sports Productions (ESP), a customer or client who shared a financial interest with him. He abstained from voting, he did not file State form 8B.
- By participating in the matter, Dr. Swerdlin violated the voting conflicts provision by not abstaining and by failing to file an 8B mandatory conflict form.
- Dr. Swerdlin had admitted that he provided approximately \$10,000 in services to ESP over the preceding 24 months.

Mr. Galle stated that Dr. Swerdlin had consented to the settlement terms; however, he was requesting that the COE accept the negotiated settlement and find that his conduct was unintentional since, in retrospect, knowing what he knew today, he would have acted differently on December 14, 2011.

Mr. Johnson clarified that the COE's Code of Ethics (Code) left the finding of intentional or unintentional to the COE's discretion. He said that the COE members could question the Respondent and the pro bono advocate to reach a determination. The COE could also examine the agreed-to written facts.

Commissioner Ronald Harbison said that Dr. Swerdlin was advised by the Village's attorney that he should not participate in the matter. He added that Dr. Swerdlin's attempt to circumvent protocol due to his conflict of interest led him to question whether the COE could reasonably conclude that there was no intent regarding a Code violation and corrupt actions.

VI.a. – CONTINUED

Mr. Johnson stated that the COE could take anything into consideration in making a determination whether the violation was intentional and unintentional.

Commissioner Farach commented that the issue before the COE was relative to an administrative hearing as opposed to a court hearing. He said that even if the matter went to a final hearing, hearsay would have been admissible, and a fundamental due process would have been given without a strict application of rules of evidence. Mr. Johnson added that relevance was the guiding determination of admissibility.

Commissioner Farach said that Mr. Small could read the stipulated facts from the proposed letter of reprimand into the record.

Mr. Galle said that to his knowledge, Dr. Swerdlin had not filed form 8B.

Mr. Johnson clarified that:

- Filing form 8B was a State requirement. The County's Code also required that the COE receive 8B form; however, the requirement was not made part of the negotiated settlement since a violation already existed.
- Additionally, public accounting for the failure and a letter of reprimand, which discussed the actual conflict, existed.

Commissioner Fiore said that since the facts were now different than they were on December 14, 2011, form 8B should be filed as part of the settlement.

Mr. Johnson said that:

- In determining intentional or unintentional, the COE members could consider that form 8B was not filed, or they could reject the negotiated settlement.
- Dr. Swerdlin was not present to agree to file form 8B. He did not believe that the COE could go beyond the agreement without rejecting it, unless Dr. Swerdlin was present to accept the added provision.
- The negotiated settlement was actually a public order imposing a penalty. It was not considered cleaning up a past wrong but holding someone responsible, whether intentional or unintentional.

VI.a. – CONTINUED

- The public order and the letter of reprimand should be in the record if the COE accepted the negotiated settlement.

Judge Rodgers stated that he opposed accepting the negotiated settlement since Dr. Swerdlin was the EPC's chair with a full leadership role and complete knowledge of the EPC's rules. He added that as the EPC's chair, he was held to a higher standard of care than the other members and that a \$500 penalty was an insufficient punishment.

Mr. Johnson said that \$500 was the maximum fine per count that could be imposed by the COE. Commissioner Fiore commented that she believed that the fine was symbolic of a form of reparation for violating the rules of society, and, in particular, the COE.

Mr. Galle said that the ultimate sanction incurred by Dr. Swerdlin was public embarrassment.

Judge Rodgers stated that he understood Dr. Swerdlin's statement that medically he could not attend the settlement conference, but he would have preferred a requested continuance.

Commissioner Harbison stated that he would support the COE going forward with a full hearing on any matter that was in the public interest.

Mr. Small pointed out that the Respondent was being assessed the full penalty, that he was further being assessed a public letter of reprimand, and that this was a proper resolution to the matter.

Commissioner Fiore asked whether some of the actions that Dr. Swerdlin failed to take, such as if form 8B had been filed, if he had resigned from the EPC, and if he were present at today's settlement conference, would be readdressed.

Mr. Galle said that Dr. Swerdlin had apologized for what had occurred and was requesting that the COE accept the negotiated settlement.

Commissioner Fiore commented that an apology was insufficient without the actions that supported a change in attitude or actions and willingness to accept the community's standard, which, in this case, was filing form 8B.

VI.a. – CONTINUED

Mr. Small stated that although he did not personally invite anyone from the EPC to attend today's settlement conference, he believed that Mr. Kurtz (phonetic) from the EPC was aware of the meeting.

Mr. Johnson said that he had invited Mr. Kurtz and Complainant Carol Coleman to the settlement conference, but he did not specifically invite anyone from the EPC. He added that Mr. Kurtz and Ms. Coleman said that they would watch the proceeding on television.

Commissioner Harbison stated that intent could be discussed as a separate matter, but he would accept the negotiated settlement if pro bono counsel believed that the settlement was just and was in the public interest.

Mr. Small replied that he believed the settlement was fair based on the penalty that could be assessed and that the Respondent would have a founded ethics complaint against him.

MOTION to accept the negotiated settlement. Motion by Ronald Harbison, and seconded by Robin Fiore.

Mr. Johnson clarified that the COE members could include in the motion a finding of intentional or unintentional, or the matter could be bifurcated.

Mr. Harbison stated that his motion was predicated that the matter of intent would be bifurcated, and that the question of intent would be handled separately.

AMENDED MOTION to include bifurcating the matter of intent. The seconder agreed, and by a roll call vote, the motion FAILED 2-2. Manuel Farach and Judge Edward Rodgers opposed. Daniel Galo absent.

Commissioner Farach said that a final hearing on the matter was set for the 12th and the 14th of June, 2012, and Mr. Johnson affirmed.

Commissioner Harbison commented that Dr. Swerdlin's appearance could make a difference to some COE members.

Commissioner Fiore said that the COE members had provided ample opportunity to Dr. Swerdlin, and a continuance had not been requested.

VI.a. – CONTINUED

Judge Rodgers said that he supported an additional hearing whereby the settlement matter could be raised again.

Mr. Johnson said that the settlement matter could be placed on the June 7, 2012, COE agenda; however, the final hearing would occur five days later.

Commissioner Farach commented that the final hearing dates could be moved. Mr. Galle requested that the final hearing be postponed for 30 days, and by consensus, the COE agreed.

Mr. Johnson said that before the COE members agreed to a continuation, the Respondent's attorney and the pro bono advocate should determine whether Dr. Swerdlin wanted to attend another settlement conference or would rather have a final hearing. He suggested that the final hearing dates remain pending notification from counsel within possibly 10 days.

Mr. Galle stipulated that he would bind his client to a 30-day final hearing continuation at the June 7, 2012, COE meeting, and Mr. Small said that he agreed with the stipulation.

Commissioner Farach stated that Mr. Galle and Mr. Small would be contacted by staff.

VII. ADVISORY BOARD MANDATORY TRAINING

Mr. Johnson stated that:

- Advisory board mandatory Code training came to the COE's attention when staff began conducting training reviews or audits.
- Code mandate, 2-446, required countywide training compliance.
- The COE and staff had met with the County and each municipality's administrator and had provided them with training materials.
- Staff had audited the County and found that some Palm Beach County Sheriff's Office (PBSO) officials had not complied with the required training by submitting an acknowledgement that they had been trained and had read the Code.

VII. – CONTINUED

- The COE's packets contained ongoing letters and legal analyses since September 2010 pertaining to the training.
- The PBSO's position was that the COE had no jurisdiction over its civilian or deputy personnel; that as a law enforcement organization, it was covered by State statute 112.533, which stated that the only device for internal investigations, other than criminal, was within an individual agency's internal affairs department.

(CLERK'S NOTE: Daniel Galo joined the meeting.)

- Staff did not take the position that the sheriff or his designee was under the Code's jurisdiction on committees where PBSO employees were appointed by law or mandated by an ordinance to serve on certain committees.
- The Code and the COE's jurisdiction only applied to someone who was appointed by a governing body under its jurisdiction.
- On May 15, 2012, the County would remove six members of boards and commissions for not taking the Code training.
 - The PBSO employees were not included in the removal since the COE had not yet determined whether those employees were under the COE's jurisdiction.
 - Staff had submitted that those employees would be under the COE's jurisdiction if they volunteered. If they did not comply with training, they were in noncompliance with the Code, and, therefore, should be removed.
- Staff disagreed with the PBSO legal department's position that a deputy remained a deputy twenty-four hours a day, seven days a week no matter where they were located and, therefore, the COE could not require advisory board mandatory training.
- When performing training audits, staff did not know where employees worked; only who had not complied with training. Staff knew of two volunteer County positions that were appointed and three County positions that were mandated by County Code.

VII. – CONTINUED

Judge Rodgers stated that he believed that constitutional officers, such as the sheriff, the public defender, and the State attorney, were mandated to serve on the Criminal Justice Commission (CJC).

Michael Rodriguez, CJC Executive Director, clarified that by County ordinance, constitutional officers and not their designees, were mandated to serve on the CJC.

Mr. Johnson commented that constitutional officers were also mandated to serve on the Investment Policy Committee and the Public Safety Coordinating Council (PSCC). He said that he would review the County's ordinances to determine whether designees were permitted. He added that under staff's recommendation, designees for the public defender and the State attorney should not be treated as volunteers.

Mr. Rodriguez clarified that the PSCC, a CJC subcommittee, was created by State statute, which mandated the attendees or their designees.

Mr. Johnson stated that either the sheriff or his employees voluntarily served on the Citizens Committee on Health and Human Services and the Homeless Advisory Board.

Commissioner Fiore said that she disagreed with the sheriff's rationale in his response letter that since he had to approve voluntary appointments, his employees who served on those committees were performing PBSO activities.

Mr. Johnson commented that:

- The code establishing the Homeless Advisory Board (HAB) contained a list of who would populate the board, one being a PBSO representative who was appointed by the Board of County Commissioners (BCC).
- The issue was more complex, but if the representative served on the HAB as an appointee, he or she would still be under the COE's jurisdiction.
- By County ordinance, the boards or committees at issue were established by the BCC.

VII. – CONTINUED

- He would verify with the County Attorney's Office whether the sheriff had discretion to determine if a PBSO representative should serve on the HAB if BCC appointed.

Commissioner Fiore opined that although the sheriff may authorize a PBSO representative to serve, he would not have the authority to decide whether the representative received the training.

Mr. Johnson said that the issue regarded enforcement, and there was no reprimand or fine since it was not actionable as a complaint. He said that he was requesting guidance rather than a vote whether the COE agreed or disagreed with staff's recommendations.

Regarding the internal affairs process under State statute 112.533, Commissioner Harbison expressed his doubt that the PBSO, or any other constitutional office, would pursue an internal investigation of one of its own who acted inappropriately while voluntarily serving as a citizen on a board when that inappropriateness had nothing to do with law enforcement or the constitutional office.

Mr. Johnson said that the State's COE members had informed him that they performed numerous investigations of ethics complaints against law enforcement officers.

Commissioner Farach stated that it was difficult to understand the PBSO's position that the statute exempted sworn law enforcement officers from compliance with local codes.

Mr. Johnson said that he believed the PBSO's position was that the statute applied to law enforcement officers who violated the law while acting in their official capacity.

Commissioner Galo commented that how the COE responded to Code noncompliance should be made on a case-by-case basis.

VII. – CONTINUED

Mr. Johnson read 1A of State statute 112.533:

Every law enforcement agency and correctional agency shall establish and put into operation a system for the receipt, investigation, and determination of complaints received by such agency from any person, which shall be the procedure for investigating a complaint against law enforcement and correctional officers, and for determining whether to proceed with disciplinary action or to file disciplinary charges, notwithstanding any other law or ordinance to the contrary.

Commissioner Fiore said that the question was whether someone should continue to serve on a board, and the COE's only obligation was to report to the BCC those individuals who had not taken the required Code training.

Mr. Johnson said that Commissioner Fiore's statement was staff's recommendation.

MOTION to approve staff's recommendation to inform the Board of County Commissioners of those independent constitutional officers and their employees who were in noncompliance with the Code of Ethics' (Code) ordinance requiring advisory board mandatory Code training and submittal of a training acknowledge form. Motion by Judge Edward Rodgers, and seconded by Ronald Harbison.

Mr. Johnson reiterated that the issue did not require a vote.

UPON CALL FOR A VOTE, the motion carried 4-1. Daniel Galo opposed.

Mr. Johnson clarified that when contacting the BCC, he would not be reporting individuals for noncompliance who were appointed by law or mandated by the Code to serve on County boards or committees.

VIII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VIII.a. Request for Advisory Opinion (RQO) 12-028

VIII.b. RQO 12-031

MOTION to approve the Consent Agenda. Motion by Judge Edward Rodgers, seconded by Daniel Galo, and carried 5-0.

IX. ITEMS PULLED FROM CONSENT AGENDA – None

X. PROPOSED ADVISORY OPINIONS

X.a. RQO 12-025

Megan Rogers, Esq., COE Staff Counsel, stated that:

- An employee, whose firm lobbied on behalf of private individuals and businesses, had asked two questions regarding the countywide lobbyist registration ordinance, which went into effect on April 2, 2012.
 - The first question was whether a landscape architecture firm's (firm) staff members, who met with County staff to ask project-related technical questions, were considered lobbyists, and would be required to register pursuant to the lobbyist registration ordinance.
 - The second question was when a registered lobbyist attended a meeting and was engaged in lobbying and accompanied by firm staff members, including engineers, to assist the lobbyist or answer technical questions, whether the accompanying staff members, would also be required to register as lobbyists in addition to the registered lobbyist.
- After reviewing the definition of lobbying and lobbyist enclosed within the lobbyist registration ordinance, staff had determined that both words had the same definition.
- Staff had submitted that purely ministerial or administrative functions, as may be provided by an assistant to a lobbyist, would not rise to the level of lobbying. However, an engineer, who was employed by a firm and contracted by a principal to lobby the government, directly negotiated or inputted information into the staff meeting with the registered lobbyist and actively participated in a discretionary manner, included matters regarding those technical requirements, would likely fall within the definitions of lobbyist and lobbying.

Mr. Johnson said that the proposed opinion letter did not address self-representation where someone in management appeared at a meeting on behalf of his or her company.

X.a. – CONTINUED

Commissioner Farach expressed concern that when reading the letter, everyone was now a lobbyist, even when someone talked to a lower-level employee who had no ability whatsoever to influence a decision. He added that the Code should not be interpreted where almost everything became a violation.

Mr. Johnson responded that the definition of lobbying was broad since it included employees.

Ms. Rogers said that people who worked under a lobbyist were not considered lobbyists unless they too were attempting to influence or persuade.

Commissioner Fiore said that the issue was ensuring that people in decision-making capacities knew who was speaking to them, whether it was a lobbyist or someone being paid by a lobbyist to represent a certain point of view.

League of Cities Executive Director Richard Radcliffe stated that although he agreed with staff's letter, it had opened up much discussion and concern regarding the erosion of the definition for lobbyist and lobbying.

Ms. Rogers clarified that the \$25 lobbyist registration fee was per lobbyist, per principal; meaning, if the lobbyist represented a different principal, he or she had to file another \$25 fee. She added that if a lawyer represented a principal in a public forum, he or she was not required to register as a lobbyist, but if it was a one-on-one meeting with a commissioner or an advisory board member, he or she was required to pay the \$25 fee.

Mr. Farach commented that if someone was attempting to influence a building official into issuing a building permit, the application would be considered lobbying. He said that the letter started to go down the path of making everything a lobbying scenario.

Mr. Johnson said that:

- It would not become a lobbying situation if a realtor, in applying for a building permit, had worked out its details, making it unnecessary to go before the planning, zoning and building department.
- Under the Code's lobbying definition, any lawyer who met with a County official on a case not involving economics was not considered lobbying as long as the County's lawyer was also present to discuss the case.

X.a. – CONTINUED

Ms. Rogers stated that she believed that the letter followed the reasoning held by the COE in another circumstance with a similar situation where a professional had sought or exchanged information with staff on the limited basis of technical specifications. She said that it became lobbying when a registered lobbyist met with staff to exchange technical information, and that information was taken outside the paper exchange and was used in a persuasive manner.

MOTION to approve proposed opinion letter RQO 12-025. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-1. Manuel Farach opposed.

RECESS

At 4:41 p.m., the chair declared a recess.

RECONVENE

At 4:56 p.m., the meeting reconvened with Manuel Farach, Robin Fiore, Daniel Galo, Ronald Harbison, and Judge Edward Rodgers present.

X.b. RQO 12-026

Mr. Johnson stated that:

- A municipal elected official asked whether she could initiate a proclamation declaring May 20-26, 2012, as Small Business Week in her municipality concurrent with the United States Business Administration's National Small Business Week.
- In addition to her position as City of Lake Worth (City) commissioner, she held a position as a certified business analyst for the Small Business Development Center (SBDC) at Palm Beach State College (PBSC) and worked with small business clients of the SBDC.
- The elected official's position was the subject of a prior COE advisory opinion. According to State statute, PBSC was considered a government entity and not her outside employer.

X.b. – CONTINUED

- For purposes of this question, the Code did not prohibit an official from initiating a general proclamation declaring May 20-26, 2012, as Small Business Week, notwithstanding the employment position with PBSC, and provided that her actions did not specially financially benefit her in a manner not shared with similarly situated members of the general public, or result in any kind of a quid pro quo benefit in exchange for her public action.
- Staff found that there was no ethics violation or consideration regarding her proclamation.

MOTION to approve proposed opinion letter RQO 12-026. Motion by Ronald Harbison, seconded by Judge Edward Rodgers, and carried 5-0.

X.c. RQO 12-027

Mr. Johnson stated that:

- The same City commissioner as in RQO 12-026 asked, as the commissioner of a city, whether she could meet with a City vendor to assist the vendor's development as a small business in the context of her position as the certified business analyst for PBSC. She also inquired whether such a meeting would result in a conflict of interest should the company appear before the City commission in the future.
- As part of her job with the SBDC, City-operated businesses occasionally sought advice through the PBSC, and businesses that she counseled could occasionally appear before her as a City commissioner.
- The City employed a sealed, competitive bid process. After completion of the bid process, staff would present the top five bids and the low bid to the City commission.
- Staff had submitted that under the specific Code sections, her outside employer, PBSC, was considered a government entity and was exempt; therefore, no conflict existed. Corrupt misuse, however, always applied.
- Staff had inserted an appearance of impropriety paragraph into the proposed opinion letter, which had been done previously in several other advisory opinion letters.

X.c. – CONTINUED

- County Code, section 2-441, said that, “Officials shall act and conduct themselves so as not to give occasion to distrust their impartiality.” The COE’s Code, section 2-260.9, said that, “An advisory opinion is - the purpose is to establish a standard of public duty, if any.” And the COE’s Rules of Procedure, section 2.8(f), said that, “If deemed appropriate by the Commission on Ethics, additional comment regarding ethics, appearance of impropriety, or similar advice to a requesting party, based upon the factual scenario as presented, may be given.”
- Staff had submitted that:
 - Section 2.8(f) should be included in the letter since an appearance of impropriety may result if she participated in a vote where she had actually counseled one of the businesses.
 - She should take great care if she significantly counseled a small business to avoid an appearance of impropriety by voting on that issue.

MOTION to approve proposed opinion letter RQO 12-027. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 5-0.

