



Agenda

June 6, 2013

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

Meeting will begin at 1:30 pm Executive Session from 3:00 pm to 4:00 pm Regular Agenda will resume at 4:15 pm

Palm Beach County

Commission on Ethics

2633 Vista Parkway
West Palm Beach, FL 33411

561.233.0724

FAX: 561.233.0735

Hotline: 877.766.5920

E-mail:

ethics@palmbeachcountyethics.com

Commissioners

Manuel Farach, Chair

Robin N. Fiore, Vice Chair

Ronald E. Harbison

Daniel T. Galo

Patricia L. Archer

Executive Director

Steven P. Cullen

Intake Manager

Gina A. Levesque

Staff Counsel

Megan C. Rogers

Senior Investigator

Mark E. Bannon

Investigator

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from May 2, 2013
- V. Presentation to James Poag
- VI. Request from David Baker (Re: Commissioners capacity as members of IG committee)
- VII. Request from Roma Theus, Esq.
- VIII. Proposed Settlement C13-004
- IX. Proposed Advisory Opinions
 - a. RQO 13-010
 - b. RQO 13-011
 - c. RQO 13-012
- X. Executive Sessions
 - a. C13-011
- 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**

MAY 2, 2013

**THURSDAY
1: 30 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Manuel Farach, Esq., Chair
Robin N. Fiore, Ph.D., Vice Chair
Patricia L. Archer
Daniel T. Galo, Esq. – Absent
Ronald E. Harbison, CPA

STAFF:

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

ADMINISTRATIVE STAFF:

Dominique Marseille, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Commission on Ethics (COE) Executive Director, Steven Cullen, Esq., stated that a quorum existed.

Commissioner Farach stated that anyone wishing to speak should submit a public comment card and include the agenda item of interest. He added that all electronic devices should be turned off.

IV. STATUS RE: Office of Program Policy Analysis and Government Accountability (OPPAGA) Review

Mr. Cullen said that the OPPAGA team had been meeting with staff and that an oral report of their findings probably would take place in 30 days. He said that no issues existed with providing information to the OPPAGA team. He added that the COE Web site had links and information about the documents that were provided.

V. APPROVAL OF MINUTES FROM APRIL 4, 2013

Commissioner Farach asked whether everyone on the commission had an opportunity to review the minutes from April 4, 2013.

Commissioner Archer said that on page six of the minutes, under item IX.a., the text should read "At a coming workshop."

MOTION to approve the April 4, 2013, minutes as amended. Motion by Ronald Harbison, seconded by Patricia Archer, and carried 4-0. Daniel Galo absent.

VI. DRAFTING COMMITTEE UPDATE

Mr. Cullen said that the drafting committee met on April 10, 2013, and that staff counsel Megan Rogers had attended the meeting. He added that the drafting committee had voted no, both on term limitations and expanding the number of COE commissioners.

Ms. Rogers reported that the drafting committee was no longer in session.

Commissioner Farach said that the drafting committee would send its recommendations to the Board of County Commissioners (BCC) for further review. He added that the BCC could either accept or reject those recommendations.

Ms. Rogers said that the BCC could reject the drafting committee's recommendations, by a supermajority vote. She added that she would notify the commission when the drafting committee's recommendations were scheduled for BCC review.

VII. STATUS RE: to C12-013

Mr. Cullen said that the item C12-013 was moved to a June 2013 agenda due to an attorney conflict.

VIII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

a. RQO 13-007

Mr. Cullen said that:

- The opinion questioned whether a financial planning company (company) could continue to provide county and municipal employees, officials, and advisory board members with the same complimentary lunch and financial action-strategy plan that was available to any member of the public.
- The opinion as drafted recommended that providing a complimentary lunch and financial action-strategy plan was an acceptable practice.
- The company would be prohibited from offering gifts valued in the excess of \$100 in the aggregate to county and municipal employees, officials and advisory board members.
- The gift law provided an exception for publicly advertised offers of goods and services from a vendor, under the same terms and conditions as were available to the general public.
- Staff concluded that the company was not prohibited from providing services to County or municipal employees, and officials who were advisory board members, so long as services were offered by the same terms and conditions to the general public.

MOTION to approve staff's recommendation for the consent agenda. Motion by Robin Fiore, seconded by Patricia Archer, and carried 4-0. Daniel Galo absent.

IX. ITEMS PULLED FROM CONSENT AGENDA – None

X. PROPOSED ADVISORY OPINIONS

X.a. RQO 13-006

Mr. Cullen said that:

- A municipal attorney asked whether an official who owned a property management company that provided services to a homeowners association (HOA), was prohibited from participating or voting on a matter that may financial benefit a developer who owned more than 80 percent of the property within the HOA.
- Staff submitted the following for commission review:
 - Elected officials were prohibited from using their official position, participating, or voting on an issue that would give special benefit to themselves, their outside business, or a customer or a client of their outside business, not shared with similarly situated members of the general public.
 - No prohibited conflict of interest existed under the Code of Ethics (code).
 - An issue with the appearance of impropriety existed, since a matter was coming before the city council that involved the elected official's outside business having the developer as a customer.
 - Staff recommended that the official abstain from voting and not participate on the matter.

Commissioner Harbison said that:

- He disagreed with the conclusion of the opinion, since the developer owned 80 percent of the HOA and was a customer of the city official.
- Allowing form over substance as a basis for the commission's decisions would create loopholes in the code.

PROPOSED ADVISORY OPINIONS – CONTINUED

X.a. – CONTINUED

- He suggested that the commission consider having a threshold for the percentage that a shareholder could own, to be in compliance with the code.

Commissioner Fiore said that if the public official voted on the matter regarding the developer, the situation should be considered more than the appearance of impropriety. She said that the public official should be required to abstain from voting and participating in the matters. She added that a financial relationship was apparent between the official and the developer.

Commissioner Archer stated that the situation was impropriety and not the appearance of impropriety.

