



Agenda

August 2, 2012 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Executive Session from 1:45pm to 3:30pm Regular Agenda will begin at 3:45pm

Palm Beach County

Commission on Ethics

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Commissioners

Manuel Farach, Chair

Robin N. Fiore, Vice Chair

Ronald E. Harbison

Daniel T. Galo

Vacant

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 July 12, 2012
- V. Probable Cause Hearing (C12-003)(Executive Session)
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 12-052
 - b. RQO 12-056
 - c. RQO 12-057
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Proposed Advisory Opinions
 - a. RQO 12-038
 - b. RQO 12-051
 - c. RQO 12-053
 - d. RQO 12-054
 - e. RQO 12-055
- IX. Social Media Update
- X. Policy and Procedure Clarification Re: Processing of Complaints that are filed within 30 days of an Election
- XI. Executive Director Comments
- XII. Commission Comments
- XIII. Public Comments
- XIV. Adjournment

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

JULY 12, 2012

**THURSDAY
1:40 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

(CLERK'S NOTE The Commission on Ethics (COE) presented an award to Judge Edward Rodgers.)

Commissioner Manuel Farach, chair, said that Judge Rodgers was appointed as the initial COE chair and that he had served with distinction for its first two years. He concluded that Judge Rodgers had moved on to pursue other ventures.

II. ROLL CALL

MEMBERS:

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

STAFF:

Mark E. Bannon, 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:

Paula Wilson, Deputy Clerk, Clerk & Comptroller's Office (Recording and Condensing)
Julie Burns, Deputy Clerk, Clerk & Comptroller's Office (Condensing)

III. INTRODUCTORY REMARKS

Commission on Ethics Executive Director, Alan Johnson, Esq., stated that a quorum existed.

Commissioner Farach stated that anyone wishing to speak should submit a public comment card, and that cell phones should be silenced.

IV. APPROVAL OF MINUTES FROM JUNE 7, 2012

Commissioner Farach stated that on page 19 of the June 7, 2012, minutes he believed that he had said, Mr. Farach commented that although it could not be rewritten by the COE. He added that on page 23, the motion to approve should read RQO 12-034 instead of RQO 12-044.

MOTION to approve the June 7, 2012, minutes as amended. Motion by Commissioner Robin Fiore, seconded by Ronald Harbison, and carried 4-0.

V. MOTION HEARINGS (C11-027) (Public Hearing)

Mr. Johnson stated that since a probable cause finding existed, it would be best to hear the motion to dismiss the probable cause finding first, although an amendment existed that may affect whether the case continued.

Commissioner Daniel Galo said that he would abstain from this case since his firm had previously represented the respondent. He added that he had filed Form 8B, Memorandum of Voting Conflict.

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

Mr. Johnson clarified that a quorum still existed.

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

V.b. Motion to Dismiss and Incorporated Memorandum of Law in Support Thereof

Mr. Johnson read the COE's Rules of Procedure regarding a motion to dismiss. He said that staff had recommended that the respondent and the advocate present oral arguments supporting their positions regarding submissions and attachments that were provided in discovery or by motion.

V.b. – CONTINUED

Commissioner Farach stated that the issue should be discussed by the COE, and that oral argument would be considered with the paperwork.

Mr. Johnson read the COE's ordinance, section 2-260.3:

Notwithstanding any other provisions of this division, the Commission on Ethics may at its discretion: a) dismiss any complaint at any stage of disposition, should it determine that the public interest would not be served by proceeding further, or b) dismiss any complaint at any stage of disposition and issue a letter of instruction to the respondent when it appears that the alleged violation was inadvertent, unintentional, or insubstantial. In the event that the Commission on Ethics dismisses a complaint as provided in the subsection, the Commission on Ethics shall issue a public report stating, with particularity, its reasons for the dismissal.

He added that the remaining section dealt with referring out to other agencies regarding a dismissal.

Commissioner Farach stated that the standard for the probable cause finding could be reiterated.

Mr. Johnson said that the COE's original standard for determining probable cause was as follows:

Probable cause exists where there are reasonably trustworthy facts and circumstances for the COE to conclude that the respondent, in this case, Dr. Scott Swerdlin, violated the Palm Beach County Code of Ethics.

He added that if reached, this would be germane to the motion to amend and that the COE had full and total discretion under the ordinance's conditions regarding a motion to dismiss.

Commissioner Farach said that all issues would be approached from a civil perspective since the proceedings were civil in nature.

The Respondent's representative, Brian Seymour, Esq. stated that:

- The distinction was not between criminal and civil, but with the penal statute.

V.b. – CONTINUED

- The probable cause findings could not be taken as true due to misinterpretation of facts and the existence of additional evidence, which provided a basis for dismissal under the rule.
- Dr. Swerdlin was an equine veterinarian in the Village of Wellington (Wellington), and was the chair of Wellington's Equestrian Preserve Committee (EPC). In that capacity, Dr. Swerdlin had presided over part of a December 2011 hearing. The hearing included multiple applications that may have been filed by separate people or companies, which provided various issues before the EPC. The four applications included:
 - a village-wide amendment to Wellington's comprehensive plan;
 - a village-wide amendment to Wellington's zoning code;
 - a specific plan unit development modification; and,
 - a specific conditional-use request.
- The complaint, the investigation report, and the motion had misconstrued some issues so that a portion of the meeting, which was unclear from the minutes, was transcribed.

Mr. Seymour requested that the transcript excerpt from the December 14, 2011, meeting be included with his materials as part of the record.

Megan Rogers, COE staff counsel, stated that if a separate transcript was not included in the initial discovery, it was not included in the materials for submittal to the COE.

Mr. Seymour clarified that the items he provided as part of the agenda packet were relative to the motion to dismiss, and that one of the four applications, a cover letter, a transcription, and an application withdrawal letter were included. He added that:

- The entities involved were the Equestrian Sport Productions (ESP), Wellington Equestrian Partners (WEP), and Mark Bellissimo.

V.b. – CONTINUED

- Under Florida Law, ESP and WEP were two separately organized corporations with Mr. Bellissimo's involvement in both companies. According to the County's Code, these entities could not be treated as the same.
- The Fourth District Court of Appeal in *State vs. Beyer* (phonetic), provided, the COE direction in applying the law to the facts.
- The COE must follow the County Code's standard rule of construction.
- In *City of Miami Beach vs. Galbut*, any doubt must be resolved in favor of strict construction so that those covered by the statute had clear notice of which conduct it prescribed.
- Dr. Swerdlin would not have known that Mr. Bellissimo's involvement with ESP, Dr. Swerdlin's customer or client, would require recusal.
- The definition of customer or client did not reference related entities, under common management, parent, or subsidiaries. Dr. Swerdlin was unclear on these issues since they were not discussed, and he was improperly advised by the EPC's lawyer.
- According to the County Code's plain language, Dr. Swerdlin's customer or client was ESP, and ESP did not receive a special financial benefit.
- Confusion existed about the applicant since Dr. Swerdlin and the other EPC members did not see the form which said, Michael Stone, Equestrian Sport Productions. This was the only instance where ESP was mentioned.
- The letter that was submitted with the application form did not mention ESP. It said that on behalf of WEP, the applications were submitted for Wellington's consideration.
- Wellington's staff reports provided to the EPC identified only WEP as the applicant.
- When Mr. Bellissimo spoke as the applicant's representative, he said that WEP was the beneficial interest in the proposed project.

V.b. – CONTINUED

- Dr. Swerdlin performed veterinary work for horse shows operated by ESP.
- At the public hearing, Michael Stone, ESP president, had read a letter stating that the horse shows would continue, and that ESP was not affected.
- Dr. Swerdlin knew that WEP was the applicant and beneficiary of this application; however, his customer or client, ESP, was not mentioned, except to say that it would hold shows as usual.
- Wellington counsel and EPC advisor, Jeffrey Kurtz, was confused about the issue.
- At the December 14, 2011, meeting, Mr. Kurtz stated that any individuals with a conflict should recuse themselves; however, Dr. Swerdlin knew that he had no conflict since WEP was not his customer or client.
- During the hearing, Mr. Kurtz should have addressed and clarified any impact that the County's code would have on the discussion.
- The recusal issue came up after public discussion and before discussion among the EPC members.
- In reviewing the minutes, it was clear that Dr. Swerdlin was confused and concerned when Mr. Kurtz read that, an individual having any business relationship with the entities needed to recuse themselves, since it appeared that in that case all the EPC members should recuse themselves and the EPC would lose a quorum.
- Mr. Kurtz was incorrect since the recusal issue was unrelated to business relationships, and only related to whether the customer or client had a special financial benefit.
- Dr. Swerdlin should not have had to recuse himself because ESP did not appear before the EPC.

V.b. – CONTINUED

- The advocate's evidence that was included in the motion, and evidence that showed that the horse shows would continue, did not prove that ESP received a special financial benefit.
- Regardless of the applications, ESP had already been given the license and the show's production dates.
- The hearing's issue related to a new horse arena and hotels that would have been beneficial to WEP if it owned or developed the property. It did not change ESP's ability to host its events.
- By County Code definition, Dr. Swerdlin knew that no impact to him, his client, his employer, or any individual that he had a clear relationship with existed; however, he recused himself.
- Under the County's Code, the COE had the ability to direct individuals by issuing a letter of instruction.
- The violations, if any, were inadvertent, insubstantial, or unintentional, and the motion should be dismissed under rule 3.7(b), or alternatively, a letter of instruction should be issued pursuant to rule 3.7.

Ms. Rogers stated that:

- The staff report that was submitted to the EPC had indicated that WEP was the applicant; however, page one of the application had indicated that ESP was the actual applicant.
- Dr. Swerdlin had notice that ESP was heavily involved in this project, that he would receive a special financial benefit by participating in the December 14, 2011, vote and that he reasonably should have known that a conflict existed.
- No significant difference existed in terms of notice between WEP and ESP; however, staff agreed that they were separate and uniquely individual entities for legal liability purposes.
- Evidence showed that Dr. Swerdlin had actual knowledge that ESP was the applicant.

V.b. – CONTINUED

- If this matter proceeded to final hearing, Mr. Kurtz would testify that he notified Dr. Swerdlin in advance that ESP was the applicant and that a conflict existed.
- The ESP stood to gain a special financial benefit from the zoning changes presented to the EPC in December 2011.
- Although ESP hosted dressage events on the property, they sought to host events at the \$80 million complex proposed by WEP. The new complex would provide ESP with more facilities, horses, and funds.
- Dr. Swerdlin had three outside businesses:
 - Palm Beach Equine Clinic;
 - Palm Beach Equine Medical Center; and,
 - Palm Beach Equine Sports Complex.
- As the wholly owned subsidiary of WEP, ESP owned and operated Wellington's Winter Equestrian Festival (WEF).
- Dr. Swerdlin's outside business provided veterinarian services to the WEF and to any events that would be held at ESP's new facility.
- Dr. Swerdlin received over \$10,000 worth of benefits in advertising.

Dr. Swerdlin had made the following statement at the December 2011 meeting:

If we have an issue here – and I'll be frank with you – we are the veterinarians. We don't charge. We have a nice table. We get promoted. We are the veterinarians for the Winter Equestrian Festival.

- Dr. Swerdlin was familiar with the type of work that ESP performed.
- The zoning application listed the applicant as Michael Stone, ESP.
- WEP created ESP to host Wellington dressage and horse-jumping events.

V.b. – CONTINUED

- As a parent corporation, WEP also benefitted when ESP was successful.
- Staff alleged that based on working at the WEF as the official veterinarian of WEP and ESP, Dr. Swerdlin had constructive knowledge that these facilities were going to be changed in order to benefit the new dressage complex.
- Mr. Stone stated that Mr. Bellissimo, managing member, of both WEP and ESP, presented the project to the EPC.
- Mr. Bellissimo sent a letter to Wellington's Planning and Zoning Director, months after the meeting, withdrawing his request for these changes on behalf of ESP and WEP.
- A hotel complex, more barns, development, and access points would affect the types and scale of events ESP could hold.
- Dr. Swerdlin acknowledged that he received a conflict of interest form in E mails between him and Wellington Deputy Clerk Rachel Callovi.
- Dr. Swerdlin should have known that ESP would receive a financial benefit from changes granted to ESP or WEP since top management referred to both companies interchangeably.
- Mr. Seymour argued that Dr. Swerdlin's participation and subsequent abstention should be forgiven as inadvertent and unintentional; however, Dr. Swerdlin had still failed to file the State voting conflict form.
- Changes that were sought by Mr. Bellissimo and his companies at the December 14, 2011, meeting included additional access points to the property, unlimited use of the facility, and additional permanent structures on the property.
- Under Wellington's zoning code, staff had previously allowed special events; however, equestrian special-use permits must go before the EPC. Uncertainty was created by doing business under a permitted process instead of a complete zoning change.