X.d. RQO 12-030

Ms. Rogers stated that:

- A Drowning Prevention Coalition of Palm Beach County (Coalition) manager asked whether the County department could accept booth space at SunFest donated by a local swim school for handing out drowning prevention literature to the public.
- Staff had submitted that:
 - While an official may not use his or her official position to obtain a special financial benefit for him or herself, a spouse or domestic partner of his or her outside business or employer, as well as additional persons or entities with whom the official may have some financial or fiduciary relationship, no such relationship existed in the above scenario.

X.d. – CONTINUED

- No Coalition staff member worked for the Big Fish, Little Fish Swim School or had a relationship of the nature that was prohibited by the misuse of office section of the Code.
- Since the donated booth space was donated to the County itself and not an individual member, it was not considered a gift since it was for use solely by the County in conducting its official business of distributing drowning prevention literature to the public.

Commissioner Farach said that he had requested that this item be excluded from the consent agenda since it appeared that one particular company would benefit; however, there appeared to be no violation by strictly applying the Code. He expressed concern that without a competitive bidding process, one particular for-profit company was, in effect, being given credibility by being affiliated with the County.

Commissioner Fiore said that she questioned why the City of West Palm Beach could not find space for a County entity to hand out its public service literature and that it appeared that the County was indirectly endorsing the swim school.

Ms. Rogers clarified that the Coalition did not endorse specific programs. She added that a financial benefit would exist for the County to encourage public/private partnerships.

MOTION to approve proposed opinion letter RQO 12-030. Motion by Ronald Harbison, seconded by Judge Edward Rodgers, and carried 4-1. Robin Fiore opposed.

X.e. RQO 12-032

Mr. Johnson stated that:

- A City of Boynton Beach (Boynton Beach) commissioner asked whether the Code prohibited him as an elected official from receiving a monthly expense allowance established by the Boynton Beach commission's resolution, and contained in the Boynton Beach personnel policy manual, to cover travel and expense expenditures made in the performance of his official duties.

X.e. – CONTINUED

- The commissioner also asked whether a record of the expenditures should be submitted for transparency purposes, and whether he could use a portion of the expense stipend to make charitable contributions to support nonprofit organizations within the community, including a school where his wife worked.
- The Boynton Beach resolution and its personnel policy manual did not define what was considered an official use or a public purpose.
- The approximate \$5,000 yearly expense allowance was retained if not spent. State statute 112.3135(5) permitted voting on a salary, expense, or other compensation.
- Providing an advance monthly expense allowance rather than having a reimbursement policy in place was perilous, and a Code violation could exist since Boynton Beach commissioners were not required to return any unused funds. Boynton Beach's resolution also left matters open for scrutiny as to how the funds were being spent, and it should be better defined.
- Donating a portion of the expense stipend to a charity could possibly be permitted but not to his wife's employer, which would be a Code violation.

Commissioner Fiore commented that:

- Instead of characterizing and interpreting Boynton Beach's ordinance and policy manual, the only issue to be addressed was whether the activity violated the Code.
- The COE could answer the commissioner's second question, but the monthly expense allowance was, in essence, considered a slush fund.
- The request was being made by a Boynton Beach commissioner and not by Boynton Beach.

Mr. Johnson said that:

- The commissioner was asking whether Boynton Beach's policy violated the Code.

X.e. – CONTINUED

- The monthly expense allowance was not similar to a slush fund as referenced in the Grand Jury report; rather, it was at the discretion of the Boynton Beach commissioners whether they wanted expenditures paid upfront or to be reimbursed afterwards.
- Discretionary funds addressed in the Grand Jury report regarded taxation items that were sent into a general account.
- The proposed opinion letter could be tabled for further review and possible language revision by staff.

Commissioner Harbison suggested that the commissioner should discuss the issue with his tax accountant.

Mr. Johnson said that:

- The commissioner had informed him that the \$5,000 was Internal Revenue Service taxable since it was upfront and unregulated.
- If the COE had received a complaint on an expenditure that was determined not to be for an official use, the individual could be subject to the complaint.
- A County employee who had an automobile allowance and rode a bike to work was different from the scenario in RQO 12-032 since it depended on whether the allowance was a negotiated-for contractual benefit or was part of a pay package considered as gross income.
- After the proposed opinion letter was issued, he had received communication from the commissioner that Boynton Beach would be making the monthly expense allowance process more transparent.

MOTION to table proposed opinion letter RQO 12-032. Motion by Judge Edward Rodgers, seconded by Daniel Galo, and carried 5-0.

XI. EXPEDITED ADVISORY OPINIONS

XI.a. RQO 12-039

- The proposed opinion letter was submitted on May 1, 2012, and was expedited since the issue was coming to fruition on May 15, 2012. Pursuant to the COE's Rules of Procedure, a person may request an expedited opinion.
- A question was asked whether, as an elected official, a lawyer may represent a customer or client of his outside law firm in front of an advisory board for the City of Delray Beach (Delray Beach) commission so long as he subsequently abstained from voting and did not participate in any part of the decision-making process when the matter eventually reached the commission.
- A prior advisory opinion letter had dealt with an advisory board member that appeared before another advisory board, but staff had never encountered a situation where someone picked advisory boards, then appeared before one of those advisory boards.
- Staff had submitted that:
 - As an elected official and vice mayor for Delray Beach, he was prohibited from using his official position to give himself, his outside business, or a customer or client of his outside business a special financial benefit not shared with similarly situated members of the general public.
 - He could not vote on a client's proposal or on any related issues pending before the Delray Beach commission.
 - He could not participate in conversations or attempt to influence his fellow commissioners, Delray Beach staff, or advisory board members in his official capacity since it would constitute a misuse of office. The prohibition extended to both he, as a Delray Beach commissioner, or anybody using his official title or name as commissioner.

XI.a. – CONTINUED

- An appearance before a Delray Beach advisory board was not prohibited, provided that the elected official did so in his personal or business capacity and did not use his official position in any manner, including interaction with the advisory board's staff, to obtain a special financial benefit for himself or his client,
- While the Code did not speak to this particular situation, the State's Code, statute 112.313(7), dealing with conflicting employment or contractual relationships, stated that a public officer may not hold any employment or contractual relationship with any business entity subject to the regulation of his or her agency. It was also advised that the elected official should obtain an opinion from the State's Code.
- The elected official only appointed one advisory board member, but he voted regarding all seven appointees.

Commissioner Harbison said that he questioned whether an elected official who had nominated and voted for an advisory board member and was now appearing as a private lawyer representing that advisory board member was not somehow swayed or tainted in his opinion.

Judge Rodgers suggested that the language, "May result in an appearance of impropriety," as contained in RQO 12-027 be added to this opinion letter.

Ms. Rogers clarified that the elected official, although the member of a law firm, was the sole representative for the case involving the advisory board member. She added that the elected official had stated that no one in his law firm was sufficiently informed at this point to handle the matter.

Commissioner Galo stated that he did not perceive the issue as being an adversarial process, rather, he viewed it as a presentation being made to an advisory board regarding a project that required certain variances and changes. Since the elected official was an experienced land use attorney, he could discuss the issues in the context of what the board needed, he said.

Commissioner Fiore said that the elected official could avoid the problem by having someone else in his law firm represent the firm's client.

XI.a. – CONTINUED

Commission Galo commented that the COE should avoid discouraging good, quality individuals from foregoing participation in the public sector due to an inability to maintain a livelihood or to perform a job that they were well trained to do.

Judge Rodgers said that in most cases that required specialized lawyers, many courts had held that the entire firm should be hired and not just one lawyer.

Commissioner Harbison stated that this matter was worthy of including Judge Rodger's suggested language.

Mr. Johnson said that staff could insert the verbatim admonishment language that was contained in RQO 12-027, and which Judge Rodgers previously referred to.

Ms. Rogers clarified that that language in RQO 12-027 was also contained in RQO 12-039 on page 109, two paragraphs above the "In summary" content. She added that while the elected official may have specialized in other matters, at this point in time, he was primarily operating in land-use law.

MOTION to approve proposed opinion letter RQO 12-039. Motion by Robin Fiore, seconded by Daniel Galo, and carried 4-1. Judge Edward Rodgers opposed.

Mr. Johnson recommended that item XII. be placed on the next COE agenda. He said that he would have a brief comment regarding the Inspector General (IG) and the COE.

RECESS

At 6:00 p.m., the chair declared a recess.

RECONVENE

At 6:05 p.m., the meeting reconvened with Manuel Farach, Robin Fiore, Daniel Galo, Ronald Harbison, and Judge Edward Rodgers present.

XII. SOCIAL MEDIA

In providing a presentation, Ms. Rogers said that:

- Facebook had created a separate mechanism for governmental entities so “friending” that existed in regular profiles was nonexistent in governmental profiles.
- The public only had an ability to “like” the governmental Facebook page, thus limiting inappropriate interaction.
- The City of San Francisco (San Francisco) had incorporated applications (apps) into its Facebook page to create a more interactive experience, such as Livestream, which allowed Facebook fans to watch commission meetings.
- San Francisco also provided a city services app, which provided an emergency notification system.
- Facebook governmental-entity pages could restrict the public’s ability to post to a page or to a timeline; however, commenting could not be restricted without using a profanity blocker.
 - Specific words would require a staff’s manual deletion if a profanity blocker was not used, and there was a report abuse button.
 - Governmental entities should remember the Constitutional considerations when creating a public forum.
 - Staff would draft a Facebook policy regarding what types of comments would be permitted and the government’s right to delete specific comments. The policy would require content and COE oversight.
- Creating, maintaining, and building a voice would increase the followers and traffic to the COE’s Facebook page and, in turn, would increase a part-time staffer’s hours.
- Setting up a governmental Facebook page was free; however, minimal costs existed in creating and maintaining apps.

XII. – CONTINUED

- Twitter allowed immediate, 140-character messages on mobile devices without an app.
- Hashtags were a form of metadata and could be a form of tracking any trending conversations.
- Retweets were a quick way for people to share information that the COE provided to them.
- The County and its library system each had a Twitter page.
- YouTube was the most practicable and the quickest startup mechanism for the COE to become involved in social media.
- Creating a YouTube account also created a channel similar to a television channel which contained playlists.

Commissioner Fiore commented that teachers used YouTube in their classes, so initiating a COE YouTube channel would be beneficial for school access.

Commissioner Harbison said that providing a YouTube account would be in line with the COE's mission to educate.

Ms. Rogers stated that the COE's file format for its training videos could be easily translated to YouTube. She added that:

- Staff had researched the use of Smartphone apps.
 - Apple and Android development systems required development accounts. Apple was \$99 annually, and Android was a \$25 one-time fee.
 - Both systems required the use of their own developer tools to create the apps. Apple's system required the use of an Apple computer, which staff did not have.
 - Outsourcing the app creation to an app builder would eliminate the additional costs. App builder costs varied, and many commercial app builders used for-profit ads associated with apps, which could be problematic.

XII. – CONTINUED

- Three apps that were usually available were text apps, searchable databases, and filing or e-signing transactional apps such as Paypal.

Commissioner Fiore commented that college courses on building apps were available.

Ms. Rogers replied that staff would review Commissioner Fiore's suggestion; however, overall system maintenance was staff's main concern.

Commissioner Farach commented that the social media mechanisms described in the presentation were the way to reach the public, and that he supported moving forward with implementation.

Ms. Rogers responded that:

- Twitter and YouTube may be the most efficient use of resources since neither one required comment monitoring.
- Both social medias possessed effectiveness of transmitting messages.
- Twitter would allow staff to post links to advisory opinions as they were approved by the COE without creating a need for additional comment.

Mr. Johnson commented that staff would work with the County's public affairs department since they had initiated some social media projects. He added that at the COE's request, staff would continue to develop social media and would report any progress in one or two-month intervals.

Commissioner Farach said that staff should first review any policies regarding social media, and that the COE's directional consensus was to continue researching social media implementation.

XIII. EXECUTIVE DIRECTOR COMMENTS

XIII.a.

DISCUSSED: COE appreciation.

Mr. Johnson thanked the COE for a great meeting.

XIV. COMMISSION COMMENTS

XIV.a. DISCUSSED: The COE and the IG's Jurisdiction.

Mr. Johnson stated that Judge Rodgers had concerns regarding an article about the City of West Palm Beach (WPB) and the jurisdiction of the COE and the IG. He said that certain WPB officials or employees were saying that they thought the IG's jurisdiction began June 1, 2011.

Commissioner Harbison clarified that the WPB mayor had made the statement.

Mr. Johnson added that:

- The COE enforced a code which impacted individuals. The COE had power to issue reprimands, to fine individuals, and to find individuals guilty of ethics violations, and those matters were laws that affected individuals and were considered substantive.
- The COE could not find someone guilty of a law violation that predated the Code going into effect, which was June 1, 2011, for municipalities and March 1, 2010, for the County.
- The IG's work was procedural and not substantive. The crux of her work dealt with contracts, processes, procedures, fraud, misuse, and nonfeasance, and she could review a matter going back as far as was needed.
- The IG could not fine someone, issue letters of reprimand, or find someone guilty of a violation. All she could do was issue reports, findings, policy statements, and recommendations.

XIV.b.

DISCUSSED: Election Appreciation.

Commissioner Farach thanked the COE for electing him as chair, and that he hoped to do as good a job as Judge Rodgers. He added that the COE's greatest assets were its credibility and its ability to inform.

XV. PUBLIC COMMENTS

XV.a.

DISCUSSED: Palm Beach County Ethics Bowl.

Mr. Radcliffe stated that he had the pleasure of judging at the first Ethics Bowl for the County's school system on April 28, 2012. He congratulated Ms. Rogers for being present, and he said that he was impressed with the students' ethics knowledge.

XVI. ADJOURNMENT

At 6:34 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

VI RECONSIDERATION OF ADVISORY OPINION 11-060 (STATUS OF MUNICIPAL PENSION BOARDS)

Background:

This issue came before the COE on September 1, 2011 regarding the status of municipal pension board trustees as *officials* and/or *advisory board members*. The initial request asked for an opinion as to the applicability of the Palm Beach County Code of Ethics to municipal pension boards, particularly as it regards trustee duties and responsibilities relating to seminars and conferences. The COE opined that based upon its structure, and its authorization under state statute, as well as board employee and vendor independence from the municipality, that the Boca Raton Police and Firefighters' Retirement System Board (BRPFRS) was not considered an *advisory board*. However, those trustees appointed by the municipal governing body were *officials* as defined by the Palm Beach County Code of Ethics (the Code). In addition, any trustee serving based upon municipal employment would likewise be subject to the Code as a municipal employee.

As officials, pension board trustees are subject to all of the Code provisions regarding conflict of interest. However, gift law provisions prohibiting acceptance of a gift valued in excess of \$100, annually in the aggregate, apply only to *advisory board members* and not *officials* (other than elected officials). In addition, COE staff has received information, subsequent to the published opinion, that BRPFRS trustees are state reporting individuals and, therefore, are subject only to the reporting requirements provided by state law. The only Code requirement is that trustees submit a copy of any submitted state report to the COE.

Subsequent to publishing RQO 11-060, COE Staff received a letter on March 15, 2012, from Robert Sugarman, attorney for the BRPFRS (the letter), asking that this matter be submitted for reconsideration (letter attached). A staff response was sent on March 28, 2012 (attached) and the matter was to be set before the COE for reconsideration.

Staff analysis:

Essentially, the letter takes the position BRPFRS trustees are not *officials* as defined by the Code, but are *advisory board members*. Pension boards are created by state statute in accordance with Chapters 112, 175 and 185, Florida Statutes. The letter makes a distinction between a *Chapter Plan* which is "adopted" by the governing body, and a *Local Law Plan* which is "established by municipal ordinance." The letter goes on to state, "As a "local law plan," the Retirement System is established and created by local municipal ordinance enacted by the Boca Raton City Council. It is not created by state statute. "Chapter plans" are created by state statute." The letter goes on to make several other distinctions between local law plans and chapter plans.

Staff sent its response (the staff response) to Mr. Sugarman, re-stating the COE opinion in RQO 11-060, that the Code clearly states that any person appointed by a governing body to serve on *any advisory, quasi-judicial, or any other board of the county, state or any other regional, local, municipal, or corporate entity*, is by definition, an *official* under the Code. Municipal employees who serve as BRPFRS trustees are also subject to the Code if their trusteeship is obtained as a result of their public employment status. The staff response further re-stated the opinion that based upon the independence of the BRPFRS, including its employment of non-municipal staff, use of separate vendors, and its authorization under state statute, the board did not constitute *an advisory board created by the local municipal governing body* as defined by the Code.

Notwithstanding, the COE opinion found trustees to be subject to all conflict provisions including misuse of office, corrupt misuse of office, voting conflicts, contractual relationships and travel expense reimbursement requirements. As stated in the opinion, trustees who attend a seminar or conference and receive travel expenses from a vendor, lobbyist, principal or employer of a lobbyist *of the municipality* must obtain a waiver from the municipal governing body. So long as the board is independent of the municipality, this prohibition does not apply to reimbursement from BRPFRS vendors or lobbyists who are not also doing business with the municipality. If the pension board is determined by the COE to be an advisory board of the municipality, vendors and lobbyists of the board may then be considered vendors and lobbyists of the governing municipal entity and the gift law prohibition, and travel expense waiver requirement, would likely apply.

Applicability of the gift law prohibition against accepting a gift of a value in excess of \$100, annually in the aggregate, from a vendor, lobbyist, principal or employer of a lobbyist would be affected were the trustees to be considered as advisory board members. However, even if the COE were to consider the trustees to be advisory board members, it should be noted that the gift law prohibition applies only to those persons or entities that are vendors or lobbyists of the trustee's board and not the entire municipality.¹

As contained in the staff response, Florida Statutes state that a pension board of trustees *shall be a legal entity with, in addition to other powers and responsibilities...the power to bring and defend lawsuits of every kind, nature, and description*. The municipality does not share vendors, supplies, staff or pay employees of the pension plans. The municipality cannot access pension funds. Pension plan employees are not eligible for municipal benefits such as the retirement system or health insurance. In this context, the pension board operates as a separate entity and may not be sufficiently connected to the municipality to constitute an advisory board as defined in §2-442 of the Code. The Florida Commission on Ethics was asked whether a municipal pension board was considered a city agency under §112.313(7)(a), Florida Statutes, for purposes of the state prohibition against conflicting employment, and opined as follows:

It is our opinion that the board, due to its independent functions in handling and managing pension assets, is an agency separate and distinct from the city's finance department for the purposes of section 112.313(7)(a), therefore, the subject employees employment or contractual

¹ §2-444(b)(1) No advisory board member, or any other person on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any vendor, lobbyist, or any principal or employer of a lobbyist, *who lobbies the recipient's advisory board, or any county or municipal department as applicable that is subject in any way to the advisory board's authority*.

relationship with the corporation is with a business entity doing business with the board, which is a separate agency from her agency, the city's finance department.²

This is consistent with the COE decision in RQO 11-060.

On the other hand, unlike a chapter plan, specifically authorized by state statute, the Boca Raton Police and Firefighters' Retirement System is a local law plan, established and created by municipal ordinance. In addition, a municipal governing body ultimately controls the existence of a local pension board. It can choose whether or not to participate, by accepting or not accepting state funds authorized under chapters 175 and 185, Florida Statutes. It can choose to abolish BRPFERS³, choose an alternative retirement structure or change the terms of the pension benefits in any way it sees fit, subject to minimum state requirements, if applicable. Lastly, the BRPFERS can make recommendations to the governing body regarding procedural or benefit changes to the pension ordinance although its core function remains administering the plan.