MOTION to decline staff’s recommendation for RQO 13-006. Motion by Ronald Harbison and seconded by Robin Fiore.

Ms. Rogers said that staff had drafted the opinion based on the Florida Commission on Ethics’ (FCOE) interpretations. She added that the developer controlled or owned a majority of the properties included in the HOA, therefore, the developer controlled who was placed on the HOA board.

Commissioner Fiore said that the commission should not base its decisions on the interpretations of the FCOE.

Commissioner Harbison suggested that the commission adopt a benchmark on how to handle matters, such as the one in front of the commission, in the future. He added that the matter concerned attribution between a controlling interest, which was the HOA, and the vendor, who happened to be a city official.

PUBLIC COMMENT: Richard Radcliffe.

(CLERK’S NOTE: The following discussion evolved between the board and Executive Director of the League of Cities [League] Richard Radcliffe.)

Commissioner Archer said that HOAs were managed by developers before they were released.

PROPOSED ADVISORY OPINIONS – CONTINUED

X.a. – CONTINUED

Mr. Radcliffe said that concern existed on how the matter would be handled since such instances were not included in the County's code.

Commissioner Fiore stated that each matter was handled on a case-by-case basis. She said that a mathematical calculation would be done on matters concerning the extent to which a client or customer was involved in a situation. She added that if the commission were careful in revising the opinion, it could be structured to not be as broad as it appeared to be.

Mr. Radcliffe said that since the county's code was evolving, the commission needed to consider new evaluations of matters.

Commissioner Farach said that the commission was not taking an official position on the matter, but was stating that the particular opinion letter was not acceptable. He said that the opportunity existed for the League and staff to have a discussion on the issue's main subject. He added that the commission could work toward achieving clarity to elected officials on the issue of attribution.

Mr. Radcliffe said that the League's board had not taken a position on the matter. He said that it was the League's desire to work with the commission, in an attempt to resolve how matters were handled.

Ms. Rogers clarified that the submission for the opinion discussed that the property was created by a developer in the 1980s and not the developer who newly purchased the properties within the HOA.

UPON CALL FOR A VOTE, the motion carried 4-0. Daniel Galo absent.

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PROPOSED ADVISORY OPINIONS – CONTINUED

X.b. RQO 13-008

Mr. Cullen stated that:

- A County employee asked whether it was a prohibited conflict of interest if a County employee made a bid and was awarded a contract with Palm Beach County.
- Staff submitted the following for COE review:
 - Employees were prohibited from using their official position to give or influence others to give themselves or outside business a special financial benefit.
 - The Code's section prohibited an employee or his/her outside business from contracting with his/her public employer; however, there were several exceptions to the contractual relationship prohibition.
 - The code provided an exception for contracts entered into under a process of sealed competitive bidding, where a County employee's outside business is the lowest bidder, provided that the employee does not participate in the bid specifications or determination of the lowest bidder, has not used his/her position in any way to influence the award, and has disclosed the nature of his/her interest in the business submitting the bid.
- If the County employee fully complied with all of the requirements, the Code did not prohibit the employee or his/her outside business from contracting with the County.

Ms. Rogers said that:

- The contract could potentially be with the County employee's department.
- A conflict did not exist with the situation so long as the employee was not involved in the bid specifications or process.

PROPOSED ADVISORY OPINIONS – CONTINUED

X.b. – CONTINUED

- The employee was not allowed to use his position to influence the selection of his corporation.
- The bid process would be sealed and reviewed by the County Procurement department, which was separate from the department where the employee worked.
- Coworkers of the employee may set the bid specifications for the potential contract; however, the employee would not be allowed to participate.
- The potential contract had not been put out for bid.
- The employee was in the beginning process of potentially starting a company and was seeking guidance for how he could offer services to the County without violating the code of ethics.

Commissioner Fiore suggested that the opinion letter's language be modified to state that the only way that the employee could qualify to apply for a contract was by a sealed bid process.

Ms. Rogers suggested the following changes to the opinion letter:

- Deletion of the following words in the in summary paragraph, on page one:

“However, there are several exceptions to the contractual relationship prohibition.”
- Adding in the following words on page one, at the end of the paragraph beginning with the words “The code provides”:

“The only exception that applies to the facts you have presented is entering into a contract based on a sealed bid process.”

PROPOSED ADVISORY OPINIONS – CONTINUED

X.b. – CONTINUED

Commissioner Fiore suggested that the additional sentence read, “The only manner which you could qualify to bid on this would be if it is a sealed bid process.”

Commissioner Farach suggested putting Commissioner Fiore’s wording on the second page of the letter at the end of the “In summary” paragraph.

Commissioner Archer said that the new sentence may need to also state that sealed bids be revealed by a department other than the employee’s current one. Ms. Rogers said that how the bids were revealed was not called for by the code, and that the Code required only that the employee was not involved in the bidding process.

Commissioner Fiore clarified that the additional sentence should state the following:

“Based on our review of the facts, the only circumstances under which you could contract would be if it is a sealed bid process and you have no involvement in either the specifications or the evaluation of the bids.”

Ms. Rogers read the following final modifications to the letter:

“Employees are prohibited from using their official position to give or influence others to give themselves or their outside business a special financial benefit. In addition this code section prohibits an employee or their outside business from contracting with their public employer. Based on our review of the facts, the only circumstance in which the county employee could contract with the county would be through a sealed bid process where the employee is neither setting bid specifications nor reviewing the sealed bids submitted, and has disclosed the nature of their interest in the business submitting the bid. If a county employee fully complies with these requirements the code does not prohibit the employee or their outside business from contracting with the County.”

PROPOSED ADVISORY OPINIONS – CONTINUED

X.b. – CONTINUED

MOTION to approve revised proposed advisory opinion letter RQO 13-008. Motion by Robin Fiore, seconded by Patricia Archer, and carried 4-0. Daniel Galo absent.