V.b. – CONTINUED

- The applications that were presented to the EPC on December 14, 2011, sought an overall use change to benefit ESP.
- Staff recommended that the COE proceed to final hearing on this matter.

Mr. Seymour responded that:

- Dr. Swerdlin did not have the first page of the applications at the meeting, and a subsequently filed letter said that were merged together and treated as the same.
- The letter did not say Equestrian Sport Productions, but instead, Equestrian Sport Partners.
- Ms. Rogers referenced seven months of evidence that Dr. Swerdlin did not have and did not know about.
- It was presumed that Dr. Swerdlin knew the intricacies of horse show management.
- Mr. Bellissimo made the differentiation between WEP and ESP at the hearing.
- Mr. Kurtz should have clarified at the December 14, 2011, hearing that he believed ESP was the applicant.
- Wellington's comprehensive plan information that was submitted November 9, 2011, and not provided to Dr. Swerdlin, mentioned that it was submitted by WEP.
- During seven months of investigation Dr. Swerdlin was unaware that many documents existed.
- Dr. Swerdlin was advised not to file Form 8B since he did not believe the Code was violated.

Commissioner Farach stated that he wished to adopt a standard of review for the motion to dismiss that did not require discussing the final evidentiary facts, and that he would allow questioning of counsel by the COE members.

V.b. – CONTINUED

Commissioner Harbison expressed his concern that the COE may create loopholes in its attempt to enforce an ethics code, if a matter was approached using the standard of a form over substance.

Responding to questions, Mr. Seymour said that:

- The BCC held discussions on how a customer or client was defined, and this was not a question of form over substance in this instance.
- The key factor was that Dr. Swerdlin was not on notice.
- Conflict checks were not performed since the rules regulating the Florida Bar identified entities separately. In this instance, the benefit was to the parent company, not to the subsidiary.

Ms. Rogers said that:

- The conflict rested with ESP, Dr. Swerdlin's claimed client, where he had been providing services.
- While WEP was the parent company, ESP received a benefit from this change since it would expand what ESP could do.
- If the change was approved, ESP could host as many events as it desired during the year.

(CLERK'S NOTE: Commissioner Farach allowed comment by Pro Bono Advocate Joseph Small, Esq.)

Mr. Small stated that Dr. Swerdlin had attempted to circumvent the vote by making it a recommendation. He added that Mr. Kurtz had noted that voting and discussing the matter was against the Code if a conflict existed.

Mr. Seymour replied that:

- Dr. Swerdlin did not participate in any discussion and had recused himself just before the vote.
- Dr. Swerdlin was confused when Mr. Kurtz read since it was not in line with the plain language of the Code.

V.b. – CONTINUED

- What Dr. Swerdlin did and did not do should be delineated in a specific timeframe to avoid misrepresentation.

Responding to questions, Mr. Johnson said that:

Staff had attached materials that pertained to the motions filed except some irrelevant discovery material filed by the advocate.

Dr. Swerdlin had completed an acknowledgement of the required ethics training for advisory board members.

Commissioner Fiore stated that:

- The COE was previously informed that Mr. Kurtz and Dr. Swerdlin had some interaction in which the conflict of interest question was addressed.
- It was clear that Dr. Swerdlin disagreed with Mr. Kurtz' understanding and that Craig Galle, Esq., attempted to mediate that disagreement before the meeting. Disagreement regarding Code provision requirements continued at the meeting.
- She agreed that Dr. Swerdlin had not conceded that a conflict of interest existed, he did not sign Form 8B, and he did not acknowledge any of the discussions with Mr. Kurtz as being dispositive.
- The issue was that Dr. Swerdlin disagreed with Mr. Kurtz' understanding of the conflict of interest with the Code provision requirements.
- It seemed that his priority was preserving the quorum, and that he was most concerned with ensuring that a recommendation was made.

Mr. Seymour said that:

- The confusion and the disagreement were not fundamentally different and that Dr. Swerdlin's issue with the quorum was that the EPC would be unable to take action on matters.
- Dr. Swerdlin was unaware of the Code provisions, since EPC members received staff reports just before the meeting.

V.b. – CONTINUED

- The ESP had no interest in the property since they managed shows.

Commissioner Fiore asked whether Mr. Seymour stated that it was just that the applicant was not ESP; the fact that the application benefited Dr. Swerdlin's customer or client did not matter; or that only the actual applicant mattered.

Mr. Seymour said that no evidence existed that the development's application would benefit his customer or client, and that horse shows had been occurring under the existing circumstance for many years.

Mr. Johnson said that the respondent and the advocate had agreed that the COE should read from pages 1-170 of the discovery materials that were previously provided at the probable cause hearing.

Commissioner Fiore clarified that she had read a memo from Mr. Basehart dated December 8, 2011, which started on page 98. She requested that at some point, staff compile what they believed was the complete agenda package before the advisory committee. However, it was not needed at this time.

Commissioner Farach stated that:

- It was clear that the ordinance's intent was not penal in nature and that he did not believe that the COE could take actions possibly considered penal.
- The COE could levy fines up to \$500.
- Mr. Johnson had previously stated that COE proceedings were similar to those of code enforcement.
- Although at least one level or layer of corporate entity-disconnect existed, it was apparent that the evidence presented showed that Mr. Bellissimo was the ultimate owner of all the entities.
- In applying the standard of reasonably trustworthy facts and circumstances that the respondent violated the Code, the evidence did not need to be proved beyond a reasonable doubt at this point.
- Based on those items, he was prepared to vote in favor of denial of the motion to dismiss and he did not think that issuing a letter of instruction was appropriate under these particular circumstances.

V.b. – CONTINUED

- If the COE voted to go forward to final hearing, more direct evidence of a violation as well as any mitigating circumstances would be expected.

MOTION to deny the motion to dismiss. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 3-0. Daniel Galo abstained.

RECESS

At 3:37 p.m., the chair declared a recess.

RECONVENE

At 3:54 p.m., the meeting reconvened with Commissioners Farach, Fiore, and Harbison present.

V.a. Motion to Amend Public Order Finding Probable Cause

- 1. Supplemental Memorandum of Investigation**
- 2. Amended Memorandum of Probable Cause**
- 3. Memorandum in Opposition to Motion to Amend Public Order Finding Probable Cause**

Mr. Johnson noted that the respondent and advocate were permitted to make a brief oral statement to the COE; however, it was a paper hearing based on the memorandum of probable cause, staff reports and attachments, and the respondent's written response. He reiterated that the established COE standard for determining probable cause was as follows:

Probable cause exists where there are reasonably trustworthy facts and circumstances for the COE to conclude that the respondent, Dr. Scott Swerdlin, violated the Palm Beach County Code of Ethics. The COE must determine whether the standard has been met, in addition, akin to civil standards, on a motion for leave to amend.

Mr. Johnson said that he recommended that the COE adopt the general civil rule that an amendment should be granted unless, the privilege had been abused, amending would be futile, or if doing so would prejudice the other party.

Mr. Seymour requested that this item be closed to the public.

V.a. – CONTINUED

Mr. Johnson said that a quandary for closing this matter existed. He stated that all documents and attachments were already public record. He said that section 2-260(g) required that all records be exempt until a finding of probable cause existed since this was not a separate complaint, but instead, an amendment. He concluded that probable cause for this particular case was already found and that all proceedings thereafter were to be public.

Ms. Rogers explained that once a probable cause determination was found in a complaint, all records subsequent to that determination were available to the public. She said that no additional penalty for the issues staff sought to amend existed and that they wished to add WEP and Dr. Swerdlin's outside businesses to the matter. Staff did not believe prejudice existed and that it was appropriate for this to remain public at this time based on the rules of procedure as well as the COE code, she concluded.

Mr. Seymour stated that he wished to withdraw his request based on staff's comments.

Ms. Rogers stated that:

- After ongoing investigation, staff sought leave to amend the prior probable cause determination to include Dr. Swerdlin's outside businesses, Palm Beach Equine Clinic, Palm Beach Equine Medical Center, and Palm Beach Equine Sports Complex under misuse of office and voting conflict sections that Dr. Swerdlin used his official position to give a direct special financial benefit to those entities.
- Staff also wished to amend the probable cause determination to include WEP as a customer or client of Dr. Swerdlin.
- Staff's position was that WEP and ESP were the same with regard to Dr. Swerdlin's conflict.
- The Code prohibited advisory board members from using their office, participating, or voting on a matter that would give a special financial benefit to their customer or client.

V.a. – CONTINUED

- While ESP and WEP were legally separate entities, ESP was founded for the direct benefit of WEP, and both companies were used interchangeably by their own officers and directors and by members of the public and zoning staff.
- Furthermore, as the parent company of ESP, WEP benefited from any business growth at these dressage competitions.
- Dr. Swerdlin alleged that he received no financial benefit from serving as the official veterinarian at the Winter Equestrian Festival, the old facility, or the new dressage program.
- The COE, in its request for advisory opinion 10-013, determined that the term special financial benefit included both a financial gain and loss, similar to the State of Florida Code of Ethics.
- Dr. Swerdlin was operating a thriving business and the new dressage facility would bring more horses, more business, and more money to ESP, WEP, and Dr. Swerdlin's outside businesses.
- Dr. Swerdlin's clinic was listed as the official provider of veterinary services in a national application for the dressage events that were held in the spring at the new facility.
- It was clearly indicated that Palm Beach Equine Medical Center was the nearest surgery center and Dr. Swerdlin's clinic was listed along with recommended amenities.
- Dr. Swerdlin was in a position to benefit from the development of the \$80 million equestrian complex.
- The Palm Beach Equine Medical Center came up in every application that went out for these events between January 2012 and April 2012.
- Dr. Swerdlin also operated a sports complex.

V.a. – CONTINUED

- An excerpt pulled from the Palm Beach Equine Sports Complex Web site read that:

Palm Beach Equine Sports Complex was the premiere sports destination in Wellington, Florida located at 13070 Pierson Road just east of South Shore Boulevard.

- These were disputed facts; however, credible information existed that the development of this complex would have brought more horses, clients, and money to Dr. Swerdlin and to his outside businesses.

Mr. Seymour responded that:

- WEP was not a customer or client of Dr. Swerdlin and that should be distinguished.
- Staff did not have evidence to show that any money was to be made by Dr. Swerdlin or his outside entity.
- Dr. Swerdlin received advertising for being at horse shows; however, those shows had occurred for years and his location did not change.
- It was inappropriate to expand this without sufficient evidence.
- With respect to the advisory opinion, no evidence of a financial gain or loss existed.
- The COE should deny the motion and move forward on the existing findings of probable cause.

Commissioner Fiore said that she assumed that the amendment was without prejudice and that it did not mean staff was correcting an error and Commissioner Farach asked for clarification on the amendment.

V.a. – CONTINUED

Ms. Rogers said that:

- The complainant initially alleged that ESP was Dr. Swerdlin's customer or client and it would receive a special financial benefit.
- When staff continued to review the materials from the initial and supplemental investigations, it became clearer that the new venue would supply Dr. Swerdlin with new means for running his business.
- In the proposed tax amendments to the Wellington comprehensive plan, there existed a large distinction of hotel room nights attributed to dressage events during the WEF.
- In the end, the project failed; however, it did not mean that at the time the meeting was held, Dr. Swerdlin did not use his official position to garner a special financial benefit for his businesses.

Mr. Seymour replied that the project failure did not affect the ability to hold shows and that the economic impact only referred to hotel rooms; and had nothing to do with Dr. Swerdlin or his businesses.

Commission Harbison said that the probable cause nature of this matter required the COE to determine whether the evidence supported reasons to go forward with more inquiries.

Commissioner Fiore stated that:

- Dr. Swerdlin was an exemplary professional, ran a successful business, and cared about the sport and animals.
- The question regarding the way in which decisions were made at the government level was being discussed; advisory bodies had to be very transparent with the public.
- The COE dealt with determining whether habits of activity and interactions needed to change because of the Code and new community standards.
- She agreed that one could not separate Dr. Swerdlin from his business, so she understood that the motion should be amended to include his businesses.

V.a. – CONTINUED

- She also agreed with the issue of including WEP.
- It was important not to be confused by these various intersecting business relationships; however, they should all be revealed so that when a decision was made the COE did not fail to see the entire picture.

Commissioner Farach said that he was prepared to allow the amendment; however, at the final hearing, the advocate would be held at a much higher standard to prove these arguments.

MOTION to allow the amendment to the probable cause finding. Motion by Commissioner Ronald Harbison, seconded by Commissioner Robin Fiore, and carried 3-0. Commissioner Daniel Galo abstained.

Mr. Johnson said that staff had a proposed public order on the amendment to the probable cause affidavit which had been provided to the respondent; and unless there was an objection, they would ask the COE's adoption.

Mr. Seymour stated that he could not agree to the order.

Commissioner Farach stated that, typically, the COE reviewed the order and sometimes made changes.