Staff Recommendation:

The members of BRPFERS are currently subject to the Code as either officials or employees. This is consistent with RQO 11-060. Staff recommends that the opinion stand as written regarding the status of BRPFERS as an independent board and not an advisory board. The City has created an entity that is independent in its function, staff and vendors. It can sue and be sued as an independent entity. This independence is significant. Also of significance is the fact that the Code is applicable to the trustees regarding issues of conflict in their capacity as *officials* or *employees* of the City. While the City has the power to change, or abolish altogether, the BRPFERS, it does not currently exercise control over its operation or choice of financial instruments. Likewise, the decisions made by BRPFERS are not passed along to the municipal governing body for ratification.

Regarding gift reporting, the section of RQO 11-060 regarding obligations of officials appointed to the pension board is incorrect insofar as the trustees are state reporting individuals. That fact was not provided by the requesting party. A subsequent advisory opinion did address the issue of pension board trustees and their status as officials identified by state law as reporting individuals. State reporting individuals are required to adhere to state requirements and submit a copy of each report to the COE.⁴

² CEO 91-50, September 13, 1991

³ §§175.361, 175.411, 185.37, Florida Statutes, permit a local municipality to terminate or revoke its participation in the plan.

⁴ RQO 11-089



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

September 6, 2011

Bob Sugarman, Esquire
Sugarman & Susskind
100 Miracle Mile, Suite 300
Coral Gables, FL 33134

Re: RQO 11-060
Gift Law/Travel Expenses

Dear Mr. Sugarman,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on September 1, 2011.

YOU ASKED in your submission dated July 18, 2011 whether Trustees of the City of Boca Raton Police and Firefighters' Retirement System (BRPFRS) are subject to the jurisdiction of the Palm Beach County Commission on Ethics and Code of Ethics. To the extent that trustees are subject to the code, what are their duties and responsibilities regarding BRPFRS related seminars and conferences?

IN SUM, while the BRPFRS is not an "advisory board" as defined under the Code of Ethics, trustees appointed by the Boca Raton City Council are considered "officials." Five of the 8 BRPFRS Trustees are employees of Boca Raton. Their decisions impact the city budget and they are paid a city salary while engaged in BRPFRS activities during working hours. Therefore, the Commission on Ethics finds there to be sufficient nexus between a trustee's public employment and the BRPFRS to place them, as public employees, within the jurisdiction of the sections of the Code of Ethics dealing specifically with financial and corrupt misuse of office issues.

For trustees who are either "officials" (appointed by the Boca Raton City Council) or public employees (elected by fellow employees), code sections involving acceptance of travel expenses apply only where the travel expenses or gifts involve vendors, contractors, bidders, proposers, service providers who do business with the City of Boca Raton. Likewise, the \$100 gift limitation involving the solicitation or acceptance of gifts only applies to vendors or lobbyists who lobby, sell or lease to the City. These regulations do not extend to those doing business exclusively with the BRPFRS, which is not a board created by the City. However, any non-prohibited gift accepted by a City of Boca Raton employee or official in excess of \$100 is reportable pursuant to the annual reporting requirements of the Code of Ethics. Lastly, no gift of any value may be accepted by a trustee who is a public official or public employee in exchange for the performance or non-performance of an official act or legal duty.

THE FACTS as we understand them are as follows:

The City of Boca Raton Police and Firefighters' Retirement System (BRPFRS) was established by Chapter 12, Article IV of the Boca Raton Code and Chapters 175 and 185 of the Florida statutes, to provide retirement benefits to the police officers and firefighters employed by and retired from the City of Boca Raton (the City). Eight trustees serve the BRPFRS; four are city residents appointed by the city council and four are city employees (two police officers and two firefighters) who are elected by their co-workers. Currently, five of the trustees are city employees. Section 112.661(4), Florida Statutes, requires trustees of public pension funds to complete continuing education requirements. It is the policy of the BRPFRS to pay any registration fee and travel expenses incurred in association with these conferences. City employees are paid by the City for time spent on BRPFRS matters during regular working hours.

Opal Financial Group ("Opal") is a private business that coordinates institutional investment conferences throughout North America and Europe. These events are designed for High-Net-Worth Individuals and executives in Corporate Pension Funds, Endowments, Public Funds, Family Offices, Foundations, Taft-Hartley Funds, Financial Planning Firms, 401 (k) Plans, Investment Consultancies, Hedge Funds, Investment Banks, Brokerage Firms, Law Firms and Accounting Firms. There is no fee to attend the public fund conferences for any pension board member nationwide. An Opal representative confirmed that conference sponsors and potential service providers cover the cost of the conference so that Public Pension Board Trustees may attend free of charge. Opal itself does not have contracts with or provide goods or services to the City of Boca Raton; however, sponsors of Opal events or other similar conferences may be vendors of the city.

A city-council appointed trustee, who is not an employee, volunteers to serve as chair of several of the conferences Opal presents. As chair, he or she presides over the conference and reviews the conference program. While not directly compensated for the role as chairman, Opal reimburses or pays travel expenses to attend the conference.

Effective July 1, 2011, local government sponsors of defined benefit pension plans, in this case, the City, may not reduce contributions required to fund the normal cost of the plan. Senate Bill 1128, which made a series of changes to Florida's local government defined benefit retirement plans, requires that the employer is responsible for funding the "normal cost" even if plan investment losses require that the employer contribute a greater percentage per employee.

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

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

Section 2-442 defines "officials" as "... members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of (a) local municipal governing body, as applicable, to serve on any advisory quasi-judicial, or any other board of the county, state or any other regional, local, municipal, or corporate entity." City appointees are therefore officials and are subject to the Code of Ethics in as much as they represent the interests of the legislative body that appointed them, the City Council of Boca Raton. However,

employee trustees, elected by employees and not appointed by the City Council, are not subject to the Code of Ethics as officials.

Employee members of the board are subject to the requirements of the code of ethics as employees of the City. While the BRPFRS is a separate and semi-autonomous entity from the city, should the plan be underfunded, the city is partially responsible for remedying the deficit under the requirements of Senate Bill 1128. In addition, time spent on BRPFRS matters during normal business hours is compensated by the City. The fiscal responsibility incurred by the trustee's public employer coupled with the payment of City salary for BRPFRS matters provides a sufficient nexus between the public employment and outside trust activity to incur limited jurisdiction over the BRPFRS Trustees who are also employees of the City.

Section 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;
 - (2) A member of his or her household, including a domestic partner and his or her dependents, or the employer or business of any of these people;
 - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
 - (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who works for such outside employer or business;
 - (5) A customer or client of the official or employee;
 - (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner-- "substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
 - (7) 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.

Trustees appointed by the Boca Raton City Council are considered "officials" and may not take, fail to take or influence others to take or fail to take any action that would result in a special financial benefit to any of the above persons or entities. Likewise, under §2-443(c) these officials may not vote on any matter that would result in a special financial benefit to those same individuals and other entities.

As for those Boca Raton employees who are not "officials" as defined by the code (those trustees elected by their co-workers), they too may not use their official position to obtain a special financial benefit for those persons and entities listed above, that are not shared with similarly situated members of the general public. In this instance, employee-trustees are eligible to sit on the board as a result of their employee status and decisions they make as trustees have a financial effect on their public employer.

Section 2-443(d) prohibits officials and employees from entering into contracts with the City of Boca Raton, unless one of several exceptions applies. Trustees are not prohibited, by the Code of Ethics, from

entering into contracts to provide goods or services to the BRPFRS by the code. The COE cannot opine as to any other rules, regulations or state statutes that may limit such a contract.

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 of 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.

Trustees of the BRPFRS (officials and employees) cannot accept travel expenses from a “contractor, vendor, service provider, bidder or proposer” of the City without obtaining a waiver from the City Council. There is no similar prohibition involving contractors, vendors, etc. of the BRPFRS who are not also doing business with the City. Trustees must keep in mind that complimentary registration at educational conferences is funded by sponsorship dollars and the situation presented by the trustee who chairs the conference is no different. Should a vendor of the City also be a sponsor of one of these educational conferences, reimbursement of travel expenses would be considered an indirect payment of those expenses by the City vendor. In that case, trustees must apply for a waiver from the City Council in order to attend the conference.

Section 2-444. Gift Law

Section 2-444(g) defines a gift as the transfer of anything of economic value, including hospitality, food and drink. Section 2-244(a) prohibits a public employee from soliciting or accepting, directly or indirectly, “a gift with a value of greater than one hundred dollars \$100 in the aggregate for the calendar year from any person or business entity that ...is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the ... municipality.” Section 2-442 defines a vendor as a person or entity who sells or leases goods or real or personal property to the City or a person or entity with a pending bid proposal or an offer to sell or lease goods or real or personal property. There is no such prohibition for “officials” who are not members of an advisory board or elected members of the county or a municipal body. Since the BRPFRS is not an “advisory board” as defined under the code, this prohibition only extends to vendors or lobbyists who lobby, sell or lease to the City. Likewise, the prohibition against soliciting anything of value from a vendor or lobbyist does not apply to vendors or lobbyists of BRPFRS. Lastly, permissible gifts of a value in excess of \$100 must be reported pursuant to §2-444(f) of the code.

Notwithstanding that the prohibitions of §2-443(a) may not apply to vendors and lobbyists of BRPFRS, City employees and officials are still subject to §2-444(e) in the performance of an official act or legal duty related to their status as a City employee or official. Section 2-444(e) states as follows:

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

- (1) An official public action taken or to be taken, or which could be taken;
- (2) A legal duty performed or to be performed or which could be performed; or

- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

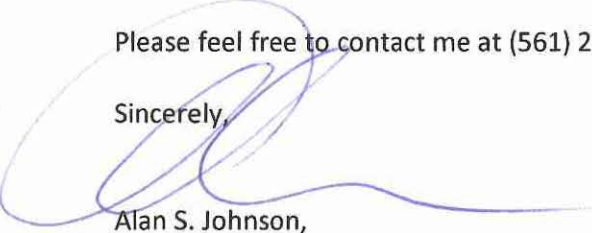
Based on the facts you have submitted, there may be vendors of the BRPFRS who are present at the conference that are not vendors of the City. Keeping in mind the misuse of office section discussed above, and the prohibition against accepting anything of value as a quid pro quo for the performance of your job, trustees are not prohibited from accepting gifts of any value from non-vendors, lobbyists, principals or employers of lobbyists who do not lobby, sell or lease to the City, but must report the gift should its value exceed \$100. Continuing education travel expenses provided by vendors of the City, properly waived under §2-443(f), or travel expenses paid by the pension plan, are exempted under §2-444(g)(1)h., from the reporting requirements of the gift law so long as attendance is related to an official or employee's duties and responsibilities as a BRPFRS Trustee.

IN SUMMARY, employees and officials of the City of Boca Raton are required to comply with the Palm Beach County Code of Ethics. Although the BRPFS is not an *advisory board* under the code, trustees appointed by the City Council are considered *officials*. Employees/trustees who are elected by other employees still maintain their status as City employees and must comply with the Code of Ethics when acting in an official capacity for the City. Limitations and prohibitions relating to the solicitation or acceptance of gifts only apply to vendors, lobbyists, principals and employers of lobbyists who lobby, lease or sell to the City, however, no gift may be accepted in exchange for the past, present or future performance of their official duties as employees or officials of the City. Travel reimbursement from vendors of the City may be accepted provided the trustee obtains a waiver from the City Council. Any gifts, not otherwise prohibited, in excess of \$100 must be reported on an annual gift report. Travel reimbursement associated with educational or governmental conferences or seminars, properly waived if required, does not need to be reported.

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

SUGARMAN & SUSSKIND

PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

Robert A. Sugarman♦
Howard S. Susskind
Kenneth R. Harrison, Sr.
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Toll Free 1-800-329-2122
Facsimile (305) 447-8115

March 15, 2012

Alan Johnson, Executive Director
Commission on Ethics
2633 Vista Parkway
West Palm Beach, FL 33411
ethics@palmbeachcountyethics.com

*Re: City of Boca Raton Police & Firefighters' Retirement System
Request for Reconsideration on Ethics Opinion - RQO 11-060*

Dear Mr. Johnson:

Our client, the Board of Trustees of the City of Boca Raton Police & Firefighters' Retirement System ("Retirement System") requests a reconsideration of the Commission's opinion, dated September 6, 2011 (i.e. RQO 11-060), as follows:

1. Whether the Board of Trustees is in fact an "advisory board," as defined under Sec. 2-442 of the Palm Beach County Code of Ethics ("PBCCE");
2. Whether non-employee, resident, and appointed by the Boca Raton City Council, trustees of the City of Boca Raton Police & Firefighters' Retirement System are considered to be "officials" under the recently enacted Palm Beach County Code of Ethics?

As you are aware, the Retirement System is established by Chapter 12, Article IV of the Boca Raton Code to provide retirement benefits to the police officers and fire fighters employed by and retired from the City of Boca Raton, a municipality in Palm Beach County. The Retirement System is governed in accordance with Sections 112, 175 and 185 of the Florida Statutes.

The Retirement System's Board of Trustees is comprised of eight volunteers who serve without compensation from the Retirement System. Four are city employees (two police officers and two firefighters) who are elected by their co-workers. Four are city residents appointed by the city council. One of those residents is employed by the city as finance director. The remaining three resident trustees are not city employees.

The basis of this letter is to seek reconsideration based on the following understandings which differ from those presented in your original opinion serving as the legal basis for such.

Section 2-442 of the Palm Beach County Code of Ethics defines “Advisory Board” to mean:

“any advisory or quasi-judicial board *created* by the board of county commissioners, *by local municipal governing bodies*, or by the mayors who serve as chief executive officers or by mayors who are not members of local municipal governing bodies.” (emphasis added)

In RQO 11-060, page 2, you provide as a legal basis for your conclusion that the Retirement System is not an “advisory board,” that:

“While BRPFRS is governed by local ordinance, the board is authorized by state statute. *It is not ‘created by’ the local municipal governing body* and is, therefore, not an advisory board.”(emphasis added)

This is inaccurate. As provided for by Florida Statutes, there are two different forms of retirement plans: “Chapter plans” and “local law plans.” Chapter plans are created by state statute. Local law plans are established by municipal ordinance. The Retirement System is a “local law plan,” as defined in sections 175.032(11) for firefighter plans and 185.02(10) for police plans, Florida Statutes, and *not* a “chapter plan,” as defined in sections 175.032(2) and 185.02(3), Florida Statutes, and as provided for in your opinion.

Section 175.032, Florida Statutes defines each aforementioned type of plan for firefighters as¹:

(2) “Chapter plan” means a separate defined benefit pension plan for firefighters which incorporates by reference the provisions of this chapter **and has been adopted by the governing body of a municipality or special district**. Except as may be specifically authorized in this chapter, provisions of a chapter plan may not differ from the plan provisions set forth in ss. 175.021-175.341 and 175.361-175.401. Actuarial valuations of chapter plans shall be conducted by the division as provided by s. 175.261(1). (emphasis added)

(11) “Local law plan” means a defined benefit pension plan for firefighters, or for firefighters or police officers where included, as described in s. 175.351, **established by municipal ordinance**, special district resolution, or special act of the Legislature, **which enactment sets forth all plan provisions**. Local law plan

¹ Section 185.02(3) and (10) defines “Chapter Plan” and “Local law plan,” respectively, for police officers, with the same exact language, save references to corresponding citations under section 185.

provisions may vary from the provisions of this chapter, provided that required minimum benefits and minimum standards are met. Any such variance shall provide a greater benefit for firefighters. Actuarial valuations of local law plans shall be conducted by an enrolled actuary as provided in s. 175.261(2). (emphasis added)

As a “local law plan,” the Retirement System is established and created by local municipal ordinance enacted by the Boca Raton City Council. It is not created by state statute. “Chapter plans” are created by state statute.

Further, the Retirement System differs significantly from “chapter plans” in several notable respects. The Retirement System is comprised of a joint police and firefighter board of trustees administering benefits from one single trust fund, as opposed to “chapter plans” which are composed either of a police plan (Section 185) or a firefighter plan (Section 175) each of which administers benefits from two distinct trust funds. The Retirement System is administered by eight trustees. “Chapter plans” are administered by five trustees. The Retirement System’s plan benefit levels and provisions vary from those provided for by state statute. Therefore, because the Retirement System was “created” by the “local municipal governing body,” it is an “advisory board” as defined in section 2-442.

Moreover, we would request that you revisit your designation of resident, non-employee, City appointees to the Retirement System as “officials,” as defined in sec. 2-442 of the PBCCE. In your opinion letter, you state in relevant part that, “City appointees are therefore officials and are subject to the Code of Ethics in as much as they represent the interest of the legislative body that appointed them, the City Council of Boca Raton.” City appointees are not city officials. They are not elected by the electorate. They have absolutely no power or influence of any kind with the City or any of its vendors. They make no decisions for the City. Their input is not sought for any decisions made by the City. The Retirement System has nothing to do with City vendors and vice versa. City appointed trustees are in fact legally required, as fiduciaries to the Retirement System under section 112.656, Florida Statutes, to place all “interests,” including those of the legislative body that appointed them, aside and act “solely in the interest of the participants and beneficiaries for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan.”

The practical effect of classifying the Retirement System as an “advisory board,” or in the alternative, not classifying resident, non-employee, City appointees as “officials,” is significant and cannot be understated. As provided for by the PBCCE, Trustees for the Retirement System would only be prohibited from certain dealings with the “vendors”² of the

² Sec. 2-442 of the PBCCE defines “vendor” as: “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

Retirement System. The Retirement System only has a small number of vendors (i.e. approximately 10 – 20) and all of the trustees know who they are and directly participate in their selection and retention. In contrast, if the non-employee, resident appointed trustees are “city officials”, they are prohibited from certain dealings with all City of Boca Raton vendors. Currently, there are approximately over 1,000 vendors to the City of Boca Raton. They are not known to the Retirement System trustees. The Retirement System trustees play no part in selecting, compensating, retaining or terminating city vendors.

These appointed trustees are required to be residents of the City of Boca Raton because their professional and personal lives are thus based in the City of Boca Raton. Consequently, many of their respective clients, friends, social organizations, etc., are likewise based in the City of Boca Raton and are likely vendors to the City in some capacity. Basic and mundane social interactions such as dinner with friends, fishing excursions, vacations, lunches, theater or sporting event tickets, birthday parties, movie tickets, children’s birthday parties, etc...are now cumbersome, methodical and tedious as trustees must record them as “gifts” and refuse common social and business courtesies from their friends and business associates who they learn to be a city vendor. The trustees can easily do this with the 10 – 20 Retirement System vendors. It is impossible to do so with the 1,000+ city vendors.

Similarly, all professional client interactions are now potentially compromised and convoluted. For example, should a trustee’s client receive a business proposal from a City vendor, certain written assurances need to be garnered that the terms and conditions offered are available to similarly situated members of the general public. Should a vendor to the City pay for travel expenses for a matter involving the trustees’ client, similar written assurances must be obtained. All business and/or social interactions with friends, clients and even potential clients must be cross-referenced with the City’s vendor list to ensure compliance. These trustees serve on the Retirement System based from a sense of civic duty and pride. As provided for by Florida Statutes, they are already personally liable as legal fiduciaries to the Retirement System subject to state restrictions on gifts and business conflicts³. They are not paid and, quite frankly, the risk does not justify their continued participation. The overwhelming negative impact to the Retirement System cannot be emphasized enough. The trustees appointed are extremely knowledgeable, intelligent, resourceful and dedicated members of the community. Their contributions to the well-being of the Retirement System are immeasurable. The Retirement System has already had its longest and most tenured trustee resign, taking with him invaluable institutional knowledge, due to his concerns over potentially damaging his livelihood should he accept a city vendor as a client or friend.