RECESS

At 1:15 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 6:44 p.m., the meeting reconvened with Commissioners Archer, Fiore, and Harbison present.

(CLERK'S NOTE: Commissioner Fiore requested a roll call.)

ROLL CALL

MEMBERS:

Manuel Farach, Esq., Chair – Absent
Robin N. Fiore, Ph.D., Vice Chair
Patricia L. Archer
Daniel T. Galo, Esq. – Absent
Ronald E. Harbison, CPA

Mr. Cullen stated that a quorum existed.

XI. EXECUTIVE SESSIONS

XI.a. C13-008

Commissioner Archer read the following public report and final order of dismissal:

Complainant, Bart Novak, filed the above-referenced complaint on February 19, 2013, alleging possible ethics violations involving respondent, Darell Bowen, the former Mayor of the Village of Wellington.

EXECUTIVE SESSIONS – CONTINUED

XI.a. – CONTINUED

The complaint contended that Mr. Bowen failed to report a gift of two tickets to attend an event held February 21, 2011, at the International Polo Club of Palm Beach valued in excess of \$100 in violation of Section 2-444 (f) Gift Reports.

Pursuant to Chapter 2, Article V, Division 8, Section 2-260.6 of the Palm Beach County Code, jurisdiction of the Ethics Commission extends to violations “committed on or after the effective date of the ordinances.” The allegations contained in the complaint involve activities alleged to have occurred in February 2011, more than three months before respondent and the Village of Wellington were subject to the Commission’s jurisdiction on June 1, 2011.

Because the alleged behavior involves a former public official who was, at the time of the alleged violation, not subject to the jurisdiction of the Commission on Ethics, the Ethics Commission dismissed the complaint on May 2, 2013, due to lack of legal sufficiency.

Therefore it is:

Ordered and adjudged that the complaint against respondent Darell Bowen is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on May 2, 2013. Signed: Manuel Farach, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the public report and final order of dismissal.)

EXECUTIVE SESSIONS – CONTINUED

XI.b. C13-007

Commissioner Archer read the following public report and final order:

Complainant, Bart Novak, filed the above-referenced complaint on February 19, 2013, alleging possible ethics violations involving respondent, Darell Bowen, former Mayor of the Village of Wellington. The complaint alleges that two (2) Codes of Ethics violations:

Count 1, alleges the respondent, while Mayor of the Village of Wellington, had his assistant use a Village issued credit card to pay for two (2) tickets from the Boys and Girls Club of Palm Beach County (BGCPBC) in order for he and his wife to attend the 24th Annual Wellington Dinner Dance “*Le Cirque!*” on December 3, 2011, in violation of Article XIII, Section 2-443 (a)(1&4), *Misuse of public office or employment*, of the Palm Beach County Code of Ethics.

Count 2 alleges that respondent, after accepting tickets valued in excess of \$100, respondent failed to file a gift disclosure form, in violation of Article XIII, Section 2-444 (f)(1), *Gift law*, of the Palm Beach County Code of Ethics.

Pursuant to Chapter 2, Article V, Division 8, Section 2-258 (a) of the Palm Beach County Code of Ethics, the Commission on Ethics (COE) is empowered to enforce the county code of ethics. Chapter 8, Article XIII, Section 2-443 (a), *Misuse of public office or employment* 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. Section 2-444 (f) (1), *Gift reports for officials and employees identified by State law as reporting individuals*, requires state reporting individuals to report gifts in accordance with state law and file a copy of each report with the COE.

EXECUTIVE SESSIONS – CONTINUED

XI.b. – CONTINUED

After obtaining sworn statements from material witnesses and documentary evidence the complaint was determined by staff to be legally sufficient on April 15, 2013. Information obtained during the inquiry was adopted into the investigation and presented to the Commission on Ethics on May 2, 2013. At that time, the Commission conducted a hearing. The Commission reviewed and considered the Memoranda of Inquiry, Memoranda of Investigation, Memoranda of No Probable Cause and the oral statement of the advocate. At the conclusion of the hearing the Commission on Ethics made a finding of no probable cause since Darell Bowen complied with all state reporting requirements by reducing the amount of the gift with reimbursement under state reporting requirements. Although the action is permitted under state law, it is contrary to the transparency that the ethics process is designed to produce with respect to the reporting of gifts under the Code of Ethics.

Therefore, it is:

Ordered and adjudged that the complaint against respondent, Darell Bowen, is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in executive session on this 2nd day of May, 2013. Signed by:
Manuel Farach, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the public report and final order.)

Commissioner Fiore stated that the documents related to the COE executive sessions would be posted on the COE Web site the following day. She added that recorded sessions of the meeting would be available the following week.

EXECUTIVE SESSIONS – CONTINUED

XI.c. C13-001

Commissioner Harbison read the following public report and finding of probable cause:

Complainant, Mark Bellisimo, filed the above-referenced complaint on January 8, 2013, alleging a possible violation of the Palm Beach County Code of Ethics involving respondent, Robert Margolis. The complaint alleges that, respondent, Robert Margolis, received gifts prohibited by the code of ethics. The complaint further alleges that the gifts were given by principles of lobbyists who lobbied the Village, and/or that respondent accepted these gifts in exchange for his votes on important development matters before the Village of Wellington Council.

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 county code of ethics. After obtaining sworn statements from material witnesses and documentary evidence the complaint was determined by staff to be legally sufficient on March 14, 2013.

Information obtained during the inquiry was adopted into the investigation and presented to the Commission on Ethics on May 2, 2013, with a recommendation that probable cause exists to believe that a violation of the code of ethics had occurred. At that time, the Commission conducted a Probable Cause hearing. The Commission reviewed and considered the inquiry and investigative reports, documentary submissions, recommendation of staff, as well as oral statements of the respondent and advocate. At the conclusion of the hearing, the Commission on Ethics determined that probable cause exists in this matter.