(CLERK'S NOTE: During the discussion on item V.a., Mr. Johnson recommended that item VII be continued to next month due to notice issues. For further discussion on item V.a. see page 20)

VII. PROBABLE CAUSE HEARING (C12-003) (Executive Session)

MOTION to continue item VII until the next meeting of the Commission on Ethics to allow for proper notice. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 3-0. Commissioner Daniel Galo absent.

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

V.a. – CONTINUED

Commissioner Farach asked whether a final hearing date had been set.

Discussion ensued regarding the available dates for the final hearing on this issue. The final COE consensus was that October 1, 2012, October 3, 2012, and October 4, 2012, would be available to hold the final hearing.

MOTION to accept the amended public report and finding of probable cause C11-027. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 3-0. Commissioner Daniel Galo abstained.

Commissioner Fiore read the amended public report and finding of probable cause C11-027 as follows:

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

The complaint originally alleged three Code of Ethics violations involving a meeting of the EPC on December 14, 2011.

Count 1 alleged that respondent misused his official position by participating in a matter before the EPC that would result in a special financial benefit to his customer or client, Equestrian Sports Production and/or Mark Bellissimo, applicant for the Equestrian Village Project, before the EPC for an advisory vote prior to consideration by the Village of Wellington Planning, Zoning and Adjustment Board and ultimately by the Village Council.

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

V.a. – CONTINUED

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

On January 30, 2012, the complaint was determined by staff to be legally sufficient. The matter had been brought to the attention of Commission on Ethics staff by a formal complaint and pursuant to COE Rule of Procedure 4.1.3., a preliminary inquiry was commenced. After obtaining sworn statements from material witnesses and documentary evidence sufficient to warrant a finding of legal sufficiency a memorandum of legal sufficiency was filed and a preliminary investigation commenced pursuant to Article V, Division 8, Section 2-260(d). Information obtained during the inquiry was adopted into the investigation and presented to the Commission on March 1, 2012, with a recommendation that probable cause exists that a Code of Ethics violation occurred. At that time, the Commission conducted a probable cause hearing in executive session. The Commission reviewed and considered the investigative report, documentary submissions, recommendation of staff, written response of the respondent as well as oral statements of the respondent and advocate. At the conclusion of the hearing the Commission on Ethics determined that there were reasonably trustworthy facts and circumstances for the Commission on Ethics to believe that the respondent may have violated §2-443(a)(COUNT 1), §2-443(b)(COUNT 2) and §2-443(c)(COUNT 3) of the Palm Beach County Code of Ethics and a final hearing was set in order to determine whether a violation or violations occurred.

Subsequently, pursuant to §2-260(d) and Commission on Ethics Rule of Procedure 4.12, Commission Staff obtained additional investigative material regarding the respondent, his equine clinic and medical facilities and equine sports complex businesses and the relationship between Wellington Equestrian Partners (WEP) Equestrian Sports Productions (ESP) and Mark Bellissimo and filed a motion to amend the Public Order Finding Probable Cause to include a finding that respondent may have violated §2-443(1) and §2-443(4) of the Code of Ethics as follows:

V.a. – CONTINUED

Count 1 now alleges that respondent misused his official position as Chairman of the Equestrian Preserve Committee (EPC), a Village of Wellington advisory board, by participating in a matter before the EPC that would result in a special financial benefit to himself, his outside businesses, including Palm Beach Equine Clinic, Palm Beach Equine Medical Centers and Palm Beach Equine Sports Complex, or his customers or clients, Equestrian Sports Production, Wellington Equestrian Partners and/or Mark Bellissimo, by participating in items before the EPC regarding a proposed Equestrian Village Project.

Count 2 now alleges that respondent corruptly attempted to secure a special privilege, benefit, or exemption for himself, his outside businesses, including Palm Beach Equine Clinic, Palm Beach Equine Medical Centers and Palm Beach Equine Sports Complex, and/or his customers or clients, Equestrian Sports Production, Wellington Equestrian Partners and/or Mark Bellissimo, with wrongful intent, in a manner inconsistent with the proper performance of Respondent's public duties.

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

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

V.a. – CONTINUED

Article XIII, Section 2-443(b), *Corrupt misuse of official position* prohibits any official or employee from using his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or an employee which is inconsistent with the proper performance of his or her public duties.

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

Information obtained during the inquiry, investigative and supplemental investigative reports along with a Commission on Ethics staff Motion to Amend the Public Order Finding Probable Cause was presented to the Commission on Ethics on July 12, 2012, with a recommendation that an Amended Public Order Finding Probable Cause be issued. At that time, the Commission conducted a probable cause hearing in public session. The Commission reviewed and considered the investigative reports, documentary submissions, recommendation of staff, written responses of the respondent as well as oral statements of the respondent and advocate. At the conclusion of the hearing the Commission on Ethics determined that there were reasonably trustworthy facts and circumstances for the Commission on Ethics to believe that the respondent may have violated §2-443(a)(1),(4) and (5)(Count 1 as amended), §2-443(b)(Count 2 as amended) and §2-443(c)(Count 3) of the Palm Beach County Code of Ethics and a final hearing was set in order to determine whether a violation or violations occurred.

V.a. – CONTINUED

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

Therefore it is:

Ordered and adjudged that the Motion to Amend the Public Order Finding Probable Cause is hereby granted and the complaint against respondent, Dr. Scott Swerdlin, is hereby set for final hearing beginning on October 1, 2012.

Done and ordered by the Palm Beach County Commission on Ethics in public session on July 12, 2012, for the Palm Beach County Commission on Ethics, Manuel Farach, chair.

V.b. Pages 2-14

VI. PROBABLE CAUSE HEARING (C12-005) (Public Hearing)

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

Mr. Johnson noted that the respondent waived, in writing, confidentiality and allowed all the documents in the hearing to be public.

Mark E. Bannon, COE Senior Investigator, reported that:

- The respondent in this case was Nelson "Woodie" McDuffie, Mayor of the City of Delray Beach (Delray), and that staff recommended this complaint be dismissed for legal insufficiency.
- The matter came to the attention of COE staff through a sworn complaint submitted by Richard Van Gemert of Delray.
- The complaint was based on actions that occurred at two regular meetings of the Delray commission held on March 12, (2012,) and April 3, (2012.)

VI. – CONTINUED

- During these meetings, a land use project known as Delray Place was presented to the commission for approval, which included a request to change the City's future land-use map for the location of this project from transitional to general commercial and to change the parcel's zoning from planned office center to planned commercial.
- Several people in attendance at both of those meetings opposed these changes, including the complainant.
- The complainant alleged that the Delray zoning commission had recommended against these changes to the Delray commission and the matter was initially discussed at a March 20, (2012,) hearing, which was held over until the April 3, (2012,) hearing.
- The complaint stated that after the close of the public comment portion of the hearing on April 3, (2012,) Mayor McDuffie failed to call for a vote on the matter, and instead, engaged in discussions with other Delray commissioners, staff, and the agent for the applicant about the possibility of withdrawing the application or amending it to request a zoning change to a new category known as Special Activities District, which all agreed would allow for the same development without a large zoning change.
- The attorney stated that if that was done, the applicant should pay the cost of re-notification since a second hearing would be required.
- The applicant's agent agreed to this option and asked that the application be put on hold until it could be amended. According to the minutes, he had current tenants in those buildings, and did not want them to think he had abandoned the idea of changing to build this new commercial development.
- Several people who wished to comment were told by Mayor McDuffie that the public comment portion was over.
- The commission then voted to allow the applicant to withdraw his application and to amend and resubmit it in six months.

VI. – CONTINUED

- The complainant stated that this was a violation of both State law and the local rules of procedure; however, no indication existed that Mayor McDuffie acted for either his own financial benefit or for any corrupt motive.
- Mayor McDuffie was quoted in the minutes as saying that he wanted this project because he thought it was best for the tax base in Delray Beach.
- Aware that Mayor McDuffie was running for the Palm Beach County Supervisor of Elections position, staff also performed check of the funds in his elections account and could not find any deposits or any funds taken from any individual associated with the project or with the agent of the project.
- A check was also performed on the corporate Web site for the Florida Division of Corporations. It was found that nobody associated with either the applicant or agent's companies had any association with Mayor McDuffie.
- Since no financial benefit to Mayor McDuffie or any related entity existed, the misuse section could not be used. Even if Mayor McDuffie should have voted, it was not a violation of the Code, and since his statement was mainly based on the statement that he withheld the vote because he believed that project was good for Delray Beach, it didn't meet the criteria of a corrupt misuse.
- Staff asked for the COE to dismiss the request as legally insufficient.

Commissioner Galo asked whether a process that the mayor employed was in violation of any State law or local rule of procedure.

Mr. Gannon said he did not know or check the local rules since they could not be enforced. He added that he believed it probably was not in violation of State law since it was the right of the commission to have those discussions. He said that thought the problem dealt with Mayor McDuffie closing public comment and it had initiated the complaint, he concluded.

MOTION to accept staff's recommendation of a finding of no legal sufficiency with regard to C12-005. Motion by Ronald Harbison, seconded by Daniel Galo, and carried 4-0.

VI. – CONTINUED

Mr. Johnson stated that he recommended that the COE return to the reading of the public report and final order of dismissal.

(CLERK'S NOTE: Item VIII was taken.)

VII. Page 19

VIII. RECONSIDERATION OF PRIOR OPINIONS

Mr. Johnson clarified that item VIII was a resubmission and not a reconsideration of prior opinions by staff. He added that reconsideration first required a motion by COE members who voted in favor of the original opinions.

MOTION to reconsider Request for Advisory Opinion (RQO) 12-034 and RQO 12-036. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 4-0.

VIII.a. RQO 12-034

Ms. Rogers stated that:

- A public employee asked whether she could accept hotel rewards points while traveling in her official capacity and where her public employer had reimbursed her travel costs.
- The COE had initially held that commercial rewards points for official business where the costs were reimbursed by a public employer could not be personally accepted by the public employee for his or her private benefit.
- The County's Code of Ethics (Code) stated that publicly advertised offers for goods or services available to an employee under the same terms and conditions that were offered or made available to the general public were not considered gifts.
 - Hotel rewards points were offered to the general public.
 - The value and frequency of the points was so insignificant and sporadic that accounting for the value was unreasonable and impractical.

VIII.a. – CONTINUED

- There was no indication that the State's Code had addressed the issue, but staff's proposed revised standard would be consistent with federal regulations, which oversaw the use of promotional materials and travel rewards programs. Therefore, staff recommended that the rewards points obtained in an official capacity should not be considered as gifts.
- A future discussion may be necessary to address situations where, unbeknownst to a public employer, public employees chose higher-cost travel and hotel reservations to obtain a benefit for themselves.
- Public employers may always impose regulations more stringent than the Code.
- Staff's proposed revised standard would also be consistent with what appeared to be the standard practice in State agencies as well.

Commissioner Farach stated that rewards points gained from the use of public funds belonged to the public even though making reservations in the name of governmental agencies was impractical.

Commissioner Fiore said that when making reservations, public employees could be restricted from using their frequent flyer or hotel numbers.

Commissioner Farach said that the COE should not micromanage, and that the restriction should be left to the discretion of each governmental entity.

Commissioner Harbison commented that some economic exchanges, such as interest costs or temporarily reducing a public employee's credit limit, might offset the reward points benefit.

Commissioner Galo opined that the relationship of a public employee and a governmental employer should not significantly differ from that of a private business. He added that he did not see any abuse being conducted by the public employee.

MOTION to approve the revised advisory opinion letter RQO 12-034. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0.

(CLERK'S NOTE: Item VI. was continued at this time.)

VI. – CONTINUED

Commissioner Fiore read the public report and final order of dismissal for C12-005:

Complainant, Richard Van Gemert, filed the above-referenced Complaint on June 8, 2012, alleging a possible ethics violation involving Respondent, Nelson McDuffie, Mayor of City of Delray Beach.

The Complaint alleges Respondent failed to call for a vote at the close of public comments concerning a private party application for change in land-use designation and zoning for a tract of land within the city. The Complaint further alleges that the application was withdrawn, and the matter was tabled in order for the applicant to resubmit the application under a different zoning request in violation of the rules of procedure for a quasi-judicial hearing.

On June 21, 2012, after reviewing the Complaint, supporting affidavit, and memorandum of inquiry, the Complaint was determined by staff to be legally insufficient and presented to the Commission on Ethics on July 12, 2012, with a recommendation of dismissal as legally insufficient.

The Commission on Ethics reviewed the Complaint and memorandum of inquiry and determined that there is no allegation by Complainant or information known or uncovered to indicate that Respondent acted in his official position in violation of the Code of Ethics. Further, there is evidence based on both records obtained during the inquiry and the statements of Respondent and Complainant, that the Respondent received no financial benefit, and that his actions were based upon what he believed to be in the best interests of the city during the meeting.

Therefore, the Commission has determined that the actions taken of the Respondent, Nelson McDuffie, do not constitute a violation of the Code of Ethics and dismissed the Complaint on July 12, 2012, due to no legal sufficiency.