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.”

³ See F.S. sections 112.3144 and 112.3148.

Based on the aforementioned legal understandings and practical considerations, we encourage you to reevaluate your original opinion and hold the Retirement System to be an “advisory board” as defined in section 2-442 of the PBCCE. Also, we urge you to revise your opinion classifying resident, non-employee, city appointees as “officials.”

Yours truly,

A handwritten signature in black ink, reading "Robert A. Sugarman". The signature is written in a cursive style with a large, stylized initial 'R'.

ROBERT A. SUGARMAN
Board Certified Labor & Employment Lawyer

RAS/jd

cc: Board of Trustees



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 26, 2012

Robert Sugarman, Esquire
Sugarman & Susskind
100 Miracle Mile, Suite 300
Coral Gables, FL 33134

Re: City of Boca Raton Police & Firefighters' Retirement System
Request for Reconsideration on Ethics Opinion - RQO 11-060

Dear Mr. Sugarman,

I am in receipt of your letter of March 15, 2012 regarding the above Commission on Ethics decision.

In general terms, I would like to respond to a few of the legal interpretations you submitted for COE review. First, regarding the status of appointed trustees, the §2-442 definition of official is as follows:

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "employee" includes but is not limited to all managers, department heads and personnel of the county or the municipalities located within the county. The term also includes contract personnel and contract administrators performing a government function, and chief executive officer who is not part of the local governing body. **The term "official" shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies, and members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.** (emphasis added)

The term "official" is not limited to elected officials. Any person appointed by a municipal body "to serve on any board of the county, state, or any other regional, local, municipal, or corporate entity" is an official as defined by the code. As indicated in RQO 11-060, your Trustees are appointed by a municipal governing body.

Second, the code provisions dealing with financial misuse of office only apply to misuse of the position. If an official has a conflict as described in §2-443(a)(b) or (c), it is the use of their position that triggers a code violation. An official may not use their official position to benefit certain enumerated persons or entities. If it involves an issue coming before the board, an official must abstain and not participate. The mere status of a relationship with no official action does not trigger anything under these sections.

Third, §2-443((d)), the code provision dealing with prohibited contractual relationships, deals with an official who has contracts with the municipality he or she serves, directly or through their outside business or employer. It does not encompass relationships with customers or clients of the official who may have contracts with the municipality. It is true that some exceptions and waivers under this provision apply to advisory board members only and may be significant to your clients.

Fourth, §2-443(f) prohibitions regarding accepting travel expenses from vendors or lobbyists of the municipality may be waived by the governing body. This section applies to officials and by extension, to advisory board members.

Lastly, regarding the gift law, the vendor/lobbyist prohibition in §2-444(b) against soliciting or accepting a gift valued at more than \$100, annually in the aggregate, only applies to advisory board members soliciting or accepting gifts from vendors or lobbyists who lobby their board or the department under the board's authority. The code does not extend this prohibition to volunteer officials who are not advisory board members. While this may have been an oversight in drafting, the language of the code is clear. Likewise, under §2-444(c), no advisory board member may knowingly solicit a gift of any value from a vendor or lobbyist who lobbies his or her board or the municipal department subject to the board's authority if the gift is for the personal benefit of the board member, his or her family or another board member. Again, this prohibition does not apply to volunteer officials who are not advisory board members.

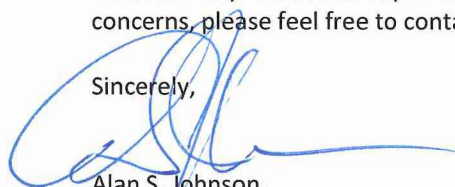
The gift law reporting requirements exclude state reporting individuals as per §2-444(f)(1). State reporting individuals must comply with state law and the code only requires a copy of the state form be sent to the COE. In fact, the state reporting requirements are more stringent than the code provisions, applicable to non state reporting individuals, which contain numerous exclusions not afforded to state reporting persons. It is my understanding that your clients are state reporting individuals.

Insofar as your request for reconsideration of RQO 11-060, specifically the issue of whether the Board of Trustees is an advisory board, the matter will be placed on the May agenda for discussion. On the one hand, §175.061(4)(Florida Statutes) states that *the Board of Trustees shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description*. Of additional significance, the municipality does not share vendors, supplies, staff or pay employees of the pension plans. Pension plan employees are not eligible for City benefits such as the retirement system or health insurance. In this context, the pension board is a separate entity and not sufficiently connected to the City to constitute an advisory board as defined in §2-442 of the Palm Beach County Code of Ethics.

On the other hand, as you pointed out in your letter request, it is *established by municipal ordinance*, as defined in §175.032, Florida Statutes. Nevertheless, while *established* by municipal ordinance, these entities are *created* by state statute and while local law plans are not required to follow the uniform requirements established in chapters 175 and 185, they must at the very least meet the minimum benefits and standards as provided by state law.

As you requested, this issue will be placed before the COE for reconsideration on May 3, 2012. In the meantime, I welcome any additional input from you on this issue. As always, should you have any further questions or concerns, please feel free to contact me.

Sincerely,



Alan S. Johnson,
Executive Director

ASJ/gal

VII – Processed Advisory Opinions

RQO 12-042 Christina Rodriguez

A municipal employee asked whether the municipality she serves could require her to sign a City *outside employment request form* in addition to the standard conflict of interest waiver form as provided by the Commission on Ethics.

Staff submits the following for COE approval: The Palm Beach County Code of Ethics (the Code) prohibits municipal and county employees and officials from entering into contracts or transactions with their public employer, directly or indirectly through the public employee's outside business or employer. However, an exception to this prohibition exists within the Code for public employees seeking part-time employment. This exception requires a waiver and is necessary only when the outside employer has contracts or conducts transactions with the City. The code does not prohibit a municipality from adopting more stringent policy rules and regulations with regard to outside employment.

RQO 12-047 Linda Elie

A member of a municipal advisory board asked whether her service as an advisory board member created a conflict of interest should a customer or client of her outside business, who is a personal friend, give her Christmas or birthday gifts.

Staff submits the following for COE approval: Gifts given to officials in excess of \$100, computed annually and in the aggregate, are only prohibited if accepted from a vendor, lobbyist, principal or employer of a lobbyist who lobbies an advisory board member's board or the department over which the board exercises authority. Notwithstanding this limitation, a gift of any value may not be accepted in exchange for the past, present or future performance of an official public action or legal duty.

Otherwise, gifts are regulated to the extent that a single gift with a value in excess of \$100 is subject to an annual gift reporting requirement. Depending upon the facts and circumstances, there is no requirement to report gifts from a personal friend or co-worker motivated by a personal or social relationship rather than an attempt to obtain the good will or otherwise influence the official in the performance of his or her official duties.



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

May 24, 2012

Christina Rodriguez, Network Administrator
City of Boynton Beach
100 East Boynton Beach Blvd.
P.O. Box 310
Boynton Beach, FL 33425

Re: RQO 12-042
Contractual relationships/part-time employment waiver

Dear Ms. Rodriguez,

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 submission of May 10, 2012, whether your municipal employer could require you to sign a City *outside employment request form* in addition to the standard conflict of interest waiver form as provided by the Commission on Ethics.

IN SUM, the Palm Beach County Code of Ethics (the Code) prohibits municipal and county employees and officials from entering into contracts or transactions with their public employer, directly or indirectly through the public employee's outside business or employer. However, an exception to this prohibition exists within the Code for public employees seeking part-time employment. This exception requires a waiver and is necessary only when the outside employer has contracts or conducts transactions with the City. This does not prohibit a municipality from adopting more stringent policy rules and regulations than those required by the Code.

THE FACTS as we understand them are as follows:

You are currently an employee of the City of Boynton Beach (the City). You have been offered a part-time position with a private for-profit school. You have not responded to a COE staff request for additional information regarding whether or not the school maintains contracts or otherwise transacts business with the City.

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

Section 2-443(d) states as follows:

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

An exception to this prohibition exists within the Code for public employees seeking part-time employment. This exception requires a waiver and is necessary only when the outside employer has contracts or conducts transactions with the City. The waiver requirements may be found in §2-443(e)(5) as follows:

Notwithstanding any provision to the contrary, subsection (d) shall not be construed to prevent an employee from seeking part-time employment with an outside employer who has entered into a contract for goods or services with the county or municipality as applicable provided that:

- a. The employee or relative of the employee does not work in the county or municipal department as applicable which will enforce, oversee or administer the subject contract; and
- b. The outside employment would not interfere with or otherwise impair his or her independence of judgment or otherwise interfere with the full and faithful performance of his or her public duties to the county or municipality as applicable; and
- c. the employee or relative of the employee has not participated in determining the subject contract requirements or awarding the contract; and
- d. the employee's job responsibilities and job description will not require him or her to be involved in the outside employer's contract in any way including, but limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance; and
- e. *the employee demonstrates compliance with applicable merit rules regarding outside employment and obtains written permission from his or her supervisor; and*
- f. The employee has obtained a conflict of interest waiver from the chief administrative officer and the employee's department head of the county or municipality based on a finding that no conflict exists. The employee shall submit the request for waiver in writing and under oath. The request for the waiver shall be signed by the employee under oath or affirmation on an approved form provided by the Commission on Ethics. The document shall contain written acknowledgment of compliance with the provisions of (5)a. through (5)e. of this subsection, together with such pertinent facts and relevant documents that support such waiver. A waiver under this subsection must be approved by both the employee's supervisor and chief administrative officer of the county or municipality. The county or municipality shall record such waiver in the employee's personnel file and shall submit a copy of the waiver and all related documents to the commission on ethics. The commission on ethics in its discretion may elect to review, comment on, or investigate any waiver. The commission on ethics review or investigation shall not delay an employee's ability to take the part time employment.

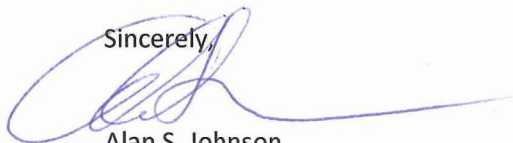
The waiver requirements of §2-443(e)(5) apply to the Code prohibition only. Therefore, if your outside employer does not transact business with the City, no waiver is required. However, the Code does not prohibit a municipality employing more stringent or additional requirements with regard to outside employment. In fact, section 2-443(e)(5)e specifically requires that you comply with applicable municipal merit rules regarding outside employment and obtain written permission from your supervisor. Therefore, should the City impose additional requirements, your compliance and supervisor approval is required.

IN SUMMARY, contractual relationship prohibitions and waiver requirements under the Code apply to part-time outside employment where the outside employer transacts business with your municipality. A waiver of the contractual relationship prohibition requires that you adhere to your municipal merit rules, policies and obtain the approval of your municipal supervisor. Regardless of whether or not a potential conflict exists under the Code, a municipality has authority to impose more stringent rules and policies regarding outside employment of its municipal employees.

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

Please feel free to contact me at 561-233-0724 if I can be of any further assistance 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

May 29, 2012

Linda Elie, CPA
2040 Galloway Trail
Wellington, FL 33414

Re: RQO 12-047
Advisory boards/customer or client

Dear Ms. Elie,

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 submission dated May 23, 2012, whether your service on a municipal advisory board creates a conflict with customers or clients of your outside business when a client who is a personal friend gives you Christmas and birthday gifts.

IN SUM, gifts given to officials in excess of \$100, computed annually and in the aggregate, are only prohibited if accepted from a vendor, lobbyist, principal or employer of a lobbyist who lobbies your municipal advisory board. Notwithstanding this limitation, a gift of any value may not be accepted in exchange for the past, present or future performance of an official public action or legal duty.

Otherwise, gifts are regulated to the extent that a single gift with a value in excess of \$100 is subject to an annual gift reporting requirement. Depending upon the facts and circumstances, there is no requirement to report gifts from a personal friend or co-worker motivated by a personal or social relationship rather than an attempt to obtain the good will or otherwise influence the official in the performance of his or her official duties.

THE FACTS as we understand them are as follows:

You are an accountant and newly appointed official to the Wellington Equestrian Preserve Committee (EPC), an advisory board of the Village of Wellington (the Village). Your outside accounting business serves numerous customers and clients, including the Palm Beach County Sheriff's Office (PBSO) and other municipal and state government entities. You do not represent any customers or clients who sell, lease or lobby either the Village or the EPC. PBSO does serve the Village of Wellington as a police agency, but does not appear before the EPC or conduct business with EPC staff.

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

A gift is considered the transfer of anything of value without adequate and lawful consideration.¹ A gift of any value may not be accepted by an official because of the past, present or future performance of a legal duty or official act taken.² In addition, no gift of a value in excess of \$100, annually in the aggregate, may be accepted by

¹ Palm Beach County Code of Ethics, Art. XIII, §2-444(g).

² Palm Beach County Code of Ethics, Art. XIII, §2-444(e).

an advisory board member from a vendor, lobbyist, principal or employer of a lobbyist who sells, leases or lobbies the official's board or the department subject to that board's authority.³ None of your customers or clients conducts business with, or lobbies the EPC. Therefore, this prohibition does not apply to a gift given to you by one of your clients.

While not prohibited, a single gift of a value in excess of \$100 must be reported on an annual gift reporting form unless one of several exceptions applies. In your scenario, the gift is given to you by a client who is also a personal friend. Section 2-444(f) states as follows:

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

- a. *Personal Gifts.* All officials and employees who are not reporting individuals under state law are not required to report gifts in excess of one hundred dollars (\$100) so long as those gifts are given to the official or employee by a personal friend or co-worker and the circumstances demonstrate that the motivation for the gift was the personal or social relationship rather than an attempt to obtain the goodwill or otherwise influence the official or employee in the performance of his or her official duties. Factors to be considered in determining whether a gift was motivated by a personal or social relationship may include but shall not be limited to: whether the relationship began before or after the official or employee obtained his or her office or position; the prior history of gift giving between the individuals; whether the gift was given in connection with a holiday or other special occasion; whether the donor personally paid for the gift or sought a tax deduction or business reimbursement; and whether the donor gave similar gifts to other officials or employees at or near the same time. If the personal friend or co-worker is a vendor, lobbyist or principal or employer of a lobbyist that lobbies the county or municipality as applicable, then the official or employee shall not accept a gift in excess of \$100 in accordance with subsections (a)(1) and (b)(1).

IN SUMMARY, based on the facts and circumstances you have provided, you are not prohibited from accepting gifts of any value from your clients who are not vendors, lobbyists, principals or employers of lobbyists who do business with or lobby your advisory board or the municipal department within your authority. No gift may be accepted if based upon the past, present or future performance of a legal duty or an official action taken.

Gifts in excess of \$100 in value are ordinarily reportable on an annual gift report form; however, an exception exists for personal friends or co-workers where the circumstances demonstrate the gift is motivated by the personal or social relationship rather than to influence the performance of your official duties.

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

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

Sincerely,



Alan S. Johnson
Executive Director

ASJ/gal

³ Palm Beach County Code of Ethics, Art. XIII, §2-444(b).

IX – Proposed Advisory Opinions

RQO 12-032 Bill Orlove (Revised)

An elected official asked whether the Palm Beach County Code of Ethics regulates or prohibits elected officials from receiving a monthly expense allowance, established by their City Commission by resolution and contained in the City personnel policy manual, *to cover travel and expense expenditures made in the performance of their official duties*. He also asked whether a record of these expenditures should be submitted by the City Commissioners for purposes of transparency. Additionally, he asked whether he can use a portion of the expense stipend to make charitable contributions supporting non-profit organizations within the community, including a school that employs his wife.

Staff submits the following to the COE for approval: An official may not use his or her official position to obtain a special financial benefit for him or herself, a spouse or domestic partner or their outside business or employer, as well as a number of additional persons or entities with whom the official has some financial or fiduciary relationship. In addition, an official may not use their official position to obtain any benefit, for any person, if done corruptly.

A government body may transparently resolve to advance travel and other expenses to the Mayor and City Commissioners, incurred in the performance of their official duties. However, if the expense funds are used for personal benefit and not in the *performance of official duties*, such use may constitute a financial misuse of office or a corrupt misuse of office, depending upon the facts and circumstances.

Lastly, as neither the elected official nor their spouse serves as an officer or director of a non-profit organization, use of expense funds would not violate the misuse of office section specific to those conflicts. The COE cannot opine as to whether such donations would violate City ordinance, policy or procedure. However, donations to a non-profit that employs an official's spouse may violate the prohibition against using one's official position to specially benefit the *employer or business* of their spouse.

RQO 12-033 Patti Hamilton

A vice-president of marketing and development for a local corporation asked whether members of a company's executive team are required to register as lobbyists if they meet with elected officials or county and municipal staff from time to time.

Staff submits the following for COE approval: A lobbyist is any person who is employed and receives payment, or who contracts for economic consideration for the purpose of lobbying on behalf of a principal, and *shall include an employee whose principal responsibility to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government*. Whether or not a particular individual is captured within this definition is determined by the specific facts and circumstances surrounding the person's status and the nature of the contact between that individual and public employees and officials.

When an owner or employee of a business lobbies directly on behalf of his or her business or employer, not on behalf of a principal of their business or employer, and lobbying is not their principal employment responsibility, the owner or employee is not required to register as a lobbyist.

RQO 12-034 Debbie Couch

A municipal employee asked whether she was prohibited by the Code of Ethics from making group hotel and conference center reservations in her private capacity for members of a non-governmental professional organization and receiving rewards points through a hotel rewards system for that reservation and if so, how should she report the points on her annual gift reporting form. Additionally, she asked whether her municipal employer may reimburse her travel expenses for the conference where her attendance is in her official capacity, for a public purpose, and approved by her municipal supervisor.

Staff submits the following for COE approval: A public employee who is an officer or director of a professional organization must take great care not to use their public position to give a special financial benefit to themselves or the organization.

Public employees are not prohibited from attending conferences and being reimbursed by their public employer in their public capacity, provided their attendance is for government purposes and has been approved by the employee's supervisor. Commercial rewards points for official business, where costs are reimbursed by a public employer, may not be personally accepted by a public employee for their private benefit.

However, public employees are not prohibited from accepting hotel rewards points accrued in their personal or private capacity. Where a public employee receives additional hotel rewards points for arranging conference accommodations in their private capacity, they may accept those points and are not required to report the value of the rewards so long as the reward dollars are given in consideration of their agreement with the hotel.

RQO 12-035 John Szerdi

A filed candidate running for elected office asked whether he may participate in a Request for Qualifications (RFQ) and ultimately enter into a contract with the municipality he seeks to serve. He also asked whether if elected, he would have a conflict should the contract be ongoing.

Staff submits the following for COE approval: A candidate for City Commission is not considered an official as defined by the Palm Beach County Code of Ethics (the Code). However, if elected, an official may not enter into a contractual relationship with the City. Once an elected official assumes office, an existing contract may continue until completed provided there are no changes, alterations or renewals.