Accordingly, with regard to the allegations concerning Mr. Neil Hirsch, we find that there are reasonably trustworthy facts and circumstances for the Commission on Ethics to believe that the respondent may have violated Sections 2-444(a)(1) and 2-444 (e) of the Palm Beach County Code of Ethics.

EXECUTIVE SESSIONS – CONTINUED

XI.c. – CONTINUED

Additionally, with regard to the allegations concerning Ms. Victoria McCullough, the Commission finds there are no reasonably trustworthy facts and circumstances for the Commission on Ethics to believe that the respondent violated Sections 2-443 (a)(1) and 2-444 (e) of the Palm Beach County Code of Ethics.

Therefore, it is:

Ordered and adjudged that probable cause exists and the complainant against the respondent, Robert Margolis, will be set for final hearing within 120 days from this date. A final hearing date will be coordinated between the parties.

Done and ordered by the Palm Beach County Commission on Ethics in public session on May 2, 2013. Signed: Manuel Farach, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the public report and finding of probable cause.)

XI.d. C13-002

Commissioner Harbison read the following public order and finding of no probable cause:

Complainant, Mark Bellisimo, filed the above-referenced complaint on January 8, 2013, alleging a possible violation of the Palm Beach County Code of Ethics involving respondent, John Greene. The complaint alleges that, respondent, John Greene, received gifts prohibited by the code of ethics. The complaint further alleges that these gifts were given by principals of lobbyists who lobbied the Village and/or that respondent accepted these gifts in exchange for his votes on development matters before the Village of Wellington Council.

EXECUTIVE SESSIONS – CONTINUED

XI.d. – 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 county code of ethics. After obtaining sworn statements from material witnesses and documentary evidence the complainant was determined by staff to be legally sufficient on March 14, 2013.

Information obtained during the inquiry was adopted into the investigation and presented to the Commission on Ethics on May 2, 2013, with a recommendation that probable cause exists to believe that a violation of the code of ethics had occurred. At that time, the Commission conducted a Probable Cause hearing. The Commission reviewed and considered the inquiry and investigative reports, documentary submissions, recommendation of staff, as well as oral statements of the respondent and advocate. At the conclusion of the hearing the Commission on Ethics determined that no probable cause exists in this matter.

Accordingly, we find that there are no reasonable trustworthy facts and circumstances for the Commission on Ethics to believe that the respondent may have violated Sections 2-444 (e), 2-443 (a)(1) and 2-443 (b) of the Palm Beach County Code of Ethics.

Therefore, it is:

Ordered and adjudged that no probable cause exists and the complaint against respondent, John Greene is dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on May 2, 2013. Signed: Robin N. Fiore, Vice Chair.

(CLERK'S NOTE: The clerk added the language as printed in the public report and finding of no probable cause.)

XII. EXECUTIVE DIRECTOR COMMENTS

XII.a.

DISCUSSED: Goals for the Commission on Ethics.

Mr. Cullen said that:

- Investigator James Poag had submitted his resignation to pursue another opportunity.
- An advertisement was posted on the County's employment Web site for an investigator position with the COE.
- His short-term goals for the COE included updating training modules and the volunteer advocate program so that staff could better serve the commission and the community.
- His long-term goals included:
 - The COE pursuing grant opportunities that would help the business of the commission; and,
 - Increased COE interaction with the magnet schools in the county that had legal magnet programs.
- The COE's physical office would relocate at the end of June 2013 to the old historic courthouse in downtown West Palm Beach.
- He had an open-door policy; and would like to be notified of any improvements that the COE staff could make.

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XIII. COMMISSION COMMENTS

XIII.a.

DISCUSSED: Well Wishes and Suggestions.

Commissioner Harbison welcomed Mr. Cullen to the COE, congratulated James Poag on his work with the commission, and wished Mr. Poag well in his new endeavors.

Commissioner Harbison said that clear standards needed to be identified with regard to pro bono advocacy and the commission's selection of a trainer for advocates. He suggested that staff design training to educate newly elected public officials on their new obligations required under the Code.

Commissioners Fiore and Harbison thanked Ms. Rogers for her work as Interim Executive Director.

XIII.b.

DISCUSSED: Appreciation.

Commissioner Archer thanked Ms. Rogers for her work, wished Mr. Poag well in his future work, and welcomed Mr. Cullen.

XIV. PUBLIC COMMENTS – None

XV. ADJOURNMENT

MOTION to adjourn. Motion by Patricia Archer, seconded by Ronald Harbison, and carried 3-0. Manuel Farach and Daniel Galo absent.

At 7:08 p.m., the vice chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

THE LAW OFFICE ROMA W. THEUS, II, P.A.

1365 Santa Barbara Drive
Wellington, Florida 33414
Telephone Number 561.793.8169
Facsimile Number 561.791.3669
Mobile Number 954.415.9517

VIA E-MAIL AND FIRST CLASS MAIL

May 13, 2013

Stephen P. Cullen, Esq.
Executive Director
Palm Beach County Commission
On Ethics
2633 Vista Parkway
West Palm Beach, FL 33411

Re: Completeness of Audio Recordings Of Hearings
Held on January 10, 2013 and February 7, 2013,
Regarding Case No. 12-016

Case: In Re Victoria McCullough, Case No. 12-016

Dear Mr. Cullen:

Please be advised that I represent Ms. Victoria McCullough, the Respondent in Case No. 12-016, which was *fully* resolved and is now *closed*. In response to my request, the Palm Beach County Commission on Ethics (the "COE") furnished me with copies of the audio recordings for the hearings the COE conducted on January 10, 2013 and February 7, 2013, in Case No. 12-016.

When I listened to the audio recording of Ms. McCullough's hearing on January 10, 2013, before the COE in Case No. 12-016, I did *not* hear remarks that were made by one of the Commissioners, Daniel Galo, Esq., that he was "sick and tired" of the Commission having to deal with matters arising out of "millionaires and billionaires fighting with each other" in Wellington. Similarly, when I listened to the audio recording of Ms. McCullough's hearing before the COE on February 7, 2013, in Case No. 12-016, I did *not* hear a remark made by Commissioner Patricia Archer or Commissioner Robin Fiore that if a contribution to a legal defense fund Ms. McCullough made was returned to her (Ms. McCullough), that "McCullough could go shopping."