Therefore, it is ordered and adjudged that the Complaint against Respondent, Nelson "Woodie" McDuffie, is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on July 12, 2012, by Manuel Farach, Chair.

VI. – CONTINUED

Commissioner Fiore requested that, in the fourth paragraph, a period be placed after the words, financial benefit. She said that she was hesitant to add the remaining sentence's language since the COE did not investigate the facts regarding C12-005.

Commissioner Farach said that the language was probably consistent with the Respondent's belief, but the COE did not make a factual determination that it was in the City's best interest.

Mr. Johnson said that the COE had previously given some leeway to respondents when dismissing complaints due to the stigma.

Senior COE Investigator Mark E. Bannon stated that the Complainant's main issue was that the zoning board and the majority of people that were present at the public meeting were against the land-use change. He added that from what he could establish, there was no financial or corrupt benefit to Mayor McDuffie.

Commissioner Fiore said that since Mayor McDuffie received no financial benefit, the COE could only state that there was no Code violation. She suggested that the fourth paragraph's remaining language in the last sentence be removed.

Discussion ensued, and the COE's consensus was to revise the fourth paragraph's last sentence as follows:

Further, there is evidence based on both records obtained during the inquiry, and the statements of Respondent and Complainant, that Respondent received no financial or corrupt benefit.

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

VIII.b. RQO 12-036

Ms. Rogers stated that:

- An employee asked whether family members could accompany her on official government travel.

VIII.b. – CONTINUED

- The COE had determined that if a family member accompanied a public employee on an official fact-finding trip, the resulting benefit, which was half the hotel room cost, constituted a misuse of office unless the employee or family member reimbursed the value received within 90 days.
- Staff had recommended that the COE clarify the reimbursable value received by the family member.
- Although staff recognized that there was often little or no additional cost to accommodate a second person per room, any additional costs would remain a special financial benefit.

Commissioner Fiore said that:

- RQO 12-036's revised opinion letter referenced that the employee was not taking a family member, and that the COE did not provide advisory opinions based on hypothetical scenarios.
- The advisory opinion implied that it was appropriate to take along a family member.
- Language should be crafted to state that it was up to management whether a family member could accompany an employee on business.

Mr. Johnson stated that:

- The following previous advisory opinion language could be incorporated:

While it's not a violation of the Code of Ethics, nevertheless, a government may enact more stringent regulations through its own policies and procedures, and may impose more restrictive requirements than those mandated by the Code.
- Language stating that it was the prerogative of a governmental entity or department whether family accompaniment was permitted could be inserted on page 3, after the sentence that began, Accordingly.
- The proposed revised advisory opinion letter neither supported nor opposed a family member accompanying a public official.

VIII.b. – CONTINUED

Commissioner Fiore suggested the following:

- Delete the following sentence on page 2: A family member is not prohibited from accompanying you on these trips;
- Craft language to state that the Code did not prohibit a family member from accompanying a public official, but the individual employer, municipality, or governmental entity may have rules regarding the family accompaniment; or,
- Craft language to state: The Code of Ethics does not allow or prohibit a family member from accompanying you.

Commissioner Farach suggested language that stated:

The Code does not speak to the propriety of family members accompanying on trips; such is left to the discretion of the applicable governmental entity.

Mr. Biggs suggested the following language:

A family member is not prohibited by the Code of Ethics from accompanying you on these trips. However, should you choose to take a family member on a FAM (familiarization) trip with you, if permitted by the governmental entity, please keep in mind that...

MOTION to approve revised advisory opinion letter RQO 12-036 as amended to include the changes as discussed. Motion by Ronald Harbison, seconded by Daniel Galo, and carried 4-0.

IX. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

IX.a. RQO 12-048

IX.b. RQO 12-049

MOTION to approve the Consent Agenda. Motion by Ronald Harbison, seconded by Daniel Galo, and carried 4-0.

X. ITEMS PULLED FROM CONSENT AGENDA – None

XI. PROPOSED ADVISORY OPINIONS

XI.a. RQO 12-029

Mr. Johnson said that RQO 12-029 was submitted by Sharon Merchant, whom he believed owned the business, The Merchant Strategy (TMS).

Commissioner Harbison stated that the Merchant family was his client so he would recuse himself from deliberation.

Mr. Johnson said that within 15 days, staff would assist Commissioner Harbison in filing an 8B Conflict of Interest Disclosure Form with the State and the COE.

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

Mr. Johnson stated that:

- Ms. Merchant asked whether, as a Board of County Commissioners appointee to the Convention and Visitor's Bureau (CVB) board of directors, she or her business, TMS, could participate in developing an event where TMS would lobby for and could receive funds from various private entities, funded in whole or in part with public funds, such as the CVB, and various public entities.
- The CVB:
 - was a private, nonprofit entity originally formed in 1983 as Discover Palm Beach County;
 - operated under a County contract to provide tourism marketing services under the County's tourist development plan;
 - received funding from a portion of County collected bed taxes; and,
 - was one of several nonprofit tourism development organizations under the advisory board, Tourist Development Council (TDC). The other organizations under the TDC's umbrella were private entities;
- The TMS was involved in event promotions and full-scale marketing activities. Ms. Merchant was approached by community members to plan and host a Dragon Boat Race Festival.

XI.a. – CONTINUED

- Docket space arrangements and sponsorship sales were made by TMS. The TDC, the Sports Commission, and the Cultural Council offered public funding to companies for similar events, and would likely be involved in the event's initial funding.
- To secure funding, Ms. Merchant or TMS members would solicit public grant money and sponsorship dollars from the organizations.
- As an official, Ms. Merchant could not contract with a governmental entity, such as the County or the TDC. She could, however, in her personal capacity, solicit and contract with the other private entities, such as the CVB, provided she did not use her official position to gain a special financial benefit for her business.

Commissioner Fiore stated that Ms. Merchant, as a CVB board member, could not go before the CVB as a private citizen to solicit or contract.

Mr. Johnson clarified that the Code did not prohibit Ms. Merchant, in her private capacity, from soliciting or contracting with the CVB.

Commissioner Galo read the Code's section 2-443(a) regarding prohibited conduct.

Mr. Johnson said that:

- He had misstated the advisory opinion, and Commissioner Fiore's statement was correct.
- Ms. Merchant could not use her official position before entities such as the Sports Commission, and the Cultural Council, for her own personal financial benefit. In her private or public position, she could not go before the CVB as a CVB board member to solicit, participate, or vote on a matter.
- Officials who were also advisory board members had certain exemptions from the Code's contracting provisions. The Code did not address officials who were not advisory board members.

XI.a.

- Based on the facts and circumstances that were submitted, Ms. Merchant was not prohibited from soliciting event funding from public and private entities other than the TDC, provided she did not use her official CVB position to obtain a special financial benefit for herself, her outside business, or a customer or client of her outside business. She also could not participate in, and vote on, such solicitations before the CVB.

MOTION to approve proposed advisory opinion letter RQO 12-029. Motion by Daniel Galo, seconded by Robin Fiore, and carried 3-0. Ronald Harbison abstained.

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

XI.b. RQO 12-037

Mr. Johnson stated that:

- A County employee asked whether she could benefit from gifts given to her husband, which were unrelated to her County employee status; and if so, whether the gifts' values must be reported pursuant to the Code.
- The County employee's husband was an ordained minister and often received gifts from parishioners. The gifts were based on work that he performed; however, the County employee often received a benefit from the gifts.
- A factual scenario existed that a potential may exist that a donor could be a County vendor.
- In RQO 11-022, the COE had determined that free hotel accommodations and accompanying event tickets given to an airline pilot and his County-employed wife were shared gifts that should be reported if valued over \$100. Unlike this advisory request, the vendor issue did not exist in RQO 11-022.
- Staff recommended that the COE:
 - recede from RQO 11-022's determination;
 - adopt the Florida Administrative Code's (FAC) seven State standards in determining what was considered a gift; and,

XI.b. – CONTINUED

- include an eighth standard that based on the facts and circumstances, did a nexus exist between the gift's donor and the public employee.

Commissioner Fiore expressed concern that if the COE based its advisory opinion on the FAC's standards, a huge potential could exist for "pass-through" favors. She added that the eighth factor could not be considered a standard since it was undeterminable whether a nexus existed.

Mr. Johnson commented that:

- The eighth standard was added because if no nexus existed, it was less likely that an issue existed regarding a gift to one person that benefited two.
- The FAC's fourth standard did not apply to RQO 12-037.

Commissioner Galo stated that the COE should define who received the gift and why the gift existed.

League of Cities Executive Director Richard Radcliffe commented that it was usual and customary for pastors to receive gifts from parishioners in lieu of salaries, and without an existing nexus, they could not earn a living.

Mr. Biggs said that the FAC was reviewed at section 34-13.310 since the Code only mentioned indirect gifts at section 2.444(a)(1). He added that using the nexus standard helped to determine the donor's intent.

Commissioner Farach commented that the circumstances and the intent surrounding a particular gift should be considered.

Commissioner Harbison stated that adopting the FAC's seven standards with a nexus standard did not preclude the COE from specifically reviewing a transaction to determine intent.

Commission Farach suggested replacing the language in the last sentence before the eight FAC standards began on page 2 with: The Commission may, among others, consider the following nonexclusive factors in determining whether a gift has been made.

XI.b. – CONTINUED

Commissioner Fiore said that applying the usual and customary standards to this advisory opinion letter may be inappropriate and should not be considered. She suggested:

- replacing the words, additional factors, with the words, important factors, or, significant factors, in the first paragraph on page 3; and,
- adding language to possibly read: No employee or public official should accept an indirect gift or benefit that is intended to influence...

Discussion ensued regarding Commissioner Fiore's proposed language. The COE's consensus was to complete the sentence by adding the verbiage: ...the conduct of the employee or the official in the manner in which they perform their public duties.

MOTION to approve proposed advisory opinion letter RQO 12-037 as amended to include the changes as discussed. Motion by Daniel Galo, seconded by Robin Fiore, and carried 4-0.

XI.c. RQO 12-050

Mr. Johnson stated that:

- After rendering a previous advisory opinion for Pastor Leo Abdella, staff had received further clarification from him regarding a slight variation from the original circumstances.
- Occasionally, Christ Fellowship Church (CFC) dealt with land-use issues where lobbyists would possibly be hired.
- The question arose concerning whether an organization that did not currently retain lobbyists but had in the past and may in the future was considered an employer.
- After reviewing the Code's language, staff recommended that the organization would not be considered as a principal unless a lobbyist was retained.

Commissioner Fiore said that a principal was still considered to be a registered principal if he or she was currently listed as such and had not yet withdrawn.

XI.c. – CONTINUED

Mr. Johnson said that:

- The individual contract determined who paid a lobbyist registration fee.
- Commissioner Fiore's statement should be included in the advisory opinion letter, noting that registration itself merely indicated that someone was the principal of a lobbyist.
 - Registration would not be determinable by the Code, but it would be a factor in a complaint before the COE.
 - If lobbying was completed on a matter and no future lobbying on other matters existed, the COE could require withdrawal of the registration.

Commissioner Fiore requested that the item be tabled so that staff could review the lobbyist retention and withdrawal issue.

Ms. Rogers clarified that the CFC had planned an upcoming retreat for August 9-10, 2012, and that no registered or retained lobbyist currently existed.

Commissioner Farach expressed his concern that the Code's section 2-442 could be read differently.

Commissioner Galo said that section 2-442 did not define whether a lobbyist was someone who was presently employed.

Mr. Johnson suggested removing the word, currently, in the paragraph that began, In sum, and removing the word, current, in the paragraph that began, In summary.

Ms. Rogers said that the CFC employed a lobbyist one or two years ago, but she would get the exact date from Mr. Abdella.

Commissioner Farach suggested rewording the sentence that began, In sum, to read: While CFC has employed lobbyists in the past, such employment was remote in time, and CFC does not have an existing or pending contract with any individual.

XI.c. – CONTINUED

Commissioner Fiore said that the second to last paragraph on page 2 also contained the word, currently. She suggested that page 2, the last sentence in the second to last paragraph could be changed to delete the remaining language after the word, lobbyist.

Commissioner Farach said that the Code did not assist the COE in determining the principal or employer's intent.

Commissioner Fiore said that the word, currently, in the sentence that began, Under the circumstances, should also be deleted.

Mr. Johnson stated that the paragraph that began, The plain language, could be removed, but it was included since it underscored the example of withdrawing the lobbying relationship, and that the COE would not opine as to speculative facts and circumstances.

Commissioner Farach stated that he did not think the plain language of the code was clear as it related to that paragraph.

Commissioner Fiore said that the paragraph could include language that, notwithstanding this opinion, the COE would not tolerate a scheme to circumvent the code by terminating the lobbyist.

Commissioner Farach said that the first sentence in the paragraph that began, The plain language, could be removed.

Commissioner Galo suggested that the entire paragraph be deleted since the issue was previously discussed.