RQO 12-036 Dani Bailey

A municipal employee asked as the program supervisor of a Village-operated travel club, whether she could accept a two night stay at an Orlando resort in her official capacity and if so, whether members of her family may accompany her on this official fact-finding trip.

Staff submits the following for COE approval: A public employee is not prohibited from accepting a two night stay at a resort hotel so long as it is in performance of her public duties and for a public purpose as program supervisor of the Village Travel Club. Under those circumstances, it is not considered a gift. However, an employee may not use his or her official position to provide a special financial benefit to his or her relatives as specified in §2-443(a)(3) of the Code of Ethics. Employees are prohibited from accepting a gift of any value in exchange for the performance of an official action or legal duty. Therefore, were a family member to accompany a public employee on an official fact-finding trip, the employee or family member would need to reimburse the amount of value received by the accompanying family member within 90 days to eliminate the financial benefit.

ROQ 12-037 Carla Crow

A county employee asked whether she may benefit from gifts given to her husband unrelated to her status as a Palm Beach County employee and if so, whether the value of these gifts must be reported pursuant to the Palm Beach County Code of Ethics (the Code).

Staff submits the following for COE approval: The prohibitions and transparency requirements of the Code apply to gifts given to an employee's spouse when the employee obtains a benefit from the value of those gifts. Therefore, the amount of value attributable to the employee's share of a single gift is reportable if in excess of \$100. If the gift is given by a vendor or lobbyist of an employee's government employer, it is prohibited if the value of his or her share of the gift(s) exceeds \$100, annually in the aggregate. In order to accept such a gift, the employee must compensate the donor for the amount of his or her share in excess of \$100 within 90 days of receiving the gift.

RQO 12-040 Alex Ream

A municipal advisory board member and potential appointee to the Northwood/Pleasant City Community Redevelopment Agency Advisory Board, asked whether the Palm Beach County Code of Ethics prohibits his outside employer, Chase Bank, from contracting with the City.

Staff submits the following for COE approval: Municipal advisory board members are not prohibited from having a contractual relationship with the municipality they serve provided that the subject contract or transaction is disclosed at a public meeting of the municipal governing body and their advisory board *provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.*

Independent or Dependent Districts, known as Community Redevelopment Agencies (CRA), are not advisory boards as defined by the Code of Ethics. These entities are independent of County and municipal government and as such are not within the jurisdiction of the Commission on Ethics (COE). To the extent that a CRA advisory board member is appointed by the CRA and not a municipal governing body, the advisory board member is, likewise, not under COE jurisdiction.

RQO 12-041 Marie Davis

A municipal advisory board member asked whether she has a conflict of interest, as a director of a non-profit civic organization, should the organization advocate a position on a matter before her board.

Staff submits the following for COE approval: As appointed officials, advisory board members are prohibited from using their official position to give a financial benefit, not shared with *similarly situated members of the general public*, to a civic organization that they serve as an officer or director. Voting on a matter, participating in conversations or attempting to influence fellow board members would therefore constitute a misuse of office. The prohibition extends to the advisory board member or someone using the member's official position on their behalf. Should such a conflict arise, advisory board members *must publically disclose the nature of the conflict*, file the required state disclosure form, refrain from voting and not participate in, or influence the process.

However, if the issue does not involve a financial benefit to the members of the civic organization, or the benefit is shared with similarly situated members of the general public, and there is no *quid pro quo* or other corrupt use of office, then the board member is not prohibited from participating.

RQO 12-043 Pam Triolo

A municipal elected official asked about her obligations under the Code of Ethics as an owner of a company that does business with other entities within the City.

Staff submits the following for COE approval: Elected officials are prohibited from using their office to give a special financial benefit, not shared with *similarly situated members of the general public*, to themselves, their outside business, or a customer or client of their outside business. A customer or client is defined as a person or entity to which your outside business has supplied goods or services valued in excess of \$10,000, in the aggregate, over the previous 24 months. Voting on your customer or client's proposal, participating in conversations or attempting to influence City staff or fellow commission members would constitute a misuse of office. The prohibition extends not only to the elected official but also to someone using the official's position on their behalf. In addition, an elected official may never use their official position to secure any benefit for themselves or others as a *quid pro quo* or with a wrongful intent, in a manner inconsistent with the performance of their public duties.

RQO 12-044 Jason Davis

A county employee asked whether Palm Beach County Employees may host a Chili Cook-off and solicit supplies/ingredients and raffle prizes from vendors in order to fund a Palm Beach County (the County) sponsored event, in conjunction with the Palm Beach County School Board, to benefit school children within the County.

Staff submits the following for COE approval: When acting in their official capacity, Palm Beach County Employees are not prohibited from soliciting and accepting donations from County vendors, lobbyists, principals and employers of lobbyists on behalf of Palm Beach County provided that donations are accepted solely by the County and used for a public purpose.

RQO 12-045 Johnny Greene

A municipal elected official asked whether he may accept temporary housing from a personal friend who is a director of a civic organization that employs a lobbyist compensated by a third party, and if so, whether the value of the housing is reportable under the Palm Beach County Code of Ethics (the Code).

Staff submits the following for COE approval: where a personal friend/donor is a director of a civic organization, and the organization is a *principal* or *employer* of a lobbyist, elected officials are prohibited from accepting a gift, even if from a personal friend, of a value in excess of \$100, annually in the aggregate.

Under the Code, elected officials, identified by state law as reporting individuals, are only required to report gifts pursuant to state law and file a copy of the report with the Palm Beach County Commission on Ethics (COE).

RQO 12-046 Nelson Berrios

A municipal police officer asked whether volunteers who participate in Town Police Department programs are subject to the Palm Beach County Code of Ethics, including mandatory ethics training.

Staff submits the following for COE approval: the Palm Beach County Code of Ethics (the Code) applies to all county and municipal employees. Paid employees or contract employees performing a government function are clearly within the jurisdiction of the Code. Volunteers are within the definition of employee if they have the ability to exercise discretionary power as a government functionary. Therefore, all employees, including volunteers who may exercise such discretionary power, must complete mandatory ethics training. However, volunteer participants in a community education or outreach programs that are not given authority to exercise discretionary power or otherwise act in an official capacity are not considered county or municipal employees within the meaning of the Code.

June 8, 2012

Bill Orlove, District 1 Commissioner
City of Boynton Beach
100 East Boynton Beach Blvd.
Boynton Beach, FL 33425

Re: RQO 12-032
Misuse of Office/Expense Accounts

Dear Commissioner Orlove,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on June 7, 2012.

YOU ASKED in your e-mail submission on April 19, 2012, whether the Palm Beach County Code of Ethics regulates or prohibits you, as an elected official of the City of Boynton Beach (the City), in receiving a monthly expense allowance, established by the City Commission by resolution and contained in the City personnel policy manual, *to cover travel and expense expenditures made in the performance of their official duties*. You also asked whether a record of these expenditures should be submitted by the City Commissioners for purposes of transparency.

Additionally, you asked whether you can use a portion of the expense stipend to make charitable contributions supporting non-profit organizations within the community, including a school that employs your wife.

IN SUM, an official may not use his or her official position to obtain a special financial benefit for him or herself, a spouse or domestic partner or their outside business or employer, as well as a number of additional persons or entities with whom the official has some financial or fiduciary relationship. In addition, an official may not use their official position to obtain any benefit, for any person, if done corruptly.

A government body may transparently resolve to advance travel and other expenses to the Mayor and City Commissioners, incurred in the performance of their official duties. However, if the expense funds are used for personal benefit and not in the *performance of official duties*, such use may constitute a financial misuse of office or a corrupt misuse of office, depending upon the facts and circumstances.

Lastly, as neither you nor your spouse are officers or directors of a non-profit organization, use of expense funds would not violate the misuse of office section specific to those conflicts. The COE cannot opine as to whether such donations would violate City ordinance, policy or procedure. However, donations to a non-profit that employs your spouse may violate the prohibition against using your official position to specially financially benefit the *employer or business* of your spouse.

THE FACTS as we understand them are as follows:

You are an elected City Commissioner of the City of Boynton Beach (the City). In 2002 the City Commission authorized by resolution that *the Mayor and City Commission each receive a monthly*

*allocation to cover expenses incurred in the performance of their official duties.*¹ The City Resolution is not limited to travel and related expenses. While, the allowance is further codified under the City Personnel Policy Manual,² the policy reference is contained within the *Travel Reimbursement* section of the manual. The City Resolution allowance is an allocation and not a reimbursement of travel and related expenses as authorized by State Statute.³

Neither the Resolution nor City policy requires that these expenses be reported. The monthly gross amount allocated to your expense account is \$593 which comes to \$7,117 annually. There is no mechanism for monies not expended under this Resolution to be returned. Each Commissioner receives approximately \$1,300 per month gross salary⁴ in addition to the expense allowance. According to the information you provided, both the salary and the advance expense allowance constitute taxable income.

Your staff researched whether other Florida public agencies had an advance expense allowance similar to the City. Five municipalities responded and none had a monthly advance expense allowance. The responding cities reimburse travel and related expenses on a per diem basis in accordance with §112.061, Florida Statutes, which is similar to how the City deals with its staff employees.

In the interest of transparency you personally file a monthly report with the City Clerk showing how your expense account is used. To your knowledge, you are the only elected official in the City to do so. As previously indicated, there is no ordinance or policy requirement to file such a report.

It is your understanding that the expense account can be used for any activity that involves you in your official capacity as an elected official. There are no specific guidelines in either Resolution 02-097 or the City Personnel Policy Manual as to what constitutes *official duty* or a *public purpose*. You understand a *public purpose* to mean meals purchased when meeting with City staff, registered lobbyists, other elected officials or a constituent to discuss City business or issues. In addition, from time to time you may use the account by making donations in support of non-profit organizations in your community. Neither you nor your spouse is a director or officer of these non-profit organizations, however, you have donated a portion of this stipend to your wife's school, located in the City, to provide books for students and to assist children who want to attend the annual safety patrol trip to Washington, DC. You have been advised by the City Attorney that your practice is permitted under the City's ordinance and personnel policy manual.

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

The Commission on Ethics is *authorized to review ordinances...relating to ethics in government and report and make recommendations to the Board of County Commissioners and municipal elected officials as it deems appropriate.*⁵ In this context, the COE will review City Resolution 02-097.

¹ City of Boynton Beach Resolution No. 02-097

² B. Expense Allowance for Public Officials:

1) Public Official shall receive, in lieu of reimbursements, a monthly expense allocation to cover travel and expense expenditures. The amount of expense allocation shall be established, and may be amended, by resolution of the City Commission.

³ §112.061, Florida Statutes, authorizes reimbursement of per diem and travel expenses of public officers

⁴ The Mayor's salary is approximately \$1,500 per month

⁵ §2-258. Powers and duties.

Section 2-443(a) prohibits you from using your official position or office in a manner which you know or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for yourself, a relative, spouse or domestic partner or their outside business or employer, and a number of other persons or entities with whom you may have a financial or fiduciary relationship. Likewise, section 2-443(c) prohibits participating and voting on an issue where such a conflict exists. Using your official position to contribute public funds to your wife's employer may violate the misuse of office sections of the Code.

Activities related to your official position may be broadly interpreted, and decisions by governing bodies, where there is transparency and public input, will rarely be disturbed. For example, the City Commission can vote on a resolution to provide a salary to the Mayor and Commissioners.⁶ However, section 2-443(b), *corrupt misuse of office*, would apply to a situation where an official or governing body uses their official position to *corruptly secure or attempt to secure a special privilege, benefit or exemption* for themselves or any other person. Corruptly means done with a wrongful intent and for the purpose of obtaining any benefit which is inconsistent with the proper performance of their official duty.⁷ Absent a factual scenario that would support such a corrupt intent, City officials are permitted to transparently make such salary and expense decisions without violating the financial misuse or voting conflicts section of the code.⁸

Where there is no guidance as to what constitutes an *official duty* or a *public purpose*, a commissioner runs the risk of violating the misuse of office sections of the Code. Based on the facts and circumstances you submitted, the City Resolution does not define *performance of official duties* or *public purpose* in relation to these stipends. Although, to your credit, you have taken it upon yourself to submit an accounting of expenses, there is no such requirement in the City Resolution. In addition, funds not expended are not returned to the City, but retained by the elected officials. Such a practice may violate the Code of Ethics if unspent funds result in a special financial benefit to the official.⁹

Under the current City Resolution, officials run the risk of violating the Code of Ethics as a result of the following: first, *official duties* is undefined and may lead to circumstances which support allegations of misuse; second, there is no transparent accountability as to how these monies are spent, and; third, the retention of unspent monies would appear to be a special financial benefit to the official. While the COE cannot speculate as to facts and circumstances not presented, the process itself lacks transparency and presents an appearance, if not the risk of impropriety.

IN SUMMARY, while an elected body has great discretion as to how public monies are spent, and similar discretion in determining the public purpose of expenditures arrived at through a transparent legislative process, the individual actions of an official are subject to Code of Ethics scrutiny. Unlike a salary, an expenditure stipend designated for the performance of official duties is regulated as to use. Where a process is in place that provides upfront stipends for expenditures for official duties but fails to specify the nature of those official duties, there is a risk that an interpretation by an official is not in compliance with the Palm Beach County Code of Ethics. Likewise, where there is no requirement to account for these expenditures, there is no transparency or accountability built within the process. This is

⁶ Such an ordinance is already in place in the City. City of Boynton Beach Ordinance No. 03-037, also see, §112.313(5), supra.

⁷ In Bell, California, public elected officials allegedly appropriated \$5.5 million dollars in salary and benefits for themselves and high ranking city staff, including six-figure salaries for city council members.

⁸ §112.313(5) Salary and expenses.—No public officer shall be prohibited from voting on a matter affecting his or her salary, expenses, or other compensation as a public officer, as provided by law.

⁹ §2-443(a) *Misuse of public office or employment*

compounded by the fact that unspent expenditure stipends are not required to be returned. Retaining these funds for personal use would appear to constitute a special financial benefit to the official, and potentially be a violation of the misuse section of the Code of Ethics.

Lastly, the prohibition against using your official position to specially financially benefit a non-profit organization is not violated, provided you (or your spouse) are not an officer or director of the recipient organization. The COE cannot opine as to whether or not use of these funds for such a purpose is permissible under your City Resolution. However, the Code of Ethics prohibits you from using your official position to specially financially benefit your spouse's employer.

This opinion construes the Palm Beach County Code of Ethics ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics. Please feel free to contact me at 561-233-0724 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/gal

PROPOSED

June 8, 2012

Ms. Patti Hamilton, Vice President/Director of Business Development
Southern Waste Systems
790 Hillbrath Drive
Lantana, FL 33462

Re: RQO 12-033
Lobbyist Registration Ordinance

Dear Ms. Hamilton,

The Commission on Ethics (COE) considered your request for an advisory opinion and rendered its opinion at a public meeting held on June 7, 2012.

YOU ASKED in your email dated April 23, 2012 whether members of a company's executive team are required to register as lobbyists if they meet with elected officials or county and municipal staff.

IN SUM, a lobbyist is any person who is employed and receives payment, or who contracts for economic consideration for the purpose of lobbying on behalf of a principal, and *shall include an employee whose principal responsibility to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government*. Whether or not a particular individual is captured within this definition is determined by the specific facts and circumstances surrounding the person's status and the nature of the contact between that individual and public employees and officials.

However, when an owner or employee of a business lobbies directly on behalf of his or her business or employer, rather than on behalf of a principal of their business or employer, and lobbying is not their principal employment responsibility, the owner or employee is not required to register as a lobbyist.

The FACTS as we understand them are as follows:

You are the Vice President/Director of Business Development for Southern Waste Systems, LLC, Sun Recycling, Sun Disposal and All Star Toilets. Southern Waste Systems, LLC (SWS) is the umbrella organization for these entities. While Sun Recycling and All Star Toilets are distinct companies, all three organizations share a website, ownership, and management team. SWS contracts with 5 lobbyists who are registered to lobby on behalf of SWS in Palm Beach County. In an abundance of caution, you have also registered as a lobbyist.

In your position as Vice President you oversee marketing and development for all four brands. From time to time, when an SWS lobbyist meets with a member of a municipal or county government you accompany the lobbyist to answer questions and provide information about the company. Additionally, you or other members of SWS management may schedule appointments and meet with elected officials or employees of the County or a municipality regarding SWS existing or potential contracts.

For example, when the existing waste contract was expiring for the Town of Juno Beach, you met with the Town Manager. After meeting with the Town Manager, you gave a three to five minute presentation to the City Council at a public meeting discussing the potential benefits to contracting with SWS. Over the course of the last year, you believe that you have met with government officials or staff members 3 or 4 times. While you acknowledge that it is not uncommon for companies in the waste industry to have full time employees that handle government relations, SWS does not. Lobbying is not your principal employment responsibility for SWS management.

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

Section 2-353 of the lobbyist registration ordinance requires all lobbyists to register by electronic submission via the "Central Lobbyist Registration Site" or by paper submission prior to lobbying. Whether or not a person appearing before a public official or employee must register as a lobbyist depends upon whether they are a lobbyist as defined by the Lobbyist Registration Ordinance (Lobbyist Ordinance). Section 2-352 contains the definitions of lobbyist and lobbying.

Lobbying shall mean seeking to influence a decision through oral or written communication or an attempt to obtain the goodwill of any county commissioner, any member of a local municipal governing body, any mayor or chief executive officer that is not a member of a local municipal governing body, any advisory board member, or any employee with respect to the passage defeat or modification of any item which may foreseeably be presented for consideration to the advisory board, the board of county commissioners, or the local municipal governing body lobbied as applicable.

Lobbyist shall mean any person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying on behalf of a principal, and shall include an *employee whose principal responsibility to the employer is overseeing the employer's various relationships with the government or representing the employer in its contacts with government.* (emphasis added)

When you meet with a county or municipal elected official or staff member to discuss a project which may foreseeably be presented to a board or commission, you are "lobbying" as defined by the Lobbyist Ordinance and the Palm Beach County Code of Ethics (the Code). However, based upon the facts and circumstances presented, you are not a lobbyist. A member of SWS staff whose principal responsibility to the organization is overseeing contacts between SWS and the County or a municipality would be required to register as lobbyist. While you do meet with staff and lobby elected officials, you estimate that over the past year you have attended 3 to 4 meetings with elected officials and that less than 5 percent of your time is spent lobbying on behalf of your employer. Accordingly, you do not fall within the definition of a lobbyist as defined by the Lobbyist Ordinance or the Code and are not required to register as a lobbyist with the County or any municipality.

IN SUMMARY, based on the facts and circumstances you provided, as a member of SWS management whose principal responsibility is marketing and business development for the SWS companies, you are not required to register as a lobbyist pursuant to the Lobbyist Registration Ordinance. You are a member of SWS staff and are not employed principally for the purpose of overseeing or representing SWS in its contacts with government.

This opinion construes the Palm Beach County Code of Ethics and Lobbyist Registration 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

June 8, 2012

Ms. Debbie Couch
Town of Jupiter
210 Military Trail
Jupiter, FL 33458

Re: RQO 12-034
Gift Law/ Gift Exceptions

Dear Ms. Couch,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on June 7, 2012.

YOU ASKED in your email and follow up phone call of May 2, 2012, whether you, as a municipal employee, may make group hotel and conference center reservations in your private capacity for members of a non-governmental professional organization and receive rewards points through a hotel rewards system. If so, are you required to report the value of those points should the value exceed \$100. In addition, you asked whether your municipal employer can reimburse your travel expenses for the conference where your attendance is in your official capacity, for a public purpose, and approved by your municipal supervisor.