Stephen P. Cullen, Esq.
Executive Director
Palm Beach County Commission
on Ethics
May 13, 2013
Page 2 of 2

In light of the foregoing, please do the following immediately:


- (A) Furnish me with a fresh set of true, complete and accurate copies of the audio recordings of the COE's hearings regarding Case No. 12-016 that were conducted on January 10, 2013 and February 7, 2013.
- (B) Preserve the originals of the audio recordings of the COE's hearings regarding Case No. 12-016 that were conducted on January 10, 2013 and February 7, 2013.
- (C) Inform me of when a forensic expert may have the opportunity to listen to the original audio recordings of the COE's hearings regarding Case No. 12-016 that were conducted on January 10, 2013 and February 7, 2013.

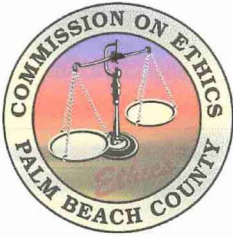
Thank you for your attention to this matter.

Very truly yours,

THE LAW OFFICE OF ROMA W. THEUS, II, P.A.

By:


ROMA W. THEUS, II, For The Firm



Palm Beach County Commission on Ethics

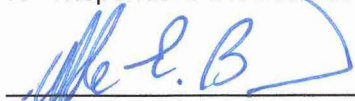
In Re: Dean Turney

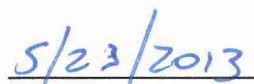
Case No.: C13-004

Negotiated Settlement

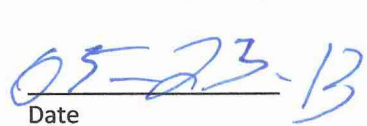
Pursuant to section 2-260(d) of the Palm Beach County Commission on Ethics Ordinance, the Commission *may enter into such stipulations and settlements as it finds to be just and in the best interest of the citizens of the county*. Commission on Ethics Rules of Procedure 6.16 permits the COE Advocate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

1. Respondent, Dean Turney, believes it to be in his best interest to avoid the expense and time of litigation in this matter and desires to resolve the issues contained in the probable cause finding by the Commission. Accordingly, Respondent admits to the allegation contained in the complaint that he conducted lobbying activities within the Village of Wellington on December 18, 2012 in a meeting with Village Mayor Bob Margolis and Village Manager Paul Schofield while not being properly registered as a lobbyist for the principal he represented during this meeting, in violation of the Palm Beach County Lobbyist Registration Ordinance, Article VIII, §2-353, Registration and expenditures.
2. Pursuant to this Proposed Settlement Agreement, the Commission on Ethics, having found on April 4, 2013 in executive session that probable cause exists to believe that Respondent did violate Article VIII, §2-353, *Registration and expenditures*, of the Palm Beach County Lobbyist Registration Ordinance, agrees to dismiss this matter and issue a Letter of Instruction, believing the alleged violation to be inadvertent, unintentional, or insubstantial.
3. This Proposed Settlement Agreement embodies the entire agreement of the parties respecting the subject matter herein. There are no promises, terms, conditions or obligations other than those contained in this Proposed Settlement Agreement.
4. This Proposed Settlement Agreement supersedes any and all previous communications, representations, and offers, either verbal or written, between the Advocate and Respondent. By signing this document, Respondent acknowledges that he is doing so freely, voluntarily and without duress; that he is competent to enter this agreement; that he has been given the opportunity to review this Proposed Settlement Agreement with an attorney; and that he has fully and completely read and understands the terms and conditions herein.
5. Advocate and Respondent agree that settlement of his action in the manner described above is just and in the best interests of the Respondent and the citizens of Palm Beach County.
6. Evidence of this offer of compromise and settlement is not admissible to prove any of the allegations alleged.
7. Respondent understands and agrees that **NO OFFER IS FINAL UNTIL ACCEPTED BY THE COMMISSION ON ETHICS.**


Mark E. Bannon, Advocate


Date


Dean Turney, Respondent


Date

**Public Report and Final Order of Dismissal
with a Letter of Instruction**

COMPLAINANT, Bart Novak, filed the above-referenced COMPLAINT on January 30, 2013, alleging a possible violation of the Palm Beach County Lobbyist Registration Ordinance involving RESPONDENT Dean Turney.

The COMPLAINT alleges that Dean Turney conducted lobbying activities in the Village of Wellington without being properly registered as a lobbyist in the county Central Lobbyist Registration System. The Village of Wellington adopted the county Lobbyist Registration Ordinance on June 16, 2012, and since the adoption of this ordinance, requires that all lobbyists be registered in the Central Lobbyist Registration System prior to conducting lobbying activities with Village officials or staff.

COE staff determined that this COMPLAINT was legally sufficient on March 22, 2013, investigated the Complaint, and determined that there was evidence to believe RESPONDENT engaged in lobbying activities on December 18, 2012 in a meeting with Village Mayor, Bob Margolis and Village Manager, Paul Schofield concerning settlement negotiations between the Village and Mark Bellissimo/Equestrian Sports Productions. RESPONDENT was not registered as a lobbyist for these principals at the time of this meeting, although he is properly registered as a lobbyist for other principals.

Pursuant to Chapter 2, Article V, Division 8, §2-258(a)¹ of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the Palm Beach County Lobbyist Registration Ordinance

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

- (1) County Code of Ethics;
- (2) County Post-Employment Ordinance; and

as it pertains to any Palm Beach County municipality, once that municipality has adopted the ordinance into law. Article VIII, §2-353, *Registration and expenditures*, of this ordinance requires any person engaging in lobbying within the Village of Wellington to register as a lobbyist.