Commissioner Fiore said that the italics should be removed from the phrase, who was employed, in the paragraph that had removed section 2-442.

Mr. Johnson clarified that the word, contract, should not be italicized as well.

MOTION to approve proposed advisory opinion letter RQO 12-050 as amended to include the changes as discussed. Motion by Robin Fiore, seconded by Daniel Galo, and carried 4-0.

(CLERK'S NOTE: Commissioner Farach stated that the rest of the agenda items could be tabled to the next COE meeting since Mr. Johnson said that no immediacy to the remainder of the agenda items existed.)

XIV. EXECUTIVE DIRECTOR COMMENTS

XIV.a.

DISCUSSED: Ben Evans' Departure.

Gina A. Levesque, COE Executive Assistant, said that employee Ben Evans' last day in the office was July 13, 2012. She added that he had provided extensive work on the Social Media Policy update.

Mr. Johnson said that staff also wished to congratulate him on receiving a full-time job since COE staff had the budget to employ him only part-time.

Commissioner Harbison asked for staff to extend the COE's thanks to Mr. Evans.

AGENDA TABLED

MOTION to table the remainder of the agenda and adjourn. Motion by Ronald Harbison, seconded by Daniel Galo, and carried 4-0.

XII. SOCIAL MEDIA UPDATE – Tabled

XIII. POLICY AND PROCEDURE CLARIFICATION RE: PROCESSION OF COMPLAINTS THAT ARE FILED WITHIN 30 DAYS OF ELECTION – Tabled

XIV. See above on this page.

V. COMMISSION COMMENTS – Tabled

XVI. PUBLIC COMMENTS – Tabled

XVII. ADJOURNMENT

At 7:15 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

VI. Processed Advisory Opinions (Consent Agenda)

a. RQO 12-052 Janet DeVries

A City Employee asked whether her name may be acknowledged in a forthcoming book where she provided research and editing assistance in her personal time.

Staff submits the following for COE approval: A City Employee is not prohibited from accepting a research credit in a forthcoming publication in exchange for research services provided in her personal time. She did not receive compensation for her work and accordingly, such an arrangement does not fall within the definition of Outside Employment as provided by the Palm Beach County Code of Ethics (the Code).

b. RQO 12-056 Heather Shirm

A County employee asked whether she was prohibited from accepting sky miles for reimbursed travel to the National Association of Government Webmasters (NAGW) conference.

Staff submits the following for COE approval: A County employee is not prohibited from accepting airline reward points when booking travel for a work related conference, notwithstanding the fact that she will ultimately be reimbursed by her government employer.

c. RQO 12-057 Suzanne Mulvehill

A municipal elected official asked whether she is permitted to attend Small Business Development Center Conferences and receive travel and related expense reimbursement from her outside employer, Palm Beach State College, and if so, whether she must report these reimbursements.

Staff submits the following for COE approval: An official is not prohibited from accepting attending development conferences and accepting reimbursement from a governmental entity. The Code of Ethics specifically excludes travel expenses paid by governmental entities from regulations related to travel reimbursement. As state reporting individuals, elected officials are required to adhere to all standards and requirements imposed under state law regarding the reporting of gifts.



Palm Beach County Commission on Ethics

Commissioners

Manuel Farach, *Chair*
Robin N. Fiore, *Vice Chair*

Ronald E. Harbison
Daniel T. Galo

Executive Director
Alan S. Johnson

July 18, 2012

Janet DeVries
3575 S. Ocean Blvd., #111
South Palm Beach, FL 33480

Re: RQO 12-052
Outside Employment

Dear Ms. Devries,

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 submission dated July 1, 2012 whether as a City of Boynton Beach (the City) employee your name may be acknowledged in a forthcoming book for which you provided research and editing assistance in your personal time.

IN SUM, you are not prohibited from accepting a research credit in a forthcoming publication in exchange for research services provided in your personal time. Such an arrangement does not fall within the definition of Outside Employment as provided by the Palm Beach County Code of Ethics (the Code).

THE FACTS as we understand them are as follows: You a member of the Boynton Beach City Library staff and a history major at Florida Atlantic University. In your personal capacity and on non-public time, you have assisted Dr. Ginger Pederson with research for her forthcoming publication, *Pioneering Palm Beach Style: The Deweys of Palm Beach*. You have not received compensation for your work nor will you receive royalties after Dr. Pederson's book is published. Dr. Pederson intends to acknowledge your research by listing your name in her work, without reference to your public title.

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) prohibits a public employee from using his or her official position to specially financially benefit their outside business or employer or a customer or client of their outside business or employer¹, in a manner not shared with similarly situated members of the general public. Under the facts you have submitted, you have not used your official position in assisting Dr. Pederson. Nor is credit for your assistance to be given in your official title.

Section 2-444 (g) defines a gift as the transfer of anything of economic value whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise or in any other form, without *adequate and lawful consideration*. Arguably, receiving a research assistant credit in a book is something of value. However, you are receiving the credit in exchange for the work you provided to Dr. Pedersen. Accordingly, it is not a gift as defined by the Code.

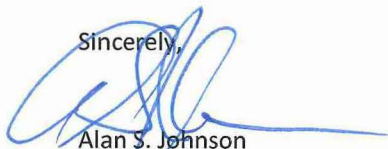
¹ Art. XIII, §2-442 Customer or client means any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000)

IN SUMMARY, based upon the facts and circumstances you have submitted you are not prohibited from accepting a research credit in your personal capacity in a forthcoming book detailing the history of the Deweys of Palm Beach County.

This opinion construes the Palm Beach County Code of Ethics Ordinance 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



Palm Beach County Commission on Ethics

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Daniel T. Galo

Executive Director

Alan S. Johnson

July 26, 2012

Heather Shirm, Web Design Coordinator
Palm Beach County Public Affairs
301 North Olive Avenue
West Palm Beach, FL 33401

Re: RQO 12-056
Gift Law/Travel Rewards

Dear Ms. Shirm,

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 submission dated July 20, 2012, whether you are prohibited from accepting airline travel rewards ("skymiles") for reimbursed travel to the National Association of Government Webmasters (NAGW) conference.

IN SUM, you are not prohibited from accepting airline reward points when booking travel for a personal or work related conference, notwithstanding the fact that you will ultimately be reimbursed by a non-vendor association.

THE FACTS as we understand them are as follows:

You are a Palm Beach County employee in the Public Affairs Department. You were recently appointed as a Board Member for the South Region of the National Association of Government Webmasters (NAGW). NAGW is a non-profit association of local government Webmasters. Membership is entirely made up of full or part-time local government employees. According to its website, the association's mission is to provide a means for local government Webmasters to share knowledge, ideas and resources. In doing so the NAGW enables these public employees to collaborate on technologies and to network with other professionals to improve members' capacity "to provide our value across the web to our communities."

You are, as a director of NAGW, required by the association to attend two meetings per year. You will be purchasing your airline tickets personally and will be reimbursed by NAGW. NAGW is not a contractor, vendor, service provider, bidder or proposer of Palm Beach County Government (PBC). When booking your flights, you will receive airline "skymiles" rewards, a program generally available to the public for carrier travel.

Although not reimbursed by PBC, your attendance at the conferences will be in your official capacity, for government purposes related to your duties and responsibilities as Webmaster for your County Department, and approved by your supervisor.

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(f) *Accepting travel expenses*. No official or employee shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees and incidentals from any

county or municipal contractor, vendor, service provider, bidder or proposer as applicable. The board of county commissioners or local municipal governing body as applicable may waive the requirements of this subsection by a majority vote of the board or local municipal governing body. The provisions of this subsection shall not apply to travel expenses paid by other governmental entities or by organizations of which the county or municipality as applicable is a member if the travel is related to that membership.

NAGW is not a contractor, vendor, service provider, bidder or proposer of PBC. Therefore, the prohibitions and waiver requirements of §2-443(f) do not apply. Provided that you do not use your official public position to specially financially benefit or corruptly benefit NAGW, the Code does not prohibit or otherwise regulate your activities for a private organization of which you are an officer or director.¹ Therefore, your acceptance of skymiles, notwithstanding reimbursement from NAGW, is not regulated within the misuse provisions of the Code.²

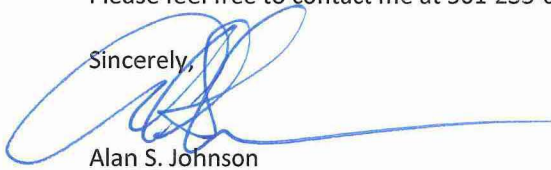
Regarding gift law, if the value of the travel expense reimbursement exceeds \$100 in the aggregate, the amount will need to be reported on an annual gift reporting form as required by §2-444(f)(2) of the Code. If the reimbursement is for registration fees and other costs associated with educational or governmental conferences or seminars, and the attendance is in your official capacity related to your duties with the Public Affairs Department, for a governmental purpose, and approved by a supervisor, then §2-444(g)(1)h. relieves you of the reporting requirement under the Code.

IN SUMMARY, the code does not prohibit you from accepting skymile rewards from airline purchases that are reimbursed by a private association.

This opinion construes the Palm Beach County Code of Ethics Ordinance 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/gal

¹ Art. XIII, §2-443(a)(7) and §2-443(b)

² Notwithstanding, acceptance of rewards points when travel is reimbursed by the public employer is not prohibited provided such rewards are similarly available to the public and the employee does not incur additional public expense in order to secure preferred rewards. RQO 12-034



Palm Beach County Commission on Ethics

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Ronald E. Harbison
Daniel T. Galo

Executive Director

Alan S. Johnson

July 26, 2012

Commissioner Suzanne Mulvehill
City of Lake Worth, District 4
7 North Dixie Highway
Lake Worth, FL 33460

Re: RQO 12-057
Accepting Travel Expenses

Dear Commissioner Mulvehill,

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

YOU ASKED in your email of July 26, 2012, whether you are permitted to attend small business development center conferences and receive travel and related expense reimbursement from your outside employer, Palm Beach State College, and if so, whether you must report these reimbursements.

IN SUM, you are not prohibited from attending development conferences and accepting reimbursement from your outside employer, Palm Beach State College. The Code of Ethics specifically excludes travel expenses paid by governmental entities from regulations related to travel reimbursement.¹ You are an official identified by state law as a reporting individual. Therefore, you are required to adhere to all standards and requirements imposed under state law regarding the reporting of gifts.²

THE FACTS as we understand them are as follows:

You are the vice-mayor of The City of Lake Worth (the City), and are a Small Business Development Consultant at Palm Beach State College (PBSC). PBSC is the host institution for the Small Business Development Center (SBDC), a governmental entity funded in part through a cooperative agreement with the U.S. Small Business Administration. You regularly attend Small Business Development Center conferences. Typically, the College would reimburse mileage and travel expenses related to conference attendance. PBSC is a vendor of the City.

THE LEGAL BASIS for this opinion may be found in the travel reimbursement section of the Code of Ethics:

Section 2-443(f) *Accepting travel expenses*; prohibits reimbursement of travel expenses from *any county or municipal contractor, vendor, service provider, bidder or proposer* of your government employer. This prohibition can be waived by a majority vote of the Lake Worth Commission. However, the prohibitions and limitations of this section do not apply to expenses paid by other governmental entities. As one of 28 public colleges in the State of Florida, PBSC is a governmental entity.³ As a result, you are not prohibited from accepting travel expenses from PBSC even though PBSC is a vendor of Lake Worth.

Section 2-444(f)(1) *Gift reports for officials identified by state law as reporting individuals.*

¹ Art. XIII, §2-443(f)

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

³ RQO 10-028-OE, RQO 10-037-OE, RQO 11-026, RQO 11-031

Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. A copy of each report shall be filed with the county commission on ethics.

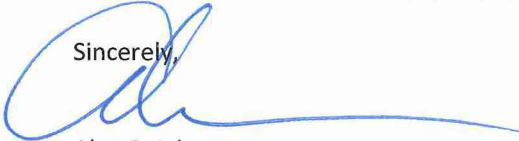
As a City Commissioner, you are a state reporting individual and must comply with the transparency requirements of state law. The Palm Beach County Code of Ethics annual reporting requirements apply only to non-state reporting individuals.⁴ Nonetheless and while attending these conferences, you may not otherwise accept a gift in excess of \$100, from a vendor, lobbyist, principal or employer of a lobbyist who lobbies, sells or leases to the City.⁵ Lastly, you may not accept anything of value in exchange for "an official action taken" or "legal duty performed."⁶

IN SUMMARY, you are not prohibited from attending Small Business Development Center conferences and receiving reimbursement from PBSC, a governmental entity, for travel expenses or mileage. You are prohibited from accepting anything of a value in excess of \$100, other than travel related expenses, from a vendor, lobbyist, principal or employer of a lobbyist of the City. Reimbursement is reportable as required by state law.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. Other than state law requirements referenced within the code, it is not applicable to any other potential conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

Sincerely,



Alan S. Johnson
Executive Director

ASJ/mcr/gal

⁴ RQO 11-089, RQO 12-018

⁵ RQO 11-047, RQO 12-018, §2-444(a)(1)

⁶ §2-444(e)

VIII. Proposed Advisory Opinions

a. RQO 12-038 Michael Malone

The President, CEO and Chief Paid Executive of the Greater Delray Chamber of Commerce (the Chamber), asked whether he will need to register as a lobbyist if he meets periodically with elected officials where interaction with government leaders, both elected and appointed, is normal operating practice for a person in his capacity.