IN SUM, a public employee who is an officer or director of a professional organization must take great care not to use their public position to give a special financial benefit to themselves or the organization.

Public employees are not prohibited from attending conferences and being reimbursed by their public employer in their public capacity, provided their attendance is for government purposes and has been approved by the employee's supervisor. Commercial rewards points for official business, where costs are reimbursed by a public employer, may not be personally accepted by a public employee for their private benefit.

However, public employees are not prohibited from accepting hotel rewards points accrued in their personal or private capacity. Where a public employee receives additional hotel rewards points for arranging conference accommodations in their private capacity, they may accept those points and are not required to report the value of the rewards so long as the reward dollars are given in consideration of their agreement with the hotel.

THE FACTS as we understand them are as follows:

You are a Town of Jupiter (the Town) employee and also serve as a member and President of the Palm Beach and Treasure Coast Payroll Association (PBTCPA), a local chapter of the American Payroll Association (APA), a private professional organization. In your personal capacity, unrelated to your employment with the Town, you are responsible for all meeting arrangements for the APA Florida Statewide Payroll Conference scheduled for August 15-17 at the Boca Raton Marriott at Boca Center. This hotel offers extra reward points to all meeting planners upon successful completion of an event at their property. You believe the value of these points may exceed \$100. This promotion is available to any event organizer, whether they are a member of a professional organization, non-profit development team or wedding planner. Marriott is not a vendor of the Town.

All conference work is done in your private capacity on personal time. However, the Town plans to send you to the conference and reimburse your attendance fee. Your attendance and the reimbursement have been approved by your supervisor.

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

§2-443 (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in *a special financial benefit, not shared with similarly situated members of the general public*, for any of the following persons or entities:

(1) Himself or herself;

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

You may not use your public position to give a special financial benefit, not shared with similarly situated members of the general public, to either yourself or the PBTCPA. Using your *official title* to fundraise or otherwise specially financially benefit the PBTCPA, to the exclusion of all other organizations similarly situated, violates the misuse of office section of the code. Likewise, using your official position to obtain a personal benefit is prohibited. Additionally, any use of office resulting in a *quid pro quo* or other corrupt misuse of office is prohibited under §2-443(b) of the Palm Beach County Code of Ethics.

Regarding the gift law section of the Code, §2-444(g) defines a gift as anything of economic value, *without adequate and lawful consideration*. However, the Code provides that a gift does not include *registration fees and other related costs associated with educational or governmental conference or seminars and travel expenses either properly waived or inapplicable pursuant to section 2-443(h), 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*.

Under the facts and circumstances you have submitted, Marriott rewards points are provided as a promotional offering to all event planners hosting conferences, weddings, or other occasions at Marriott Hotels. Essentially, these points are given in consideration for an organization choosing a Marriott Hotel over another hotel or conference location. Accordingly, rewards points accepted as part of a contractual agreement in consideration for using the hotel, *and obtained in your personal capacity for a non government organization*, are not considered a gift under the Code of Ethics and are thus not reportable.

In addition, when an employee attends a conference in their official capacity, related to his or her official duties, and attendance is approved by an employee's supervisor and is for educational or governmental purposes, reimbursement by the Town is not considered a gift as defined by §2-444(g) of the gift law and therefore does not need to be reported if the value exceeds \$100.¹

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

Employees must keep in mind that while attending educational conferences or seminars, they may not otherwise accept gifts in excess of \$100, in the aggregate, from a vendor, lobbyist, principal or employer or a lobbyist who lobbies, sells or leases to the Town.² Employees are prohibited from accepting anything of value in exchange for a past, present or future *official action taken or legal duty performed*.³

IN SUMMARY, based on the facts and circumstances submitted, a municipal employee, in her personal capacity, is not prohibited from accepting hotel rewards points received in exchange for selecting a hotel as a meeting site for her non-government professional organization's annual conference. As a bargained for benefit of hosting a conference at a Marriott Hotel, the rewards points are not considered a gift under the Code of Ethics and are not reportable.

Public employees are not prohibited from attending professional development conferences, and receiving travel reimbursement from their public employers so long as their attendance is for governmental purposes, related to the employee's duties and responsibilities as a Town employee, and attendance has been approved by their supervisor.

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

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

Sincerely,

Alan S. Johnson
Executive Director

ASJ/mcr/gal

² RQO 11-047, 2-444(a)(1)

³ §2-444(e)

June 8, 2012

John Szerdi
LDG Florida Architects, Inc
120 North Federal Highway, Suite 211
Lake Worth, FL 33460

Re: RQO 12-035
Conflict of Interest/Prohibited Contracts

Dear Mr. Szerdi,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on June 7, 2012.

YOU ASKED in your submission dated April 24, 2012, whether as a filed candidate running for the Office of Commissioner for the City of Lake Worth (the City), you may participate in a Request For Qualifications (RFQ) and ultimately enter into a contract with the City. You also asked whether you would have a conflict if elected, should the contract be ongoing.

IN SUM, as a candidate for City Commission, you are not considered an official as defined by the Palm Beach County Code of Ethics (the Code). However, if you are elected, you may not enter into a contractual relationship with the City. If you assume office, an existing contract may continue until completed provided there are no changes, alterations or renewals.

THE FACTS as we understand them are as follows:

You are a local businessman and architect in the City. You are also a candidate for City Commission, District 4, and qualified with the City Clerk on December 7, 2011 for the upcoming November, 2012 election.

As a local architect, you have been asked to team up with some firms to respond to a Request for Qualifications (RFQ) from the City for a City project. The RFQ is related to a City public services complex design/build project. You would be part of a team of contractors, engineers and architects hired to produce the design and construction of the project. As an architect, you are not a sole source provider of these services to the City. The RFQ is not a bid, but a submittal of qualifications that indicate the design team has the experience and knowledge to accomplish the project. The City will then go through a short-listing process and pick certain design teams to make presentations to the selection committee. The selected design team will go through contract negotiations and, if successful, will be awarded the project. Otherwise, the City will begin negotiations with the second place design team. You anticipate that the selection process will be completed within the next 60 days and that once awarded, there will be no modifications, changes or renewals to the contract which will have been entered into prior to your assuming office.

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

Section 2-443(d) states as follows:

Contractual relationships. No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to § 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable.

An official of the City may not enter into a contract or other transaction for goods or services with the City. There are several exceptions to this prohibition, including an award made under a system of sealed, competitive bidding to the lowest bidder, provided certain safeguards are followed.¹ The RFQ that you are considering is not a sealed competitive low bid process. There is also an exception for sole source providers of goods and services within the City.² You do not qualify for these exceptions.

However, as a candidate, you are not an official as defined by the Code as you are not *a member of a local municipal governing body*.³ The COE has issued a number of opinions regarding its jurisdiction over public officials and employees. For example, a vendor of the County may enter into multiple contractual relationships with the County notwithstanding the fact that the vendor serves as a director of a non-profit organization that receives funding from the County.⁴ Regarding former public officials and employees, the Code definition of official and employee applies to his or her current status. Therefore, a former employee of the County is not subject to the contractual relationship prohibition.⁵ Accordingly, if you are elected to the District 4 Commission seat and assume the office, you will then be subject to the Code and subject to the contractual relationship prohibitions.

Applying the Code to candidates for office, in regard to an already existing contract, the Code does not apply retroactively.⁶ However, while an existing contract may continue, any changes, revisions, alterations or renewals, occurring after jurisdiction is effective, are subject to the contractual relationships prohibition of the Code. Therefore, if you were to have an existing contract for goods or services with the City upon taking office, any subsequent change would subject the entire transaction to the Code, and the contract would be prohibited unless a valid exception applies. In addition, once you take office, any issues coming before the City Commission involving the contract or the project, even if they do not involve contract changes, may constitute a conflict of interest and you would be prohibited from participating or voting. At all times, as a City official, you are prohibited from using your official position to specially financially benefit yourself, your outside business or employer or a customer or client of your outside business or employer as defined by the Code.⁷ The COE cannot speculate as to

¹ §2-443(e)(1)

² §2-443(e)(3)

³ §2-442 Definitions. Official or employee

⁴ RQO 11-020, also, see RQO 11-043

⁵ RQO 11-014

⁶ RQO 12-001 (a public employee's outside business is not prohibited from fulfilling the terms of its licensing agreement with the municipality entered into prior to the effective date of the Code)

⁷ §2-443(a) misuse of public office or employment, §2-442 Definitions. Customer or client

specific facts and circumstances that may or may not violate these provisions unless and until they are presented for an advisory opinion.

Although the COE cannot opine as to state law, you need to be aware that the Florida Code of Ethics prohibition on doing business with one's agency extends to contracts entered into after *qualification for elective office*.⁸ While this section would appear to disallow entering into a contract between qualification for elective office and assuming elected office, the State of Florida Commission on Ethics has opined that notwithstanding the language of §112.313(3)(b), state prohibitions do not apply until a public officer actually holds the office.⁹

IN SUMMARY, the Palm Beach County Code of Ethics does not apply retroactively to actions that have taken place before a person becomes subject to its jurisdiction. In your case, the term official applies to current status as a member of a governing body. Therefore, entering into a contract for goods or services with the City prior to becoming an official for the City would not violate the *contractual relationships* provision of the Palm Beach County Code of Ethics. However, upon taking office, any change, revision, alteration or renewal would alter the status of the contract or transaction and may violate the prohibition against contracting with one's government.

Notwithstanding, the COE encourages you to submit your question to the State of Florida Commission on Ethics regarding the application of the state prohibition to qualified candidates for elective office.

This opinion construes the Palm Beach County Code of Ethics ordinance, but is not applicable to any conflict under state law, including possible conflicts under §112.313(3)(b), Florida Statutes. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

Sincerely,

Alan S. Johnson
Executive Director

AJS/gal

⁸ §112.313(3)(b),

⁹ COE 95-013, June 1, 1995 ("...we have not had occasion previously to render an advisory opinion as to whether Section 112.316 operates to negate a conflict under Section 112.313(3) in those apparently rare situations in which a contract between a governmental entity and a business is entered into prior to a public officer's assuming public office but after qualification for that office...The Mayor could not have "acted in his official capacity" to enter into the contract because during the brief window of time during which the contract was entered into he was not yet a public officer and thus possessed no official capacity in which to act...The prohibitions of Section 112.313(3) only apply to one who actually holds office, not to one who has merely qualified for office.")

June 8, 2012

Dani Bailey, Program Supervisor
Village of Palm Springs
226 Cypress Lane
Palm Springs, FL 33461

Re: RQO 12-036
Gift Law/Gift Exceptions

Dear Ms. Bailey,

The Palm Beach County Commission on Ethics has considered your request for an advisory opinion, and rendered its opinion at a public meeting on June 7, 2012.

YOU ASKED in your email dated April 26th, 2012, whether you may accept a two night stay at the Gaylord Palms Resort in Orlando, Florida, in your official capacity as the program supervisor of the Village of Palm Springs Travel Club, a division of the Village Leisure Department, and whether you may also accept complimentary accommodations for family members accompanying you on this official fact-finding trip.

IN SUM, based upon the information you submitted, your stay at the Gaylord Palm Resort is in the performance of your public duties and for a public purpose as program supervisor of the Village of Palm Springs Travel Club. As such, it is not considered a gift. However, you may not use your official position to provide a special financial benefit to your relatives as specified in §2-443(a)(3) of the Code of Ethics. In addition, you may not accept a gift of any value in exchange for the performance of a public action or legal duty. Therefore, if a family member accompanies you on the official fact-finding trip, you will need to reimburse the amount of value received by the accompanying family member within 90 days to eliminate the financial benefit.

THE FACTS as we understand them are as follows:

You are an employee of the Village of Palm Springs Leisure Department (PSLD) and the program supervisor of the Village's Travel Club (TC). Residents of the Village must join the TC in order to take advantage of the club's trip planning and group travel arrangement services. As Village Staff you plan all TC trips. TC members pay the Village trip fees plus a 5% surcharge as set by the Village Council and the Village makes final arrangements and provides payment to the resort, bus companies, airlines, etc.

Recently, you were invited by the Gaylord Palm's Resort in Orlando, Florida (GPR) to participate in a familiarization trip or "FAM Trip." FAM Trips are common within the travel agent field. Staff contacted GPR staff and requested additional information about these trips. Attending FAM trips is part of your official duty as program supervisor. GPR invited you and a guest to attend the weekend experience. Your Village supervisor has approved your attendance on behalf of the Village in performance of your official duties.

According to GPR staff these trips are offered to all travel professionals nationwide and are not intended as a substitute for an agent's personal vacation every year, but as an opportunity to learn about the resort and its many offerings. You are not planning on taking a family member or any guest with you on this official FAM trip.

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

Section 2-443(a) prohibits you from using your official position to give yourself or your relatives a special financial benefit not shared with similarly situated members of the general public. Although part of your official position with the Village as program supervisor of the Travel Club is to seek out and plan interesting travel opportunities for club members, and attending FAM trips is part of your official position as program supervisor, should you chose to take a family member on such a trip the value of their trip would be a financial benefit, not shared by similarly

situated members of the general public and their unreimbursed attendance would constitute a violation.¹ Nonetheless, since an equivalent commercial value for this trip can be established, payment of this amount to GPR or to the Village revenue fund would eliminate the “financial benefit,” and assure that no violation of the code of ethics occurs in this matter.²

Section 2-444(g) states as follows:

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:

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

Since, the trip itself is designed to provide an overview of the accommodations and activities available to travelers at the GPR and as program supervisor you are responsible for searching out and providing TC members with an overview of accommodations at potential vacation sites, your stay at the resort falls under §2-444(g)(1)(e) of the code of ethics as being accepted on behalf of a municipality in one’s official capacity for use solely by the municipality for a public purpose. The public purpose aspect of this trip has been approved by your supervisor. Therefore, your attendance is not considered a gift and accordingly the value of your trip is not reportable on an annual gift reporting form.

However, §2-444(e) prohibits a public employee from accepting a gift of any value because of an official public action taken or to be taken, or which could be taken. You are prohibited under the gift law from accepting a benefit of any value from GRP in exchange for the performance of your public duties. This would include the value of accommodations offered to your family member. Therefore, in addition to a prohibited special financial benefit, the value of the trip received by a family member would also violate the gift law, if not reimbursed within 90 days.

IN SUMMARY, based on the facts and circumstances submitted, you are not prohibited from accepting a FAM trip from a hotel in performance of your public duties as travel club program supervisor. The Code of Ethics provides an exception to the gift law for gifts provided to a municipality or a municipal employee in performance of their official duties on behalf of that municipality. The public purpose of your trip has been approved by your supervisor. Accordingly, your trip is not considered a gift and is neither prohibited nor reportable.

However, you may not use your official position to secure a financial benefit, not shared with similarly situated members of the general public, for your family members or relatives to accompany you. Additionally, the added value attributed to your family member, would constitute a prohibited gift, given as a result of the performance of your official duties. Nonetheless, since an equivalent commercial value for a hotel room can be established, payment of this amount to the GPR or Village general fund would cancel out the “special financial benefit” or prohibited gift/value received.³

¹ RQO 11-006

² §2-444(g), §112.3148(7)(b), Florida Statutes, §34-13.500(3), Florida Administrative Code.(compensation provided by the donee to the donor, if provided within 90 days after receipt of a gift, shall be deducted from the value of the gift in determining the value of the gift.)

³ RQO 11-006 (County Commissioner attending a boat tour in her official capacity **and** paying the equivalent amount to cover the commercial cost of her nieces’ attendance eliminates any financial benefit and avoids a potential violation of the misuse of office section of 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 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/mcr/gal

PROPOSED

June 8, 2012

Carla Crow, Budget Analyst I
Office of Financial Management and Budget
301 N. Olive Avenue, 7th Floor
West Palm Beach, FL 33401

Re: RQO 12-037
Gifts to spouse

Dear Ms. Crow,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on June 7, 2012.

YOU ASKED in your submission dated April 30, 2012, whether you may benefit from gifts given to your husband unrelated to your status as a Palm Beach County employee and if so, whether the value of these gifts must be reported pursuant to the Palm Beach County Code of Ethics (the Code).

IN SUM, the prohibitions and transparency requirements of the Code apply to gifts given to your spouse when you obtain a benefit from the value of those gifts. Therefore, the amount of value attributable to your share of a single gift is reportable if in excess of \$100. If the gift is given by a vendor or lobbyist of your government employer, it is prohibited if the value of your share of the gift(s) exceeds \$100, annually in the aggregate. In order to accept such a gift, you will need to compensate the donor for the amount of your share in excess of \$100 within 90 days of receiving the gift.

THE FACTS as we understand them are as follows:

You are a Budget Analyst in the Palm Beach County Office of Financial Management and Budget. Your husband is an ordained minister and often receives gifts from his parishioners. These gifts are given to him based on the work that he performs; however, you often receive a benefit from the gifts as well. Examples include gift certificates to restaurants and free use of a vacation home. There is a potential that a donor may be a vendor of the County. However, the gifts are given to your husband and none of the gifts are based upon your status as a Palm Beach County employee.

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

Section 2-443(a) and (b) of the Code prohibit you from accepting any benefit, directly or indirectly, as a quid pro quo in exchange for an official action, whether corruptly, or as a special financial benefit to you or your husband. In addition, §2-444(e) prohibits you from accepting a gift in exchange for the past, present or future performance of your official duties. Based on the facts and circumstances you have submitted, the gifts received by your husband are related solely to his position as an ordained minister and have no connection to your public employment.

Section 2-444(a)(1) states as follows:

No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, *or employee*, or any other person or business entity on his or her behalf, shall knowingly solicit or accept *directly or indirectly*, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.

While you are not directly receiving any of the gifts, you are receiving a benefit from those gifts that are shared with your husband. Section 2-444(g) defines a gift as *the transfer of anything of value* and §2-444(f) requires employees to complete an annual gift disclosure report, reporting any single gift in excess of \$100, unless one of several exceptions apply. One such exception includes gifts from relatives, domestic partners or household members.¹ A gift from your husband ordinarily would be excluded from the definition of gift; however, the benefit you receive in this instance is a direct pass-through from the original donor.

The Commission on Ethics (COE) has issued several opinions regarding the application of the Code to these indirect gifts to family members. In the case of scholarships to children of public employees, the COE has opined that *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.*² In that case the gift is considered an indirect gift to the employee because the gift is provided with the intent to benefit the employee. On the other hand, where the scholarship is offered to all town residents and the children of any person who is employed by a business within the town, consistent with the Florida Administrative Code, when a town employee's child receives one of the scholarships, it is not an indirect reportable gift.³ The basis for this exemption can be found in the Code exception for offers available to the general public.⁴

Although, based upon the facts you have submitted, the gifts given to your husband are not based upon your status as a County employee, the COE has previously opined that the value of gifts that flow through a spouse to a public employee, and not otherwise exempt under the Code, are reportable if the value of your share in the gift exceeds \$100.⁵ In addition, if the donor of any of the gifts is a vendor providing goods or services to the County, or a lobbyist, principal or employer of a lobbyist who lobbies the County, and the annual aggregate value you receive from the donor exceeds \$100,⁶ the amount in excess of \$100 would constitute a prohibited gift. While the Florida Administrative Code appears to exempt such gifts when given to a spouse in their personal capacity and independently of their partner's status as a public employee, the COE does not adopt this interpretation under the Palm Beach County Code of Ethics. In a recent opinion, the COE opined on the use of Florida Statutes and the Florida Administrative code in determining gift valuation.