The Memorandum of Probable Cause and Memoranda of Inquiry and Investigation, adopted by reference, were presented to the Commission on Ethics on April 4, 2013. At that time, the Commission conducted a hearing. The Commission reviewed and considered the Memoranda of Inquiry, Investigation and Probable Cause recommendation of staff, and oral statements of RESPONDENT and ADVOCATE. At that time, the Commission found that PROBABLE CAUSE existed to believe RESPONDENT violated the Palm Beach County Lobbyist Registration Ordinance, and the matter was to be set for a public hearing within 120 days.

On June 6, 2013, RESPONDENT and ADVOCATE submitted a NEGOTIATED SETTLEMENT to the Commission on Ethics for approval. Under this NEGOTIATED SETTLEMENT, RESPONDENT stipulates to the facts as set forth in the Public Report Finding Probable Cause, and as listed within the LETTER OF INSTRUCTION, that he violated Article VIII, §2-353 of the Palm Beach County Lobbyist Registration Ordinance on December 18, 2012, by failing to properly register as a lobbyist prior to engaging in lobbying activities during a meeting with the Village Mayor and the Village Manager.

Pursuant to the Commission on Ethics Ordinance 2-260.1, *Public hearing procedures*, the Commission on Ethics finds that the violation by RESPONDENT was **inadvertent, unintentional or insubstantial**, DISMISSES the complaint, and issues a LETTER OF INSTRUCTION to RESPONDENT.

Therefore it is:

ORDERED AND ADJUDGED THAT the COMPLAINT against RESPONDENT, Dean Turney, is hereby DISMISSED and a LETTER OF INSTRUCTION is to be issued in this case.

-
- (3) County Lobbyist Registration Ordinance.
 - (4) County Post-Employment Ordinance, and
 - (5) County Lobbyist Registration Ordinance.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on
June 6, 2013.

Palm Beach County Commission on Ethics,

By: _____
Manuel Farach, Chair

PROPOSED

LETTER OF INSTRUCTION

Bart Novak (Complainant) filed the above-captioned complaint against **Dean Turney**, (Respondent) alleging violations of the Palm Beach County Lobbyist Registration Ordinance, Article VIII, §2-353. (Registration and expenditures). The complaint alleges that Respondent conducted lobbying activities within the Village of Wellington, however has not registered as a lobbyist pursuant to the Palm Beach County Lobbyist Registration Ordinance.

- **Facts**

Respondent is a registered lobbyist listed in the county's Central Lobbyist Registration System (CLRS), listing two (2) separate principals within this database. The Village of Wellington (the Village) adopted the CLRS as its sole means of registering lobbyists who lobby the Village on June 12, 2012. Respondent is not registered as a lobbyist for Equestrian Sports Productions (ESP) in the CLRS, although he is employed by ESP. Respondent described his employment with ESP as involving community and public relations and working to promote the equestrian industry throughout Palm Beach County.

On or about December 18, 2012, Respondent met with Paul Schofield, Village Manager, and Robert Margolis, Village Mayor. Respondent states that this meeting was to discuss general equestrian issues within the Village, and the possibility of having a Village sponsored PBC League of Cities monthly meeting at the Palm Beach International Equestrian Center (PBIEC), which is owned and operated by ESP. Respondent described the purpose of this meeting to COE Investigator James Poag as seeking the goodwill of Manager Schofield and Mayor Margolis as it pertained to allowing the League of Cities monthly meeting to be held at PBIEC.

Mayor Margolis stated under oath that this meeting also involved a discussion of a proposed stipulation agreement offered by ESP to end current litigation with the Village over the Equestrian Village project, and other general ESP interests concerning the Equestrian Village project, and that Respondent appeared to be seeking their acceptance of this proposed stipulation. This stipulation agreement would have to be presented for a vote before the Village Council in order to be accepted.

- **Holding**

Sec. 2-352. *Definitions*, of the Lobbyist Registration Ordinance states in relevant portion:

Principal shall mean the person or entity a lobbyist represents, including a lobbyist's employer or client, for the purpose of lobbying.

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

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

(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.

Respondent is not an employee of any governmental agency or entity as listed in Section 2-352, sub-section (1); is not a licensed attorney or member of The Florida Bar Association employed to represent ESP in any hearing as described in sub-section (2), or as defined under §2-253(c), *Registration exceptions*; is not an expert witness retained to provide only scientific, technical or otherwise specialized information as listed in sub-section (3); was not lobbying in his individual capacity without compensation as listed in sub-section (4); and is not an employee, contract employee, or independent contractor lobbying on behalf of the League of Cities as listed in sub-section (5).

Sec. 2-353. **Registration and expenditures**, states in relevant portion:

(a) **Registration required.** Prior to lobbying, all lobbyists shall submit an original, fully executed registration form to county administration, which shall serve as the official location for countywide lobbyist registration and which shall be known as the "Central Lobbyist Registration Site."

(c) **Registration exceptions.** Registration shall not be required for the following:

(2) **Any attorney representing a client in an active or imminent judicial proceeding**, arbitration proceeding, mediation proceeding where a mediator is present, or formal administrative hearing conducted by an administrative law judge in the Division of Administrative Hearings, in which the county or municipality as applicable is a party, who communicates with county or municipal attorneys on issues related only to the subject matter of the judicial proceeding, arbitration proceeding, mediation proceeding, or formal administrative hearing. This exception to the registration requirement includes communications with other government officials and employees conducted during depositions, mediation, arbitration hearings or trial, judicial hearings or trial, **and settlement negotiations for active litigation**, so long as the county or municipal attorneys are present for those communications. (Emphasis added)

Sec. 2-260.3. **Dismissal of complaints**, states as follows:

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 the commission on ethics dismisses a complaint as provided in this subsection, the commission on ethics shall issue a public report stating with particularity its reasons for the dismissal.

The commission on ethics may, at the request of the state attorney or any other law enforcement agency, stay an ongoing proceeding. The commission on ethics shall not interfere with any ongoing criminal investigation of the state attorney or the U.S. Attorney for the Southern District of Florida.