Additionally, he is a member of the Sister Cities of Delray Beach Board of Directors (Sister Cities) and is an appointed member of the Charter Review Commission of the City of Delray Beach (CRC), an advisory board of the City. Sister Cities is a 501(3)(c) charitable organization. He asked whether he can continue to participate as a member of the CRC without violating the Palm Beach County Code of Ethics.

Staff submits the following for COE approval: Whether or not a particular individual is considered a lobbyist as defined by the Palm Beach County Code of Ethics (the Code) and Lobbyist Registration Ordinance is determined by the specific facts and circumstances surrounding the person's status and the nature of the contact between the individual and public employees or officials. Insofar as his representation of the Chamber is concerned, if his principal responsibility to the Chamber is overseeing the Chamber's various relationships with government or representing the Chamber in its contacts with government, then he is a lobbyist within the definition of the Palm Beach County Code of Ethics and Lobbyist Registration Ordinance and would need to register as a lobbyist.

The Palm Beach County Code of Ethics does not prohibit him from serving on the CRC provided that he abstain and not participate in any issue that comes before the CRC that would financially benefit the Chamber or Sister Cities, in a manner not shared with similarly situated members of the general public.

As a Chamber staff member and CRC board member, so long as the CRC *provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction*, neither he nor the Chamber is prohibited from having contracts or transactions with the City of Delray Beach (the City).

b. RQO 12-051 Beverly Brown

A Town Clerk asked whether her office may provide an elected official with an email database of local condominium presidents and home owner association directors, and whether the use of the database by the elected official to advocate a position on an upcoming issue before the Town Council violates the Palm Beach County Code of Ethics. The database is available to the public through a public records request.

Staff submits the following for COE approval: An official is prohibited from using his or her official position to gain a *special* financial benefit. Here, there is no indication that the elected official received a special financial benefit as defined by the Palm Beach County Code of Ethics (the Code). Additionally, the Code does not limit or regulate political activity that does not involve a corrupt misuse of official position. Regulation of political activity or public records disclosure is controlled by state and federal law.

c. RQO 12-053 Caryn Chichon

A municipal supervisor asked whether two members of her staff may attend a local training session paid for by the City of Lake Worth (the City), where the training is sponsored by a vendor and attendees will receive a \$50 voucher for water testing services provided for use by the City upon course completion.

Staff submits the following for COE approval: Public employees are prohibited from accepting gifts in excess of \$100, in the aggregate over the course of the calendar year, from a vendor of their public employer, unless an exception applies. Gifts provided to a governmental employee by a vendor and accepted on behalf of the government for a public purpose are not subject to this prohibition. Accordingly, a public employee is not

prohibited from attending a local vendor training in his or her official capacity and accepting a \$50 voucher for testing services on behalf of their governmental employer.

d. RQO 12-054 Kevin Foley

A real estate development consultant asked whether he must register as a lobbyist when he spends less than one percent of his consultation time in contact with government officials or staff members

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. Lobbying is defined as seeking to influence a decision through oral or written communication, or an attempt to obtain the goodwill of a public official or employee, with respect to the passage, defeat or modification of any item which may foreseeably be presented for consideration to an advisory board or governing body.

Whether or not a particular individual is captured within these definitions is determined by the specific facts and circumstances of the contact between that individual and public employees and officials. However, where a real estate developer, hired by a principal to develop a project, seeks to influence a decision or obtain a public employee or official's goodwill on a matter which may foreseeably be presented for consideration, he or she would likely fall within these definitions, regardless of how often the developer engages in such activity.

e. RQO 12-055 Janice Rustin

An Assistant City Attorney asked whether a local cruise company may hold a City Parks and Recreation appreciation cruise for department employees and their families.

Staff submits the following for COE approval: Offering an employee appreciation cruise and barbecue to all employees of a City's Parks and Recreation Department as a general gesture of appreciation for public employees and their families from a non-vendor of a municipality is not prohibited by the Palm Beach County Code of Ethics (the Code) provided that the event does not reward individual employees for the specific performance of an official act or public duty and there is no *quid pro quo* or other special consideration given to the donor in exchange for the donated gifts. If the value of the event for an individual employee and his or her family members exceeds \$100, the gift must be reported as required by the Code.

August 4, 2012

Michael Malone, President
Greater Delray Beach Chamber of Commerce
64-A SE Fifth Avenue
Delray Beach, FL 33483

Re: RQO 12-038
Lobbyist Registration

Dear Mr. Malone,

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 August 3, 2012.

YOU ASKED in your email submission dated April 30, 2012, whether, as President, CEO and Chief Paid Executive of the Greater Delray Chamber of Commerce (the Chamber), you will need to register as a lobbyist if you “meet periodically with elected officials” where “interaction with government leaders, both elected and appointed, is normal operating practice for a person in your capacity.”

You also currently serve on the Sister Cities of Delray Beach Board of Directors (Sister Cities) and are an appointed member of the Charter Review Commission of the City of Delray Beach (CRC), an advisory board of the City. Sister Cities is a 501(3)(c) charitable organization. In addition, you asked whether you can continue to participate as a member of the CRC without violating the Palm Beach County Code of Ethics. COE staff received additional requested information regarding your status on July 6, 2012.

IN SUM, whether or not a particular individual is considered a lobbyist as defined by the Palm Beach County Code of Ethics (the Code) and Lobbyist Registration Ordinance is determined by the specific facts and circumstances surrounding the person’s status and the nature of the contact between the individual and public employees or officials. Insofar as your representation of the Chamber is concerned, if your principal responsibility to the Chamber is overseeing the Chamber’s various relationships with government or representing the Chamber in its contacts with government, then you are a lobbyist within the definition of the Palm Beach County Code of Ethics and Lobbyist Registration Ordinance and would need to register as a lobbyist.

The Palm Beach County Code of Ethics does not prohibit you from serving on the CRC provided that you abstain and not participate in any issue that comes before the CRC that would financially benefit the Chamber or Sister Cities, in a manner not shared with similarly situated members of the general public.

Neither you nor the Chamber are prohibited from having contracts or transactions with the City of Delray Beach (the City) where the CRC *provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.*

THE FACTS as we understand them are as follows:

You are the president, CEO and Chief Paid Executive of the Greater Delray Beach Chamber of Commerce (the Chamber), a non-profit organization. There are approximately 850 paid members of the Chamber constituting approximately 14% of City businesses. The role or function of the Chamber is to promote economic development, membership services, community development, and the free enterprise system in the Greater Delray Beach area. The president’s responsibility is to represent the Chamber to its members and the general public, to manage the day to day operations of the organization (including but not limited to staffing, building, programs, events, finance, records, and be a spokesperson for the organization), provide counsel to the Chamber Board of Directors, and to promote policies and positions of the organization as outlined by the Chamber Board. In this capacity, you meet

with present and prospective businesses, members and nonmembers of the Chamber, speak before various groups, and meet periodically with elected officials.

In addition, you currently serve on the Sister Cities Delray Beach Board of Directors (Sister Cities). Sister Cities is a 501(3)(c) non-profit organization, created by the Delray Beach Commission in 1977 for the purpose of establishing a Sister City affiliation with Miyazu, Japan. In 1999 a partnership with a second City; Moshi, Tanzania; East Africa was established. The mission is to “promote greater respect, understanding and cooperation through cultural and educational exchanges and programs for children and adults.” Funding for Sister Cities includes charitable donations through fundraising. You do not appear before City officials on behalf of Sister Cities.

You are also a member of the Delray Beach Charter Review Commission (CRC), a purely advisory City board appointed by the Delray Beach Commission. The CRC was created to review the City charter, make recommendations, hold public forums, and report results to the City Commission in September 2012. Neither the Chamber nor Sister Cities will be transacting business or advocating before the CRC or its 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:

As an appointed member of a municipal advisory board, you are considered to be an *official* under the Palm Beach County Code of Ethics (the Code).¹ Section 2-443(a), Misuse of office or employment, prohibits an official from obtaining a special financial benefit for him or herself, their outside business or employer, a customer or client of their outside business or employer, or a civic or charitable organization in which they or their spouse or domestic partner is an officer or director.² A customer or client means any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).³

Section 2-443(c) requires that you abstain and not participate in any issue that involves a financial conflict of interest in violation of the misuse of office or employment subsection above. You may never use your official position to corruptly secure any benefit with wrongful intent and in a manner inconsistent with the proper performance of your official duties.⁴ That being said, you are not prohibited from serving on the CRC and participating and voting on issues that do not involve a conflict under the Code.

Insofar as any requirement to register as a lobbyist, both the revised Lobbyist Registration Ordinance, effective April 2, 2012, and the revised Code of Ethics, effective June 1, 2011 define lobbyist and lobbying 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 various relationships with government or representing the employer in its contacts with government.*

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.

¹ Art XIII, §2-442. Definitions. *Official or employee*

² Art. XIII, §2-443(a)(1),(4),(5) and (7)

³ Art. XIII, §2-442. Definitions. *Customer or client*

⁴ Art. XIII, §2-443(b)

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.⁵ If your principal responsibility to the Chamber is overseeing its relationships with government or representing the Chamber in its contacts with government, then you are required to register as a lobbyist prior to attempting to influence a government decision with respect to the passage, defeat or modification of an item which may come before that government body.⁶

Lastly, the Code prohibits an official from contracting or transacting business with his or her government entity. There is an exception for volunteer advisory board members provided the subject contract or transaction is disclosed at a public meeting of the City Commission and the advisory board member's board *provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.*⁷ Even if the board does have the above connection to the contract or transaction, if the board is purely advisory in nature, the member may apply for a waiver from the City Commission. No waiver may be obtained if the board is decision-making and not purely advisory under the above scenario.⁸ Under the facts and circumstances you have provided, CRC is purely advisory and will not be transacting business with the Chamber or Sister Cities.

IN SUMMARY, whether or not you are required to register as a lobbyist depends on the nature and extent of your contacts with government. Based upon the information that you have provided, your contacts and relations with government on behalf of the Chamber are occasional and are not your principal responsibility as president of the Chamber. Under these specific facts, you are not required to register as a lobbyist.

You are not prohibited from being a member of the CRC, however, you may not use your official position to obtain a special financial benefit, not shared with similarly situated members of the general public, for yourself, the Chamber or Chamber members, or a civic or charitable organization, if you or your spouse are an officer or director of that organization. In addition, neither you nor the Chamber are prohibited from entering into contracts or transactions with the City where the CRC *provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction*, and the nature of the contract or transaction is disclosed at a public meeting of the City Commission.

This opinion construes the Palm Beach County Code of Ethics Ordinance 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/gal

⁵ RQO 12-033, RQO 12-025

⁶ Art. VIII, §3-353(a)

⁷ Art. XIII, §2-443(d)

⁸ Art. XIII, §2-443(e)

August 3, 2012

Beverly Brown, MMC
Town Clerk, Town of Highland Beach
Highland Beach, FL 33478

Re: RQO 12-051
Misuse of Office

Dear Ms. Brown

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 August 2, 2012.

YOU ASKED in your submission dated July 2, 2012 whether your office may provide an elected official with an email database of local condominium presidents and home owner association directors, and whether the use of the database by the elected official to advocate a position on an upcoming issue before the Town Council violates the Palm Beach County Code of Ethics. The database is available to the public through a public records request.

IN SUM, an official is prohibited from using his or her official position to gain a *special* financial benefit. Here, there is no indication that the elected official received a special financial benefit as defined by the Palm Beach County Code of Ethics (the Code). Additionally, the Code does not limit or regulate political activity that does not involve a corrupt misuse of official position. Regulation of political activity or public records disclosure is controlled by state and federal law.

THE FACTS as we understand them are as follows:

You are the Town Clerk to the Town of Highland Beach (the Town). Recently, an elected official obtained a list of local home owners association board members and condominium association presidents maintained by Town staff. He proceeded to contact these persons regarding an issue coming before the Town Council, specifically, setting of the Town's maximum millage rate. Essentially, the phone calls were made to enlist citizen support in opposition to any tax increases by the Town Council. Your office has received numerous telephone calls from members of the community requesting that they not be contacted by the elected official in the future. You have also received several complaints suggesting that the official is using public resources to further his future political aspirations.