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

¹ §2-444(g)(1)b.

² RQO 11-081, also see, RQO 12-017 ("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.")

³ RQO 11-057

⁴ §2-444(g)(1)f. "Publicly advertised offers for goods or services from a vendor under the same terms and conditions as are offered or made available to the general public."

⁵ RQO 11-022

⁶ Under circumstances wherein the gift to your husband is equally shared by you, the value would be divided in half.

mandated to do so.⁷ As permitted under state law, local ordinances may impose additional or *more stringent standards of conduct and disclosure requirements*.⁸ 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.⁹

IN SUMMARY, As a Palm Beach County employee, you are not prohibited from receiving a benefit from a gift, given to your husband and shared with you, provided the donor is not a vendor, lobbyist or principal of a lobbyist of your government employer. If the value of your share in a single gift exceeds \$100 you will need to report the gift as required by the Code. However, if the value you receive exceeds \$100, annually in the aggregate, and the donor is a vendor, lobbyist or principal of a lobbyist of the County, you are prohibited from accepting such a gift unless you repay your share of the value in excess of \$100 within 90 days of receiving the gift.

If the value of your share in the gift does not exceed \$100 (annually in the aggregate if the donor is a vendor or lobbyist), there is no reporting requirement or prohibition under the code, so long as there is no official *quid pro quo* or other corrupt misuse of office in exchange for that gift.

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

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

Sincerely,

Alan S. Johnson
Executive Director

ASJ/gal

⁷ §2-444(g)

⁸ §112.326, Florida Statutes

⁹ RQO 12-024

June 8, 2012

Alex Ream, Branch Manager
JPMorgan Chase Bank
222 Lakeview Avenue, Suite 100
West Palm Beach, FL 33401

Re: RQO 12-040
Contractual Relationships

Dear Mr. Ream,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on June 7, 2012.

YOU ASKED in your email dated May 3, 2012, as a member of a non-decisional, purely advisory board of the City of West Palm Beach (the City), and appointee to the Northwood/ Pleasant City Community Redevelopment Agency Advisory Board, whether the Palm Beach County Code of Ethics prohibits your outside employer, Chase Bank, from contracting with the City.

IN SUM, as a City advisory board member, you are not prohibited from having a contractual relationship with your municipality provided that the subject contract or transaction is disclosed at a public meeting of the municipal governing body and your advisory board *provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.*

Independent or Dependent Districts, known as Community Redevelopment Agencies (CRA), are not advisory boards as defined by the Code of Ethics. These entities are independent of County and municipal government and as such are not within the jurisdiction of the Commission on Ethics (COE). To the extent that a CRA advisory board member is appointed by the CRA and not the City, the advisory board member is, likewise, not under COE jurisdiction.

THE FACTS as we understand them are as follows:

You are a resident of the City of West Palm Beach (the City) and a branch manager of Chase Bank (Chase). You serve on the City's Parks and Recreation Advisory Board (PRAB) and your appointment to the Northwood/Pleasant City Community Redevelopment Agency Advisory Board (CRA) is pending. PRAB is a non-decisional purely advisory board of the City. The CRA is a Dependent Taxing Authority within the City. You were appointed to serve on the PRAB by the City Commission. While the City Commission and the Mayor serve as the governing body of the CRA, you were appointed to the CRA Advisory Board (CRAAB) by the CRA Board, not the City Commission. At this time, Chase does not contract with the City or the CRA.

Chase requires that you submit documentation stating that there are no statutes, ordinances, or bylaws, or other relevant legal authorities that prohibit or restrict the City or the CRA from doing business with Chase or any of its subsidiaries or affiliates by virtue of your service on either board. You were referred to the Commission on Ethics by the City Attorney's office based upon the contractual relationships provision contained within the Code of Ethics. You are seeking an advisory opinion as to whether or not

Chase will be limited in any way by your current service to the City. Your employment with Chase is not related to any services that could potentially be provided by Chase to the City; Chase has a government banking branch unique from the local branch you manage.

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

The relevant portions of Section 2-442, *Definitions*, of the Palm Beach County Code of Ethics (the Code) define "Advisory Board" as any advisory or quasi-judicial board *created by* the local municipal governing bodies, and defines "Official" as a member appointed by the local municipal governing board to serve on any advisory, quasi-judicial or *any other board of the county, state, or any other regional, local, municipal, or corporate entity*. As an appointed member of the PRAB you are an advisory board member and subject to the Palm Beach County Code of Ethics.

As a dependent taxing district, the CRA is a unique entity distinct and legally separate from the City and not subject to the jurisdiction of the Code of Ethics. You are appointed by the Board of Directors of the CRA and not by the City Commission. Accordingly, you are only subject to the code's prohibitions in your role as an advisory board member to the PRAB.¹

Section 2-443(d) prohibits an official or advisory board member from entering into *any contract or other transaction for goods or services with their respective...municipality*. This prohibition extends to all contracts or transactions between the municipality, and the official, directly or indirectly, *or the official or employees outside employer or business*. The contractual relationships section of the code prohibits such relationships on the basis of your outside employer, not your specific job title or duties for that employer. However, this prohibition does not apply to advisory board members provided the subject contract or transaction is disclosed at a duly noticed public meeting of the governing body and the advisory board member's board provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.

At this time, you have indicated that your employer has no intention of entering into a contract or transaction with the City. However, should Chase enter into a contract or transaction with the City, you are not prohibited from serving on the PRAB, so long as your respective board does not provide oversight, regulation, management or make policy recommendations regarding any contract between Chase and the City. If your advisory board should provide the above regulation or oversight, you would need to obtain a waiver of this provision by the City Commission so long as your board is purely advisory, otherwise, if you are on a decision-making advisory board, the contract or transaction would be prohibited by the Code.

In addition, in the future, should Chase do business with the City, you are prohibited from using your official position to specially financially benefit your employer, or otherwise corruptly obtain a benefit for Chase that is inconsistent with the proper performance of your public duties.

The COE cannot advise you regarding speculative facts and circumstances. In that regard, this opinion applies to those facts submitted and may not be considered by your employer as documentation that there is no potential conflict under the Code should the facts and circumstances change.

¹ RQO 11-060 (pension board established by state statute and a legal entity distinct from the City), RQO 11-107

IN SUMMARY, under the facts and circumstances you have submitted, your outside employer is not prohibited from entering into a contractual relationship with the City of West Palm Beach based upon your appointment to serve on the City's Parks and Recreation Advisory Board, provided that the subject contract or transaction is disclosed at a public meeting of the municipal governing body and your advisory board *provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.*

The CRA is a dependent special taxing district and is not subject to the jurisdiction of 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

June 8, 2012

Ms. Marie Davis
3001 Lake Drive
Riviera Beach, FL 33404

Re: RQO 12-041
Voting Conflicts

Dear Ms. Davis,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on June 7, 2012.

YOU ASKED, whether you have a conflict of interest as a member of the City of Riviera Beach Planning and Zoning Board (PZB), if a non-profit civic organization, of which you are a director, appears and advocates a position on a matter before the PZB.

IN SUM, as an appointed official you are prohibited from using your official position as an advisory board member to give a special financial benefit, not shared with *similarly situated members of the general public*, to a civic organization of which you are an officer or director. Voting on a matter, participating in conversations or attempting to influence your fellow members would therefore constitute a misuse of office. The prohibition extends to you, or someone using your official position on your behalf. If you have such a conflict, you must *publicly disclose the nature of the conflict*, file the required state disclosure form, and refrain from voting or participating in, or influencing the process.

However, if the issue does not involve a financial benefit to the members of the civic organization, not shared with similarly situated members of the general public, and does not involve a *quid pro quo* or other corrupt use of office, then your participation is not prohibited.

THE FACTS as we understand them are as follows:

You are a member of the Planning and Zoning Board for the City of Riviera Beach (PZB). You also are a board member of the Singer Island Civic Association (SICA). In June of 2011, the City Council voted to place a moratorium on the development of residential rehabilitation facilities based upon new federal disability discrimination guidelines.

As a member of the PZB, it is your understanding, based upon conversations with City staff, that this is a complex issue, involving local, state and federal guidelines and requirements. This area of law is heavily regulated by federal and state law. You informed City staff of your opinion that local organizations could be of help in shaping the issue and developing an appropriate citywide ordinance. Thereafter, you met with a local attorney and discussed the possibility of his assisting the City, on behalf of SICA, with drafting the ordinance. Ultimately, SICA retained this attorney to contact City Staff to offer assistance.

City policy precludes the acceptance of services of a privately retained attorney in drafting ordinances. Accordingly, the City determined that it would provide SICA counsel with staff proposals when completed. This matter is coming before the PZB for public and board comment on May 10, 2012. No vote will take place at that time.

COE Staff spoke with SICA counsel who indicated that he would not be appearing at the May 10, 2012 meeting. He indicated that as of May 9th he had received the City's proposed ordinance but had not reviewed it. In addition, he indicated that he has not discussed the existing proposal with SICA members and that the association has no position at this time.

The ordinance in question applies citywide.

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 an official from using his or her official position to give a civic organization, in this case SICA, for whom they serve as an officer or director, a financial benefit, 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.*

Section 2-443(c) similarly prohibits an official from voting on an issue or participating in a matter that would result in a special financial benefit attributable to SICA as previously described. Essentially, the voting conflict section addresses the scenario whereby in voting the official would violate the misuse of office prohibitions of the code.

The issue of prohibited conduct and voting conflict turns on whether a *financial benefit* is shared with similarly situated members of the general public.¹ A financial benefit is special when it affects a person or group of persons differently than another person or group of persons who are similarly situated. Under the facts and circumstances you have submitted, the proposed ordinance is uniform and citywide. SICA hired counsel to assist the city in crafting a *citywide* ordinance. Therefore, all residents of the City are similarly situated. If SICA were to advocate for a change in the ordinance, that change would apply equally to all areas of the City, and would not present a special financial benefit to SICA residents.

However, SICA is a civic association representative of a specific, unique segment of the city. If the City presents a plan that SICA's members disagree with, should counsel or SICA itself advocate for a modification to the proposed ordinance that would give targeted quality of life or property value benefits unique to SICA members, and not shared with residents citywide, such action may create a conflict of interest for you. Whether or not a conflict exists depends upon the facts and circumstances presented. At this time, SICA does not plan to advocate any particular position. Should that change, your counsel has indicated that any recommendations would apply equally to all residents of the City. The issue is whether an organization is advocating for a subset of the community as represented by the civic association and whether a financial benefit or loss would apply to the organization's members or be equally shared by the community at large.

Should such a special financial benefit to SICA present itself, you are prohibited from participating, voting, or otherwise influencing the matter. In such a scenario you are required to 1) disclose the nature of your conflict before your board discusses the issue; 2) abstain from any discussion or vote or otherwise participate in the matter; and 3) File a state voting conflict form (8B), submitting a copy to the City clerk and the Palm Beach County COE. The language of §2-443(c) is as follows:

¹ RQO 10-013 (For the purpose of ordinance construction, the commission finds that a financial benefit includes both a private gain or loss.)

County and municipal officials...shall abstain from voting and not participate in any matter that will result in a special benefit as set forth in subsections (a)(1) through (7) above...Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other 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...

In this context, "participate" means that you may not present SICA's perspective to the Board or take part in any presentation or discussion regarding SICA counsel's presentation with your fellow board members.

IN SUMMARY, based on the facts and circumstances presented, because SICA has not taken a position on the proposed ordinance and because the ordinance, as proposed, is of equal application citywide, you are not prohibited from participating in the matter at this point in time. However, should SICA advocate a modification to the ordinance that would uniquely benefit its members as compared to all City residents, it may result in a special financial benefit to SICA members. You may not use your appointed office to give a non-profit organization of which you are a board member a special financial benefit, not shared with similarly situated members of the general public. When faced with a conflict, you must disclose the nature of that conflict, refrain from voting or participating in, or influencing the process and file the required conflict disclosure form 8b.

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

June 8, 2012

Pam Triolo, Mayor
City of Lake Worth
7 North Dixie Highway
Lake Worth, FL 33460

Re: RQO 12-043
Voting Conflicts

Dear Mayor Triolo,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion and rendered its opinion at a public meeting held on June 7, 2012.

YOU ASKED as an elected official and member of the City of Lake Worth Commission what your obligations are under the Code of Ethics as an owner of a company that does business with other entities within the City.

IN SUM, as an elected official you are prohibited from using your office to give a special financial benefit, not shared with *similarly situated members of the general public*, to yourself, your outside business, or a customer or client of your outside business. Voting on a client's proposal, participating in conversations or attempting to influence City staff or fellow commission members would constitute a misuse of office. The prohibition extends to you, or someone using your official position on your behalf. In addition, you may not use your official position to secure any benefit for yourself or others as a *quid pro quo* or with a wrongful intent, in a manner inconsistent with the performance of your public duties.

THE FACTS as we understand them are as follows:

You are the Mayor of the City of Lake Worth (the City). In addition to your public service, you are the owner of a full service advertising, marketing and Public Relations firm located in the City. In your professional capacity you provide branding campaigns, plan and purchase media and create advertising materials for other businesses. Several of your clients are based in Lake Worth and you have done design and media work for the Lake Worth Chamber of Commerce as well as local non-profit organizations, law firms, retail outlets and service businesses. Your company does not transact business or maintain contracts with the City. However, several of your clients, like the Chamber, do conduct business with the City.

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

Section 2-443(a) prohibits you from using your official position to give yourself, your outside business, or a customer or client of your outside business a financial benefit, in a manner which you *know or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public.*¹ A customer or client is defined as a person or entity to which your outside business has supplied goods or services *in excess of \$10,000*, in the aggregate, over the previous 24 months.²

Section 2-443(c) similarly prohibits you from voting on an issue or participating in a matter that would result in a special financial benefit attributable to yourself, your outside business or customer as previously described. Essentially, the voting conflict section addresses the scenario whereby in voting you would violate the misuse of office prohibitions of the code.³ In such a scenario you are required to 1) disclose the nature of your conflict *before* the Commission discusses the issue; 2) abstain from any discussion or vote or otherwise participate in the

¹ RQO 11-092

² §2-442. *Customer or client*

³ RQO 11-067, RQO 11-076, RQO 11-099

matter; and 3) File a state voting conflict form (8B), submitting copies to the City clerk and the Palm Beach County Commission on Ethics (COE). The language of §2-443(c) is as follows:

County and municipal officials...shall abstain from voting and not participate in any matter that will result in a special benefit as set forth in subsections (a)(1) through (7) above...Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other 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...

In this context, “participate” means that you may not present a client’s project to the City Commission or take part in any presentation or discussion regarding your client’s project with your fellow Commissioners. The misuse of office and voting conflict provisions apply to you personally, or someone using your official title or position at your direction. This provision does not prohibit other owners or employees of your outside business from representing your client’s interest in these matters, so long as you do not participate, vote or attempt to influence the process.⁴

Section 2-443(b) prohibits an official from using his or her official position, *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* to obtain any benefit that is *inconsistent with the proper performance of his or her duties.*⁵

IN SUMMARY, as City Mayor, you may not use your elected office to give yourself, your outside business or a customer or client of your outside business a special financial benefit, not shared with similarly situated members of the general public. This includes you or someone acting on your behalf. When faced with a conflict, you must disclose the nature of that conflict, refrain from participating and file the required conflict disclosure form 8B. The Code of Ethics does not prohibit a business associate or other individual from representing your client’s interests before the City Commission separate and apart from you or your official office.

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

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

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/mcr/gal

⁴ RQO 11-067, RQO 11-076

⁵ RQO 12-039

June 8, 2012

Jason Davis, Criminal Justice Support Manager
Electronic Services and Security
2601 Vista Parkway
West Palm Beach, FL 33411

Re: RQO 12-044
Public purpose

Dear Mr. Davis,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on June 7, 2012.

YOU ASKED in your e-mail May 15, 2012, whether you and other Palm Beach County Employees may host a Chili Cook-off and solicit supplies/ingredients and raffle prizes from vendors in order to fund a Palm Beach County (the County) sponsored event, in conjunction with the Palm Beach County School Board, to benefit school children within the County.

IN SUM, in your official capacity as a Palm Beach County Employee, you are not prohibited from soliciting and accepting donations from County vendors, lobbyists, principals and employers of lobbyists on behalf of Palm Beach County provided that donations are accepted solely by the County and used for a public purpose.

THE FACTS as we understand them are as follows:

You are the Criminal Justice Support Manager for Palm Beach County Electronic Services and Security. Palm Beach County managers and directors (County Leadership) have been working with the Palm Beach County School Board (School Board) on a project to assist students with college preparation and "real world" situations. This program will provide students with the opportunity to listen to speakers from all over the county, presenting on a variety of topics. Specifically, the School Board has asked County Leadership to host 50 students at a local restaurant for an etiquette lesson and presentation. Currently, County Leadership has an agreement with the Banana Boat restaurant in Boynton Beach to host the students for this presentation and luncheon (Luncheon).

County Leadership plans to host a chili-cook off to raise the funds needed to pay for the Luncheon and would like to solicit donations for chili ingredients and raffle prizes from county vendors.

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

Section 2-444(a) prohibits a Palm Beach County Employee from accepting gifts of a value in excess of \$100, annually in the aggregate, from vendors, lobbyists, principals or employers of lobbyists who lobby, sell or lease to the County. However, §2-444(g)(1)e. specifically exempts gifts solicited or accepted by a County Employee on behalf of the County "in performance of their official duties for use solely by the

county... for a public purpose.” Based upon the facts and circumstances you submitted, in order to comply with the Code of Ethics, County Administration must make a determination that solicitations for the Luncheon are for a public purpose.¹ Vendor items must be donated directly to the County for County use. County Leadership may accept these donations and then use the funds raised from the Chili Cook-off to fund the Luncheon.

There is no prohibition within the Code of Ethics regarding use of county resources or staff for soliciting or planning the event, so long as the solicitations are in furtherance of a public purpose and the donations are accepted directly into government accounts.² The COE cannot opine as to other County Policies or Procedures that may or may not conflict with hosting the BB Event or accompanying Chili Cook-off.

IN SUMMARY, Palm Beach County employees are not prohibited from soliciting and accepting donations from County vendors in excess of \$100, annually in the aggregate, for a Chili Cook-off Fundraiser and subsequent Luncheon to benefit Palm Beach County school children, so long as these donations are 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. In this case, since County Leadership consists of Department Managers and Directors, supervisory approval of the public purpose by County Administration may be necessary.

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

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

Sincerely,

Alan S. Johnson
Executive Director

ASJ/mcr/gal

¹ RQO 11-084 (donations from vendors solicited by public officials or employees must be deposited into public accounts; distributions of public dollars to non-profit organizations by *public officials* must be determined to be in furtherance of a public purpose by the governing body of the County or municipality as applicable). RQO 12-011 (in the context of educational conferences, the determination of whether *employee attendance or participation* is in furtherance of a governmental purpose shall be made by an employee’s supervisor).

² RQO 10-027 (solicitation and acceptance of grant dollars on behalf of a non-profit for a public purpose). *But see* RQO 11-039 (solicitation by municipal employees and use of municipal resource prohibited where solicited dollars are given directly to a non-profit beneficiary).