Respondent met with Village Manager and Village Mayor on December 18, 2012 and during this meeting discussed the proposed settlement stipulation and attempted to influence the acceptance of this agreement. This stipulation agreement would have to be presented for a vote before the Village Council in order to be accepted.

In light of the facts and circumstances known to the Commission on Ethics, the matter is disposed of by way of dismissal with this Letter of Instruction. The COE believes that the alleged violation was inadvertent, unintentional or insubstantial and has determined that the public interest would not be served by proceeding further. However, Respondent is now advised that the filing of Ethics Complaint C13-004, along with this Letter of Instruction, is to serve as notice that prior to taking any actions that would be construed under the Lobbyist Registration Ordinance to be "lobbying" efforts regarding the Village he is to be properly registered with the county Central Lobbyist Registration System.

Respondent is instructed to take care to properly register in the CLRS database prior to lobbying for any principal before any county or municipal official or employee that falls with the jurisdiction of the Lobbyist Registration Ordinance to avoid any future enforcement action.

This letter of instruction is issued by the Palm Beach County Commission on Ethics in public session on June 6, 2013.

Palm Beach County Commission on Ethics,

By: _____

Manuel Farach, Chair

IX. Proposed Advisory Opinions

RQO 13-010 Ned Obradovic

A compliance associate for a municipal vendor asked whether the City of Boca Raton Police and Firefighters Retirement System (retirement system) is subject to the Countywide Lobbyist Registration Ordinance and if so, whether investment advisory services providers must register as lobbyists when conducting a meeting with the board for the limited purpose of a yearly portfolio review.

Staff submits the following for COE review: a lobbyist is defined as any person who is employed and receives payment for or who contracts for economic consideration for the purpose of seeking to influence a decision of a public employee or official on an issue which foreseeably will be presented to a municipal governing body or advisory board. Any person who meets this definition must register as a lobbyist with the central lobbyist registration database unless an exception applies. Section 2-353(c)(1) provides an exception for vendors who meet with officials and advisory board members regarding issues related only to the performance of their services under their contract. So long as the vendor representatives only meet with retirement system members for the limited purpose of reviewing the board's plan investments, they are not required by the ordinance to register as lobbyists.

RQO 13-011 Howard Gilmore

An Aviation and Airports Advisory Board member asked whether he is prohibited from participating and voting on the selection of a fixed base operator for the Palm Beach County Park Airport where he leases two hangers from the existing fixed base operator.

Staff submits the following for COE review: An advisory board member may not use his official position, including participation and voting on issues before the AAAB or its RFP selection committee, where he leases 2 of 68 available hangers at the Lantana Airport. Based upon the facts and circumstances provided, including the limited class of persons or entities that stand to gain from the RFP process and the absence of significant contingencies to obtain that gain if changes are approved, the potential financial benefit to the board member is not so remote and speculative as to eliminate a conflict of interest under the Palm Beach County Code of Ethics.

RQO 13-012 William Doney

A Town Attorney asked whether it is permissible under the Code of Ethics for a municipal employee to accept direct donations from Town residents for a legal defense expenses incurred. In the alternative, he asked whether it is permissible under the Code of Ethics for a municipality to collect donations and create a legal defense fund for the benefit of the municipal employee.

Staff Submits the following for COE Review: The Code of Ethics does not prohibit municipal employees from accepting financial assistance from Town residents who are not otherwise vendors, employees of vendors, lobbyists or principals or employers of lobbyists who sell, lease or lobby the Town, so long as the assistance is not provided in exchange for any official action performed by the Town or any employee. Municipal employees may not use their official position to obtain a financial benefit for themselves that is not available to similarly situated members of the general public. Solicitation for personal benefit while in uniform, or otherwise in an official capacity, is prohibited. If the amount provided to the employee is greater than \$100, he or she must report acceptance of such a gift to the Commission on Ethics as required by the Code.

In addition, The Code does not prohibit a municipality from establishing a legal defense fund to benefit a municipal employee. However, such donations may not be solicited, or accepted from, any Town vendor, lobbyist, principal or employer of a lobbyist that lobbies the Town, and the disbursement of the donation may not be based on any official act or legal duty taken or to be taken.

June 7, 2013

Mr. Nedojsa Obradovic, Compliance Associate
HedgeOp Compliance LLC
184 High Street, Fl 6
Boston, MA 02110

Re: RQO 13-010
Lobbyist Registration Ordinance

Dear Mr. Obradovic,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on June 6, 2013.

YOU ASKED whether the City of Boca Raton Police and Firefighters Retirement System (retirement system) is subject to the Countywide Lobbyist Registration Ordinance and if so, whether investment advisory services providers must register as lobbyists when conducting a meeting with the board for the limited purpose of a yearly portfolio review.

IN SUM, a lobbyist is defined as any person who is employed and receives payment for or who contracts for economic consideration for the purpose of seeking to influence a decision of a public employee or official on an issue which foreseeably will be presented to a municipal governing body or advisory board. Any person who meets this definition must register as a lobbyist with the central lobbyist registration database unless an exception applies. Section 2-353(c)(1) provides an exception for vendors who meet with officials and advisory board members regarding issues related only to the performance of their services under their contract. So long as your client's representatives only meet with retirement system members for the limited purpose of reviewing the board's plan investments, they are not required by the ordinance to register as lobbyists.

THE FACTS as we understand them are as follows:

You are a compliance associate with HedgeOp Compliance, LLC. Your company contracts with hedge funds and private equity groups to provide guidance on local, state and federal regulations. Your firm does not have a contract with the City of Boca Raton or with the City of Boca Raton Police and Firefighters' Retirement System (retirement system). However, a hedge fund that you provide compliance services to has a contract to provide investment advisory services to the retirement system board. On a yearly basis, the fund team meets with board members for the sole purpose of reviewing the board's investment portfolio. The team's contract for services will not be reviewed for renewal at this meeting. There is no attempt by the team to influence a decision of a public employee or official on an issue which foreseeably will be presented to a municipal governing body or advisory board.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Lobbyist Registration Ordinance which took effect April 2, 2012:

Sec. 2-353. Registration and expenditures.