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) prohibits a public official from using his or her official position to financially benefit themselves in a manner not shared with similarly situated members of the general public. Based upon the facts and circumstances you submitted, the list is a public record, therefore, the official has not used his position to obtain a benefit not available to the general public. Similarly, because the official was advocating for citizen response to a public matter that would affect all residents of the Town in the same manner, there is no *special* financial benefit uniquely attributable to the elected official.

Additionally, §2-443(b) prohibits a public official from using his or her official position *to corruptly secure or attempt to secure a special privilege, benefit or exemption for himself, herself, or others*. Corruptly, means done with a wrongful intent and in a manner inconsistent with the proper performance of his or her official duties. Although §2-442 specifically excludes campaign contributions from the definition of financial benefit, such a benefit is not immune from scrutiny if obtained corruptly. However, based upon the facts and circumstances submitted, the calls to constituents did not involve solicitation of campaign contributions.

While the elected official may have used his position to obtain the homeowner/condo list without following the proper Town public records request procedure, such action does not rise to the level of corrupt misuse. The COE will not opine as to speculative facts and circumstances that may rise to a violation of the corrupt misuse section of the Code.

IN SUMMARY, based upon the facts and circumstances presented, the use of a public record by an elected official to solicit public response on a general issue before the Town council affecting all residents of a municipality, that does not involve a special financial benefit, is not prohibited under the financial misuse section of the Palm Beach County Code of Ethics. Nor does such action rise to the level of a corrupt misuse of office.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law, including the release of public records. 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

August 4, 2012

Caryn Cichon, Laboratory Administrator
City of Lake Worth Water Plant
Lake Worth, FL 33460

Re: RQO 12-053
Gift Law/Vendor Training

Dear Ms. Cichon,

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 August 3, 2012.

YOU ASKED in your submission dated July 5, 2012 whether two members of your staff may attend a local training session paid for by the City of Lake Worth (the City), where the training is sponsored by a vendor and attendees will receive a \$50 voucher for water testing services provided for use by the City upon course completion.

IN SUM, public employees are prohibited from accepting gifts in excess of \$100, in the aggregate over the course of the calendar year, from a vendor of their public employer, unless an exception applies. Gifts provided to a governmental employee by a vendor and accepted on behalf of the government for a public purpose are not subject to this prohibition. Accordingly, a public employee is not prohibited from attending a local vendor training in his or her official capacity and accepting a \$50 voucher for testing services on behalf of their governmental employer.¹

THE FACTS as we understand them are as follows:

You are the laboratory administrator for the City of Lake Worth Water Plant. Two staff members of the Lake Worth Water Plant Lab (the City Lab) would like to attend a hazardous materials training class. The class will be held at the Palm Beach County Water Utilities facility, but is sponsored by Pace Analytical (PA). Pace Analytical Services, Inc. is a privately held, full-service sampling and analytical testing firm operating a network of laboratories and service centers nation-wide.

PA is a City vendor. The cost of the training is \$50 per person, but PA provides attendees with a \$50 voucher at the end of the class for use towards PA lab services. The City will be reimbursing employees the \$50 course fee. PA does not provide "personal services." Rather, their testing facilities are designed to accommodate governmental entities or industrial organizations interested in professional staffing, chromatography, and drinking water testing.

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 2-444(a)(1) prohibits employees from accepting or soliciting gifts in excess of \$100 in the aggregate over the course of the calendar year, from a vendor, lobbyist, or employer of a lobbyist who sells, leases or lobbies the employee's municipal employer. However, aside from the \$100 vendor gift limit, §2-444 (e) prohibits employees from accepting any gift of any value in exchange for the performance or non-performance of an official action or legal duty. Attending the training session in one's official capacity and accepting a \$50 voucher for their personal benefit upon completion of the course would violate this prohibition.

¹ RQO 12-014 (local training tuition reimbursement not requiring overnight accommodation is not considered a travel expense as contemplated by §2-443(f)). *But see, RQO 11-011, 11-106, 11-071* (travel expenses provided by a vendor for attendance at a vendor-sponsored conference over multiple days and/or including an overnight stay must be properly waived pursuant to §2-443(f)).

However, Section 2-444(g)(1)e provides an exception to these prohibitions where the gift has been solicited or accepted by municipal officials or employees on behalf of their municipality in performance of their official duties for use solely by the municipality for a public purpose. Accordingly, the City employee may accept the \$50 voucher on behalf of the City. The PA vouchers provided are of no value to individual staff members, nor are the services that PA provides designed for individual use.

IN SUMMARY, based upon the facts and circumstances presented, City staff members are not prohibited from accepting a vendor voucher in their official capacity, on behalf of the City, for use by the City for a public purpose.

This opinion construes the Palm Beach County Code of Ethics Ordinance 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

PROPOSED

August 3, 2012

Mr. Kevin J. Foley, Tranquility Capital, LLC
12056 SE Birkdale Run
Tequesta, FL 33469

Re: RQO 12-054
Lobbyist Registration Ordinance

Dear Mr. Foley,

The Commission on Ethics (COE) considered your request for an advisory opinion and rendered its opinion at a public meeting held on August 2, 2012.

YOU ASKED in your submission dated, July 17th, 2012 whether, as a real estate development consultant who spends less than one percent of his consultation time in contact with government officials or staff members, you must register as a lobbyist under the Palm Beach County Lobbyist Registration Ordinance.

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. Lobbying is defined as seeking to influence a decision through oral or written communication, or an attempt to obtain the goodwill, of a public official or employee with respect to the passage, defeat or modification of any item which may foreseeably be presented for consideration to an advisory board or governing body.

Whether or not a particular individual is captured within these definitions is determined by the specific facts and circumstances of the contact between that individual and public employees and officials. However, where a real estate developer, hired by a principal to develop a project, seeks to influence a decision or obtain a public employee or official's goodwill on a matter which may foreseeably be presented for consideration, he or she would likely fall within these definitions, regardless of how often the developer engages in such activity.

The FACTS as we understand them are as follows:

You have been a real estate developer and real estate development consultant for the past 35 years. You are currently a consultant to Braman Motorcars (Braman) on a variety of real estate related matters, which include, among many things, the acquisition of the Jupiter Dodge/Mazda site (the BMW Project) located in the Town of Jupiter (the Town). This would include its development and anticipated re-redevelopment at the request of BMW and your employer, Braman. As a Braman consultant, the Jupiter BMW Project is one of nine Braman developments with which you are currently involved. You estimate that you spend less than one percent of your Braman consultation time in contact with government officials or their staffs. According to your factual submission, when you do meet with Town of Jupiter officials or staff members the sole purpose of that communication is the "exchange of information" about Braman's projects and to solicit ideas and comments from officials and staff in order to develop better projects in their communities.

There are unresolved ongoing issues regarding the BMW Project that foreseeably will require government action. On June 5th, you met with Town Councilwoman Harrison, and Planning and Zoning Director, John Sickler, regarding the development of the BMW Project. After this meeting you were

contacted by the Town Manager and informed that it appeared as though you were acting as a lobbyist during this meeting and as such you were required to register as a lobbyist through the county lobbyist registration system. After receiving your request for opinion, COE staff contacted the Town Manager for more information. In conversation with the Town Manager, it is his belief that during your meeting with the Town Staff and Councilwoman, you advocated a change in Staff's current position regarding the BMW Project property.

Additionally, you indicated that you have met with Town Officials regarding the purchase of a nearby piece of property by Braman that would seek to alleviate Town development concerns during the time period when Braman would be seeking to develop the subject BMW Project site. Lastly, you indicated that you have appeared in front of the Town Council at public meetings to advocate on behalf of your client, Braman. You are seeking a determination from the Palm Beach County Commission on Ethics (COE) as to whether you are required to register as a lobbyist based upon the information you provided.

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, prior to lobbying, to register by electronic submission via the "Central Lobbyist Registration Site" or by paper submission.¹ 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 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 ... 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, ... 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.

"Lobbyist" shall not include:

- (1) Any employee, contract employee, or independent contractor of a governmental agency or entity lobbying on behalf of that agency or entity, any elected local official when the official is lobbying on behalf of the governmental agency or entity which the official serves, or any member of the official's staff when such staff member is lobbying on an occasional basis on behalf of the governmental agency or entity by which the staff member is employed.
- (2) Any person who is retained or employed for the purpose of representing an employer, principal or client *only during a publicly noticed quasi-judicial hearing or comprehensive plan hearing, provided the person identifies the employer, principal or client at the hearing.* (emphasis added)

¹ The effective date of the Lobbyist Registration Ordinance for municipalities is April 2, 2012

- (3) Any expert witness who is retained or employed by an employer, principal or client to provide only scientific, technical or other specialized information provided in agenda materials or testimony only in public hearings, so long as the expert identifies the employer, principal or client at the hearing.
- (4) Any person who lobbies only in his or her individual capacity for the purpose of self-representation and without compensation.
- (5) Any employee, contract employee, or independent contractor of the Palm Beach County League of Cities, Inc., lobbying on behalf of that entity.

In RQO 12-025, the COE determined that a person who contracts with a principal for economic consideration who meets with county or municipal staff for the sole purpose of gathering information for a project, asking technical questions only, and not providing information to county or municipal staff other than what is needed to meet technical requirements for required approvals, is not engaged in lobbying and is not required to register as a lobbyist.

Lobbying is defined as seeking to influence a decision of a public employee or official on an issue which foreseeably will come before a board or commission for advice or approval. When information flows from Town Staff to you, the exchange of information is one sided. Therefore, if the purpose of your meeting is solely to extract information as compared to inputting information for the purpose of persuading a staff member or official to change their position, you would not be required to register as a lobbyist under the ordinance. However, in your submission to this Commission you noted that your conversations with local employees and officials, no matter how few and far between, included an exchange of information and ideas. Moreover, it was the impression of Town staff that your meeting was not for the purpose of asking questions of the Town Councilwoman and planning and zoning director, but was also to influence and advocate a modification to staff's current position on the Braman Project.

You indicated that as part of your consulting work for Braman you spend less than one percent of your time meeting with local staff and officials. However, as an independent consultant to your client, Braman, you are not an employee of that entity within the meaning of the Lobbyist Registration Ordinance. Therefore, the percentage of time you spend representing Braman in its discussions with government employees and officials is irrelevant. The exclusionary language contained within the definition of lobbyist, limiting the scope of the definition to "an employee whose principal responsibility to the employer is overseeing the employer's relationships with government," applies to lobbying by an employee directly on behalf of their employer and not a consultant retained by an outside principal.

Further, you indicated that on behalf of Braman, you have discussed the purchase of a vacant property in the vicinity of the BMW Project site. It is unclear by the facts that you have submitted whether or not a purpose of this purchase is to obtain the goodwill of the Town Council or otherwise facilitate approvals for the BMW Project site, however, the proximity in time and location of the proposed purchase would, at a minimum, create the appearance that it is contemplated in part to obtain the goodwill of the Town Council with regard to future decisions involving the BMW Project redevelopment.

Finally, in your submission to staff, you described your past participation in public meetings as a consultant to Braman. Please keep in mind that as a compensated representative of an applicant

seeking to influence a decision of an advisory board or the Town Council that you must register as a lobbyist in order to participate on behalf of Braman in any public meeting except for publicly noticed quasi-judicial hearings or comprehensive plan hearings.²

IN SUMMARY, based on the facts and circumstances you provided, your activities constitute lobbying within the meaning of the Palm Beach County Lobbyist Registration Ordinance. As a paid consultant seeking to influence the decision-making of a public employee, advisory board member or elected official, or attempting to obtain their good will, with respect to the passage, defeat, or modification of any item which may foreseeably be presented for their consideration, you are required to register as a lobbyist. This applies regardless of the percentage of your duties to your principal involving lobbying activities.

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

² Art VIII, §2-353. Definitions. *Lobbyist* (2)

August 3, 2012

Janus Rustin, Assistant City Attorney
City of Delray Beach
200 N.W.1st Avenue
Delray Beach, FL 33444

Re: RQO 12-055
Gifts/Employee Appreciation

Dear Ms. Rustin,

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 August 2, 2012.

YOU ASKED, as Assistant City Attorney for the City of Delray Beach (the City), in your email submission dated July 18, 2012, whether a local cruise company may hold a City Parks and Recreation appreciation cruise for department employees and their families.

IN SUM, offering an employee appreciation cruise and barbecue to all employees of a City's Parks and Recreation Department as a general gesture of appreciation for public employees and their families from a non-vendor of a municipality is not prohibited by the Palm Beach County Code of Ethics (the Code) provided that the event does not reward individual employees for the specific performance of an official act or public duty and there is no *quid pro quo* or other special consideration given to the donor in exchange for the donated gifts. If the value of the event for an individual employee and his or her family members exceeds \$100, the gift must be reported as required by the Code.

THE FACTS as we understand them are as follows:

A local tour company, Delray Yacht Cruises (Tour Company), would like to host an employee appreciation cruise and barbeque for employees of the City's Parks and Recreation Department and their families. Delray Yacht Cruises leases dock space from the City of Delray Beach (the City). City park employees do not maintain the dock, but they do maintain an adjacent park, Veteran's Park, which is adjacent to the dock. Customers of the Tour Company, as well as other members of the general public, are allowed to park in the Veteran's Park parking lot free of charge. The Tour Company is not a municipal vendor as defined under the Code and does not lobby the City.