June 8, 2012

Councilman Johnny Greene
Wellington Village Council
14000 Greenbriar Blvd.
Wellington, FL 33414

Re: RQO 12-045
Gift Law/Personal Friend

Dear Councilman Greene,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on June 7, 2012.

YOU ASKED in your email submission dated May 21, 2012, whether you may accept temporary housing from a personal friend who is a director of a civic organization that employs a lobbyist compensated by a third party, and if so, whether the value of the housing is reportable under the Palm Beach County Code of Ethics (the Code).

IN SUM, where a personal friend/donor is a director of a civic organization, and the organization is a *principal* or *employer* of a lobbyist, you are prohibited from accepting a gift from your friend/donor of a value in excess of \$100, annually in the aggregate.

Under the Code, elected officials, identified by state law as reporting individuals, are only required to report gifts pursuant to state law and file a copy of the report with the Palm Beach County Commission on Ethics (COE).

At all times, you may not use your official position corruptly to secure a benefit for the donor of a gift, or otherwise use your official position to obtain for yourself a financial benefit, not available to similarly situated members of the public. *"Corruptly"*, means done with a wrongful intent and for the purpose of obtaining, compensating or receiving compensation for, any benefit resulting from some act or omission which is inconsistent with the proper performance of your public duties.

THE FACTS as we understand them are as follows:

You are a newly elected Councilman for the Village of Wellington (the Village). You have been offered temporary housing from a close, personal friend who you have known for 30 years. You frequently socialize together, he is a frequent guest at your current home and your close friendship is publicly known. The property will not become your permanent or primary residence. The temporary arrangement will be for no more than 90 days.

Your friend (the Donor) is not a vendor or lobbyist who does business with the Village. He is a retired businessman who currently owns a restaurant located within the Village. Nor do you have any business relationship with the donor or serve on any board, committee or commission together.

The Donor is a director of a civic organization that does engage in lobbying activity within the Village. The organization, Wellington Equestrian Preservation Alliance (the Alliance), is active in publicly advocating positions regarding the development of an area in the Village known as the Equestrian Preserve. According to the facts you submitted, the Donor does not provide financial support to this organization and “strictly acts in an advisory capacity.” However, the Executive Director of the Alliance (ED) was hired and paid through Solar Sports Systems, Inc. (Solar) and does engage in lobbying activity for Solar within the Village. He also lobbies the Village on behalf of the Alliance. While the ED is a paid lobbyist for Solar, you stated that he receives no compensation in his capacity as the ED of the Alliance. However, the president of the Alliance apparently has a significant ownership interest in Solar.

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

A public official may not use his or her official position or office to financially benefit him or herself, in a manner that will result in a special financial benefit not shared with similarly situated members of the general public, or otherwise corruptly obtain a special benefit for anyone if done with a wrongful intent, inconsistent with the proper performance of his or her public duties.¹ Additionally, an official may not accept a gift of any value if given because of an official action taken or legal duty performed or violated.²

Section 2-444(a) prohibits an elected official or employee from accepting a gift valued in excess of \$100, *from a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases* to his or her municipality. In determining the value of a gift, section 2-444(g) allows a recipient to consult §112.3148, Florida Statutes, and the Florida Administrative Code. Section 112.3148 states that lodging provided on consecutive days is considered a single gift and that lodging in a private residence is to be valued at the per diem rate as established in §112.061(6)(a), Florida Statutes. The state per diem lodging rate is currently \$44; therefore, the total value of a 90 day stay in a private residence would be \$3960. The value of the gift may be reduced by the Donee by compensating the Donor within 90 days.³

Section 2-444(d) states as follows:

For purposes of this section, a principal or employer of a lobbyist shall include any officer, partner or director of the principal entity, or any employee of a principal who is not an officer, partner or director, provided that the employee knows or should know with the exercise of reasonable care that the principal employs a lobbyist.

Therefore, if the Alliance is a principal or employer of a lobbyist, you may not accept a prohibited gift from a director of the Alliance. Lobbying means seeking to influence a decision of an item which may foreseeably be presented for consideration to an advisory board or a local governing body.

Section 2-442 defines lobbyist as follows:

Lobbyist shall mean any person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying on behalf of a principal, and shall include an employee whose principal responsibility to the employer is overseeing the employer's

¹ Article XIII, §2-443(b)

² §2-444(e)

³ §112.3148(7)(b), Florida Statutes.

various relationships with government or representing the employer in its contacts with government.

If the person lobbying on behalf of the Alliance receives compensation for that representation, from whatever source, that person is a lobbyist and Alliance is the principal under the Code. While an exception may exist where a person lobbies as an employee of the principal organization, it applies in circumstances where lobbying is not the principal responsibility of the employee to the employer. Here, the Solar lobbyist is also the ED of the Alliance and lobbies on behalf of the Alliance. Recent issues involving land use decisions in the Village have been the subject of significant lobbying activity. This opinion relies upon the facts and circumstances you have provided, based upon your knowledge and belief. Considering the facts and relationships that exist between the Alliance, Solar, the Alliance ED and the President of the Alliance, the COE cannot opine as to whether the employer/employee exception applies without further investigation into the relationships involved. Should an inquiry be commenced or a complaint filed in the matter, the issue would be decided by the facts uncovered through an inquiry or investigation. Due to these relationships and the potential appearance of impropriety, should you choose to accept the gift, you must take great care in relying on the employer/employee exception. It should be noted that the Code also prohibits a principal or employer of a lobbyist from knowingly giving a gift valued in excess of \$100, annually in the aggregate, to a person they know is an elected official of the municipality lobbied.⁴ The Donor, as a Director of the Alliance, is subject to this prohibition if the Alliance is the principal of a lobbyist.

If the Donor were merely a member and not a director of an organization that is the principal or employer of a lobbyist who lobbies your municipality, the above prohibitions would not apply as the definition of *principal or employer* does not include members of civic organizations.

As an elected official, you are required to *report gifts pursuant to state law... in the manner provided by Florida Statutes, §112.3148.*⁵ No other reporting requirements or exemptions apply under the Code. A copy of the state report must be submitted to the Palm Beach County Commission on Ethics.

IN SUMMARY, as an elected official, you may not accept a gift valued in excess of \$100, annually in the aggregate, from a director of an organization that employs a lobbyist who lobbies your municipality. In the event that the donor no longer is a director of such an organization, the prohibition against accepting the gift would be eliminated under this section of the Code.

As a state reporting individual, the Code does not impose additional requirements other than the submission of a copy of any state required report to the COE.

In all instances, you may not accept a gift of any value in exchange for the past, present or future performance of an official act or a legal duty. Nor may you accept anything of value as a quid pro quo or otherwise corruptly misuse your office by giving someone a special benefit that is inconsistent with the proper performance of your duties.

⁴ §2-443(a)(2)No lobbyist, vendor or principal or employer of a lobbyist that lobbies...a municipality shall knowingly give, directly or indirectly, any gift with a value greater than one hundred dollars (\$100) in the aggregate for the calendar year to a person who...is an official...of that municipality.

⁵ §2-444(f)(1)

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

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

Sincerely,

Alan S. Johnson
Executive Director

ASJ/gal

PROPOSED

June 8, 2012

Officer Nelson Berrios
Lantana Police Department
500 Greynolds Circle
Lantana, FL 33462

Re: RQO 12-046
Jurisdiction/training

Dear Mr. Berrios,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on June 7, 2012.

YOU ASKED in your email submission dated May 24, 2012, whether volunteers who participate in the Town of Lantana Police Department programs are subject to the Palm Beach County Code of Ethics, including mandatory ethics training.

IN SUM, the Palm Beach County Code of Ethics (the Code) applies to all county and municipal employees. Paid employees or contract employees performing a government function are clearly within the jurisdiction of the Code. Volunteers are within the definition of employee if they have the ability to exercise discretionary power as a government functionary. Therefore, all employees, including volunteers who may exercise such discretionary power, must complete mandatory ethics training. However, volunteer participants in a community education or outreach program that are not given authority to exercise discretionary power or act in an official capacity are not considered county or municipal employees within the meaning of the Code.

THE FACTS as we understand them are as follows:

You are an officer of the Lantana Police Department (Lantana PD) and administer several Lantana PD volunteer programs that support the mission of the agency. These volunteers serve in different capacities depending upon their age, interests, experience and future goals. The programs are all unpaid volunteer programs and are described as follows:

Unpaid Law Enforcement Explorers: The Lantana Police Explorers consists of teenagers, ages 14 through 18, interested in learning about law enforcement. Exploring offers experiential learning with hands-on activities that promote the growth and development of adolescent youth. Police Explorers perform a wide variety of non-enforcement duties to assist the Lantana Police Department, while being tutored for a career in law enforcement. Police Explorers are trained and then allowed supervised participation in all areas of police work through the Town of Lantana and in supervised field trips to other law enforcement facilities and agencies.

Unpaid Law Enforcement Junior Explorers: The Lantana Police Department's JUNIOR Explorer Program participants are unpaid volunteers. The mission is to give youngsters, ages 11 through 14, a chance to begin training for a career in the field of Law Enforcement. Junior Police Explorers perform a wide variety of non-enforcement duties to assist the Lantana Police Department, while being tutored for a

career in law enforcement. Junior Police Explorers are trained and then allowed supervised participation in all areas of police work through the Town of Lantana and in supervised field trips to other law enforcement facilities and agencies.

Unpaid Law Enforcement Cadets: The Lantana Police Department's Cadet Program is a non-paid, law enforcement volunteer organization. Law Enforcement Cadets (L.E.C.) are former Explorers between the ages of 18 and 21 who attend college and have an interest in developing themselves in a full-time or part-time Law Enforcement career. This program runs similar to the Explorer program and parallels the existing volunteer policies; however the responsibilities are much more extensive and provide a variety of services to the department and community. The program has no connection with Learning for Life, but instead has direct departmental oversight. The cadets participate in the ride-a-long program and are given the opportunity to operate assigned vehicles for specific tasks. Some of the services L.E.C.s are assigned to, but not limited to: Parking Enforcement, Assistance with Communications (Call Takers), Fingerprinting, Administration Services, Community Relations, Prevention Programs, Traffic Control, Youth Programming Assistance, C.E.R.T. Community Emergency Response Team (Disaster Relief), CPR/First Aid, Explorers (Mentors), and Extended Ride-a-along assignments (Night Shifts).

Unpaid Citizens on Patrol (C.O.P.): Adults appointed by the Chief of Police as volunteers, who have met prescribed qualifications, background checks and training requirements. C.O.P.s duties include but are not limited to parking enforcement and community patrols. Uniforms are provided by the department and the unit is sustained by the general budget.

Unpaid Reserve Officers: A volunteer Police Officer who has met all the pre-employment and training requirements prescribed by the Florida Criminal Justice Standards and Training Commission for Auxiliary Officers. A Reserve Officer can aid and assist a sworn Police Officer and exercises police authority only while under the direct supervision of a sworn Police Officer. Reserves Officers are partly funded through the general budget and fundraising.

Unpaid Interns: High School or College students who want experiential learning with hands-on activities that are directly related to course or program studies. Position is sustained through the educational institution.

A uniform is required For Explorers, Junior Explorers and Law Enforcement Cadets. Each volunteer is responsible to purchase and maintain their uniforms. Certain parts of the over-all uniform may be provided by the Police Department (i.e. Patches, accessories and duty gear if needed). These units are all monitored by two paid full-time police employees and two civilian adult volunteers. The unit is self-sustained by community support and/or fundraisers. Participants in all programs are unpaid volunteers.

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

§2-442 **Official or employee** means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term “employee” includes but is not limited to all managers, department heads and personnel of the county or the municipalities located within the county. The term also includes contract personnel and contract administrators performing a government function, and chief executive officer who is not part of the local governing body.

The Code addresses training requirements and obligations in §2-446(a)

Ethics training. Officials and employees, as public servants, are considered stewards of the public trust and should aspire to the highest level of integrity and character. Officials and employees shall be informed of their ethical responsibilities at the start of their public service, and shall receive updates and training materials on ethics issues throughout the span of their public service. The county administrator or municipal administrator as applicable shall establish by policy a mandatory training schedule for all officials and employees which shall include mandatory periodic follow-up sessions. This policy may also address ethics training for entities that receive county or municipal funds as applicable.

Officials who serve on advisory boards are in most instances volunteers. Notwithstanding, all such officials are within the jurisdiction of the Code. With regard to employees, further review is necessary in applying the code to non-advisory board volunteers within the community. For example, volunteers who are part of an educational program and possess no discretionary power do not perform a function commonly associated with the term *personnel* as it pertains to a governmental entity. On the other hand, if a person has discretionary, decision-making authority, he or she is essentially functioning in an official capacity and regulation is warranted, whether or not the person is paid or unpaid. Therefore, while a teenager participating in a program for educational or community outreach purposes may not be considered an employee subject to the Code, an auxiliary officer with discretionary police powers certainly functions as a government agent and therefore is considered an employee of the municipality he or she serves.

The Volunteer Law Enforcement Explorers, Junior Explorers and Intern Programs give young residents of the Town an educational opportunity to learn about the police agency and assist in non-enforcement activities alongside Town police officers. These volunteers are not subject to the Code as they perform no discretionary government function. The Volunteer Law Enforcement Cadet and Citizen on Patrol (COP) programs include assignments of a discretionary nature such as parking enforcement and traffic control and the participants are therefore subject to the Code and its required training. Likewise, unpaid Reserve Officers have law enforcement training and exercise *police authority* under the supervision of a sworn police officer. Therefore, Volunteer Reserve Officers are employees and within the jurisdiction of the Code.

Training is mandatory for all employees of the Town, including volunteer cadets, COP participants and Reserve Officers. A municipality may adopt rules and policies that are more stringent than those contained in the Code and may require training, including ethics training, for volunteers who are not otherwise required to do so under the Code.

IN SUMMARY, unpaid participants in municipal police agency programs are considered employees of the municipality if the program gives the volunteer discretionary power to act in an official capacity. However, volunteers in municipal educational and community outreach programs that delegate no such authority to its participants are not employees as defined by the Code.

Ethics training is mandated for all employees of governmental entities within the jurisdiction of the COE. A municipal government may require more stringent regulations through its own policies and procedures, and may require training for volunteers who otherwise would not be mandated to do so under the Code.

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

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

Sincerely,

Alan S. Johnson
Executive Director

ASJ/gal

PROPOSED



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

March 2, 2012

Norman Ostrau, Ethics Officer
The City of West Palm Beach
P.O. Box 3366
West Palm Beach, FL 33411

Re: RQO 11-121
Solicitation/Gifts/Public Purpose

Dear Mr. Ostrau,

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 March 1, 2012.

YOU ASKED in your letter dated December 19, 2011, whether procedures in place regarding solicitation of vendor donations for a City of West Palm Beach (the City) sponsored 4th of July event which includes a "VIP tent" area not open to the public are in compliance with the revised code of ethics.

IN SUM, based upon the facts and circumstances submitted, the solicitation by public employees of vendor contributions to a City sponsored event is not prohibited by the code if the contributions are solicited or accepted on behalf of the City for use solely by the City for a public purpose. Donations such as these are excluded from the definition of gift. However, the solicitation of donations from City vendors by City employees in order to provide City employees and officials and their invited guests a VIP area not open or available to the public is prohibited by the Code of Ethics.

THE FACTS as we understand them are contained in the attached COE Memorandum of Inquiry. A brief recitation of those facts is as follows:

For a number of years the City has held a 4th of July celebration (4th on Flagler) for the benefit of the public and funded by the City. At these events a separate area is created for the exclusive use of City officials, employees and their invited guests. Tickets to this VIP tent area have a face value of \$50, are distributed to City officials and employees, and are not made available to the public. The City provides funding for some aspects of the VIP area (tent, chairs), however, in-kind donations are solicited from City vendors by City employees, primarily for food and beverage. The VIP area is not established by the City Commission as a part of the 4th on Flagler event.

The 4th on Flagler VIP tent originated through the City Parks and Recreation Department (PRD). Included in the planning process are staff members and volunteers. The solicitation of vendor sponsors for the VIP tent is done by PRD employees. At the 2011 event, approximately 700 VIP tickets were printed and distributed to City officials, employees and their guests. The PRD determined the face value of the tickets to be \$50, however, based upon the amount of vendor donations per ticket, the actual value of the goods and services provided per attendee was determined to be under that amount at the 2011 event. Vendors contributing to the VIP area included Pepsi-Cola Enterprises, Brown Distributing Company and Duffy's Sports Grille. Those officials and employees receiving more than two tickets were required to report the amount as gifts under §2-444(f)(2)b. of the gift law section of the Code of Ethics.

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

Section 2-444(c) 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.


An official or employee may not solicit a gift of any value from a City vendor if the gift is for his or her benefit, the benefit of a relative or *any other official or employee* of the City. Section 2-444(g)(1)e. provides an exception to the definition of gift where it is *solicited or accepted by municipal officials or employees on behalf of the municipality in performance of their official duties for use solely by the municipality for a public purpose.*¹ Under the facts you have submitted, the solicitation and acceptance of food and drink donations for the VIP area from City vendors is exclusively for the benefit of City officials, employees and their guests. There is no general admission ticket or other public admittance to the VIP tent. Additionally, the establishment of an exclusive VIP tent area was made by staff. The issue of public purpose was not subject to a transparent and public hearing and vote by the City Commission. Therefore, the *public purpose* exception to the gift law restriction does not apply.

IN SUMMARY, the current City staff procedure for soliciting donations for the 4th on Flagler VIP tent area violates the Code of Ethics insofar as the benefit of the solicitation is received by City officials, employees and their guests and therefore is not used *solely by the municipality for a public purpose*.

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

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

Sincerely,



Alan S. Johnson,
Executive Director

ASJ/gal

¹ RQO 10-027, RQO 10-040, RQO 11-021

RESOLUTION NO. 103-12

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, DECLARING THAT THE SPONSORSHIP OF CITY PRODUCED EVENTS AND THE USE OF HOSPITALITY AREAS FOR SPONSORS, CITY OFFICIALS AND DESIGNATED EMPLOYEES CONSTITUTES A PUBLIC PURPOSE; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City of West Palm Beach desires to solicit and enter into sponsorship agreements with various sponsors of City produced events to enhance public/private partnerships for the public good; and

WHEREAS, in connection with such sponsorship agreements, the City receives goods and services and/or cash payments in exchange for the sponsor's participation in the City produced event; and

WHEREAS, to further enhance the public/private partnerships, the City may provide hospitality areas for the use of the sponsors, city officials and designated employees; and

WHEREAS, the use of sponsors and the hospitality area to promote the public/private partnerships for such City produced events serves a public purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, that:

SECTION 1: The City Commission hereby declares that the use of sponsors for City produced events and a hospitality area for sponsors, city officials and designated employees constitutes a public purpose.

SECTION 2: The City is authorized to solicit sponsorships for city produced events according to the sponsorship guidelines previously approved by Resolution No. 150-98 and to provide for hospitality areas for sponsors, city officials and designated employees at City events.

SECTION 3: This Resolution shall take effect as provided by law.

PASSED AND ADOPTED THIS 14th DAY OF May, 2012.

(CORPORATE SEAL)

CITY OF WEST PALM BEACH
BY THE CITY COMMISSION

Geraldine Russo
PRESIDING OFFICER

ATTEST:

[Signature]
CITY CLERK

CITY ATTORNEY'S OFFICE
Approved as to form and legal sufficiency
By: [Signature]