The Tour Company's owner described his reasons for hosting the event in an email to the City as follows:

"I thought it would (be) a great morale building event going into next busy season. As I said, I see the work these people do every day and I think they deserve to be recognized as a group."

The event will consist of an hour long cruise, a cookout in Veteran's Park, with music from a steel drum band, and contests with prizes. The value of the event will be less than \$20 per person.

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 2-444(a)(1) prohibits an elected official or government employee from soliciting or accepting any gifts with a value of greater than \$100, in the aggregate for the calendar year, from a person or entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to their government employer. Section 2-443(1)(b) prohibits the vendor, lobbyist or principal from giving such a gift to a public employee as well.

Section 2-444(c) prohibits the solicitation of any gift from a vendor, lobbyist, principal or employer of a lobbyist if the gift is for the personal benefit of the official or employee, fellow official or employee, or the official or employee's relatives or household members. The term vendor is defined as any person or entity who has a pending bid proposal, has a pending offer or currently sells goods or services, or real or personal property, to the county or municipality, as applicable.¹

Under the facts you have submitted, the Tour Company is neither a vendor nor an employer or principal of a lobbyist that lobbies the City. While the Tour Company leases space from the City, it does not provide goods or services. It is merely a consumer of City offered services and facilities.² Therefore, the above sections do not apply.

Section 2-444(e) states as follows:

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

A gift of any value may not be accepted as a *quid pro quo* for any official action, duty performed or duty violated.³ Nor may a gift be accepted as a thank you gift or otherwise in appreciation for the performance of an official act by a public employee.⁴ Notwithstanding, where a gift is general in nature and not directed at specific acts of individual employees, depending upon the facts and circumstances, such a gift may not be prohibited. For example, lunch and complimentary use of golf and tennis facilities as an expression of appreciation for the work of municipal public safety employees was found not to violate section 2-444(e) where the donor country club was not a municipal vendor, lobbyist or principal of a lobbyist.⁵ Similarly, awards given by a private entity to municipal employees generally for outstanding performance (such as employee of the year, officer of the month, etc.), were not prohibited where the donor was not engaged in vending or lobbying with the town.⁶ The COE has likewise determined that public employees could solicit funds from non-vendors, lobbyists or their principals, in order to recognize 911 operators at a luncheon in recognition of National Telecommunicator Week.⁷

The key factors involved in these opinions include; the gift was general in nature and given to recognize a large class of public employees, the gift was not in response to a specific act by one or more

¹ Art. XIII, §2-442 Definitions. *Vendor*.

² RQO 11-022 (Airline leasing space at airport is not a vendor)

³ RQO 11-103

⁴ RQO 10-031, RQO 11-008

⁵ RQO 11-007

⁶ RQO 11-053

⁷ RQO 12-020

employees meant as a tip, thank-you or compensation and, the gift was not given by a vendor, lobbyist, principal or employer of a lobbyist who lobbies the employee's public employer.

Notwithstanding, any gift with a value in excess of \$100 must be reported as required under section 2-444(f)(2) of the Code. You have indicated that the value of an individual cruise and barbeque is under \$20. The gift is available to Parks and Recreation Department employees and their families. Assuming a \$20 value, if an employee receives more than four tickets, the gift will need to be reported.⁸ Likewise, if an employee or family member wins a raffle prize, if the value exceeds \$100 it must be reported by the employee.

IN SUMMARY, under the facts and circumstances you submitted, an appreciation cruise and barbeque for all employees of the City Parks and Recreation Department and their families is not prohibited provided that the donor is not a vendor, lobbyist, principal or employer of a lobbyist, and the event is general in nature and not hosted because of the performance or non-performance of an official act or legal duty or as a *quid pro quo* given in exchange for the gift. If a raffle prize or the value of the admission, including each employee and their family members taken together, exceeds \$100, the gift must be reported on an annual gift reporting form as required by the Code.

This opinion construes the Palm Beach County Code of Ethics Ordinance 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/gal

⁸ RQO 12-037 (gifts given with the intent to benefit a public employee are attributed to the employee)

Agenda Item IX

Commission on Ethics

Social Media Policy

Purpose

The Commission on Ethics (COE) recognizes that public entities must expand their traditional communication methods in order reach a broader audience. This requires the COE to adapt to the fast-changing landscape of the internet and the way citizens communicate and obtain information online.

While the COE website will remain the public's primary access point to COE records, advisory opinions, training and forms, social media can increase the public's access to this resource. Policy goals include the establishment of guidelines for the use of social media by the Commission on Ethics and to provide a standard of conduct for COE staff in the implementation of social media to better engage with the citizens of Palm Beach County.

Access/ Authorized Use

- Access to social media networks on COE computers is limited to individuals performing official COE business.
- The Executive Director will designate which social media sites shall be used and will designate which COE employees are authorized to use social media on behalf of the COE within designated access levels.
 1. Access levels include identifying what sites, or type of sites, the individual is approved to use, as well as defining capability to publish, edit, comment or view only.
 2. Employees performing COE social media work beyond normal work hours shall receive pre-authorization from the Executive Director.
- Account password information shall only be shared with staff authorized to use social media on behalf of the COE
 1. A record shall be maintained containing the name of each social media account, password and registered email address, and shall include the date established, authorized user/users and the name of the account creator who agreed to the sites terms of service agreement/ policy.

- If an employee responsible for maintaining content of a social media site/ page leaves the COE or is removed as a social media administrator the passwords to those social media sites/ pages shall be immediately reset.

Security

- Social media accounts must use an official COE email address.
- Transferring sensitive, non-public record information over social media is prohibited.
- A social media application should not be used unless it serves a public purpose, comes from a trusted source and is approved by the County's IT department.
 1. An application shall be immediately removed if there is any reason to believe that it is causing a security breach or computer virus. [MCR1]

Content

- Social media sites/pages shall contain visible elements that identify them as an official COE site/page. This may include, but not limited to, the official COE seal, contact information and a link to the COE website.
- Sites/pages shall include an introductory statement which clearly specifies the purpose and topical scope of the site/page.
- Posted information will reflect the COE's goals for using social media technology and will be relevant and timely. Additionally, posts should stand alone in nature, allowing for the posting to be a topic or category oriented toward creating awareness and promoting discussion.
- Non-public information shall not be posted/shared on a COE social media site/page.
- Sharing or posting of content owned by others shall be performed in accordance with copyright, fair use and established laws pertaining to such materials.
- Links to other social media sites or websites are approved if they meet the following criteria:
 1. Creates awareness and discussion on COE related topics
 2. Does not raise partisan questions, issues or promote a political agenda or campaign.
 3. Are sites created by state regional or federal government agencies, special purpose districts, and hospitals, scientific or cultural organizations.
 4. Content does not contain inappropriate or offensive material or information irrelevant to the COE's mission or services.
- All approved links shall include a disclaimer stating that the COE does not guarantee the authenticity, accuracy, appropriateness or security of the link, website or content linked thereto.
- When possible, content posted to a social media site/page will also be available on the COE website.

1. Links will direct users back to the COE's website for in depth information, forms, documents or online services necessary to conduct business with the COE.

Public Comment

- The COE may disable commenting features on its social media sites/pages in accordance with publically noticed site/page policies.
- When public comments are enabled a site/page must clearly display a comment policy informing the public of the discussion topic introduced for public comment and the limited nature of the discussion. Inappropriate or discriminatory posts are subject to removal regardless of format (text, video, images, links, documents, etc). **This policy will also inform the public that comments are subject to public disclosure laws.**
- Comments containing any of the following shall be removed:
 1. Comments not relevant to page content
 2. Profane or harassing language or tone
 3. Content that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, sexual orientation, national origin. physical or mental disability or status with regard to public assistance
 4. Obscene sexual content or links to sexually oriented materials
 5. Solicitations of commerce
 6. Conduct or encouragement of illegal activity
 7. Information that may lead to compromise the safety or security of the public, public servants or public systems
 8. Content that violates a legal ownership interest of any other party
 9. Promotion or opposition to any person campaigning for election to a political office or promoting or opposing any ballot initiative
 10. Disclosure of information which the COE and its employees are required to keep confidential by law or regulation
 11. Attempts to circumvent public records or open meetings laws

Site Monitoring

- An authorized COE staff member(s) shall regularly monitor site/ page content for exploitation and misuse and to ensure the content does not become stale.
- All comments will be approved by an authorized COE staff member.
- Comments should remain regardless of whether the content of the comment is favorable or unfavorable. *Only posts which violate the comment policy will be deleted.*
- Prompt corrective action shall be taken when an issue arises that places, or has the potential to place, the County, the COE, any other public agency, or the general public at risk.

- Prompt corrective action shall be taken when an issue arises that places, or has the potential to place, a public official, employee, or member of the general public at risk.
- Any user posting comments in violation of the comment policy will be given a warning on their first offence. If a user commits a subsequent offence, that user shall be banned from the page.

Public Records/ Record Retention

- All posted content, comments, replies and email/ messages on any COE social media site are subject to Florida Public Records Laws.
- The COE will respond completely, accurately and in a timely manner to all social media public records request.
- Social media content shall be retained on a regular schedule in an easily assessable format that preserves the integrity of the original record.
 1. Staff will review pages for changes on a weekly basis.
 2. If comments have been posted in accordance with the COE social media comment policy a screen shot of the comment will be retained.
- Any content posted in violation of the comment policy must be retained before deletion. Upon deletion, the time, date, identity of the poster (users name/ screen name) and a description of the reason the content is in violation of the comment policy shall be filed along with the retained content.
- Official COE business emails/messages and other correspondence conducted over personal social media channels shall be retained in a manner similar to other official COE documents.

Standards of Conduct

- The same standards, principles and guidelines that apply to COE employees in the performance of their assigned duties apply to social media use by those employees.
- Employees using social media on behalf of the COE shall:
 1. Not knowingly communicate inaccurate or false information. All reasonable efforts should be made by the COE member to provide only verifiable facts and not speculative facts or opinions
 2. Be as transparent as possible without disclosing information of a non-public nature
 3. Respect public opinion, whether positive or negative, provided the opinion is “on topic” and does not violate the comment policy.
 4. Provide links to credible sources of information to support its interactions, when possible
 5. Use proper grammar and avoid using jargon and abbreviations.

- Authorized social media users participating in *personal social media discussions* related to COE matters shall indicate that viewpoints are personal and do not necessarily reflect COE opinion.
 1. A disclaimer will be posted with the content stating: “The postings are my own and do not represent the opinion of the COE”
- A COE employee using social media in their official or nonofficial capacity shall not write anything that is or could appear to be legal advice. Legal issues must be handled through the COE’s regular procedures.
- If a COE employee is responding on a non COE social media site/page concerning an official COE matter, the employee must be sure to identify themselves and their position. They must only comment about matters they are qualified to address and may not respond without first consulting the Executive Director.
- A COE employee using a personal social media account, and who is known to the general public, must ensure their profile and related content is consistent with how they wish to present themselves as a professional, and appropriate to the public trust associated with their position.
- A COE employee will not use a COE email address or password to access any other social media site/ website for personal use.

X Policy and Procedure Clarification Re: Processing of Complaints that are filed within 30 days of Election

Background:

Staff was requested to review the applicable codes and rules of procedure to determine protocol for complaints filed within 30 days of an election and if a change in rules on the issue is warranted.

Staff Analysis:

Both the Palm Beach County Commission on Ethics Ordinance and the Commission Rules and Procedures are silent as to when a complaint may be filed. Likewise, there is no time constraint regarding the filing of a complaint prior to an election. Aside from legal sufficiency requirements, a complainant may file his or her complaint at any time. Nor is there any requirement that a complainant withhold the filing of a complaint from public disclosure. The COE does not possess the power to order a complainant to not disclose the filing of a complaint or the supporting documentation provided by, and in the possession of, the complainant. Notwithstanding, pursuant to §2-260(g) public records exemption, "The complaint and all records held by the commission on ethics and its staff related to an active preliminary investigation are confidential and exempt from disclosure..." This exemption is also found in COE Rule of Procedure 3.3. Consistent with §2-257 of the COE Ordinance pertaining to organization, the COE Executive Director has adopted personnel and management policies, including policies pertaining to staff response to public inquiries involving ongoing investigations that are not yet public record. Office Policy and Procedure 6.1 prohibits staff from commenting on "any matter that is not a public record."

While it may be within the power of the COE to promulgate a rule of procedure interpreting the public records exemption mandated by the Code to include a freeze on the acceptance of a complaint within a reasonable time prior to an election, the fact that the complaint process itself takes some time before records become public would seem to make such a finding unnecessary.

Staff recommendation:

No action by the COE is warranted.