- (a) **Registration required.** Prior to lobbying, all lobbyists shall submit an original, fully executed registration form to county administration, which shall serve as the official location for countywide lobbyist registration and which shall be known as the "Central Lobbyist Registration Site." The registration may be submitted in paper or electronic form pursuant to countywide policies and procedures. Each lobbyist is required to submit a separate registration for each principal represented. A registration fee of twenty-five dollars (\$25.00) must be included with each registration form submitted. A registrant shall promptly send a

written statement to county administration canceling the registration for a principal upon termination of the lobbyist's representation of that principal. This statement shall be signed by the lobbyist. Lobbying prior to registration is prohibited. It is the responsibility of the lobbyist to keep all information contained in the registration form current and up to date.

(c) Registration exceptions. Registration shall not be required for the following:

- (1) Persons under contract with the county or municipalities as applicable who communicate with county commissioners, members of local municipal governing bodies, mayors or chief executive officers that are not members of a local municipal governing body, advisory board members or employees regarding issues related only to the performance of their services under their contract;

The City of Boca Raton is subject to the county-wide lobbyist registration ordinance. 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.¹ Lobbying is defined as seeking to influence a decision of a public employee or official on an issue which foreseeably will come before a municipal governing body or an advisory board.² Any lobbyist who engages in lobbying activities is required to register with the central lobbyist registration database unless one of several exceptions applies.

Section 2-353(c) of the ordinance provides an exception for vendor-representatives who meet with members of local governing bodies regarding issues related only to the performance of their services under their contract. Based on the information you provided, your clients are meeting with retirement system members for the limited purpose of reviewing the board's portfolio as required by the contract between the investment management firm and the retirement system. So long as your clients are meeting with board members for the sole purpose of reviewing the board's existing investment portfolio, your clients are not required to register.

IN SUMMARY, although HedgeOp Compliance, LLC does not have a contract with the retirement system, your client undertakes a yearly portfolio review meeting pursuant to a contract between it and the retirement system. Persons under contract with the county or municipalities who communicate with officials or employees regarding issues related only to the performance of services under their contract are not required to register as lobbyists. Based on the facts and circumstances you have submitted, your client's representatives are meeting with retirement system members for the sole purpose of reviewing the plan's investment strategy as provided for in the plan's contract for services with your client. Accordingly, your client's representatives are not required to register as lobbyists at this time.

This opinion construes the Palm Beach County Code of Ethics Ordinance and the Palm Beach County Lobbyist Registration Ordinance. It 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 should you have any further questions in this matter.

Sincerely,

Steven P. Cullen
Executive Director

SPC/mcr/gal

¹ §2-352 Lobbyist

² §2-352 Lobbying

June 7, 2013

Mr. Harold Gilmore
Airport and Aviation Advisory Board
7020 Half Moon Cir. #201
Hypoluxo, FL 33462

Re: RQO 13-011
Voting Conflicts

Dear Mr. Gilmore,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on June 6, 2013.

YOU ASKED whether, as an Aviation and Airports Advisory Board member, you are prohibited from participating and voting on the selection of a fixed base operator for the Palm Beach County Park Airport where you lease two hangers from the existing fixed base operator.

IN SUM, advisory board members are prohibited from using their official position, participating or voting on an issue that would give a special financial benefit to themselves or a customer of client of theirs, not shared with similarly situated members of the general public. Based on the facts presented you are prohibited from voting on this matter.

THE FACTS as we understand them are as follows:

The Palm Beach County Department of Airports (DOA) is the regulating authority that oversees the Palm Beach County Park Airport (Lantana Airport). A fixed base operator (FBO) is a commercial business granted the right to operate the airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, maintenance and flight instruction. The FBO is the primary provider of support services to general aviation operators at a public use airport.

Lantana Airport is currently operated by FBO Florida Airmotive, Inc. pursuant to a long term lease with the county that expires on March 31, 2014. The County has issued a Request for Proposals (RFP no. LN 13-4) from fixed base operators for the operation and lease of property at the airport.

You serve on the Aviation and Airports Advisory Board (AAAB). The AAAB is a volunteer board appointed by the Palm Beach County Board of County Commissioners (BCC) to review issues pertaining to airports within Palm Beach County. The AAAB will participate in reviewing the RFP and several such members will serve on a selection committee comprised of AAAB members, county staff and third parties with specific expertise in these issues.

You lease hangers 709 and 608 at the Lantana Airport. This lease derives from the current FBO's master lease with Palm Beach County. When Florida Airmotive's lease with the county expires, your lease for hangers 709 and 608 will expire as well. While you have sold your airplane and do not intend to renew your lease with the replacement FBO in March of next year, all current owners will be guaranteed renewal as provided by the RFP. Based on your current ownership interest and the guaranteed renewal option (whether ultimately exercised or not) in the Lantana Airport, you asked whether you can vote as an AAAB member and in addition, if you may serve on the RFP selection committee.

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

Sec. 2-443. Prohibited conduct.

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

Section 2-443(a) prohibits advisory board members from using their official position to take or fail to take any action *if they know or should know with the exercise of reasonable care* that the action would result in a special financial benefit not shared with similarly situated members of the general public, for certain entities or persons including themselves or their employer. Section 2-443(c) *Disclosure of voting conflicts*, similarly requires an advisory board member to abstain and not participate in any matter coming before his or her board which would result in a special financial benefit, not shared with similarly situated members of the general public, to a person or entity as described in subsection (a).

To constitute a prohibited voting conflict, the *possibility* of a financial gain must be direct and immediate, rather than remote and speculative.¹ Where an official's gain or loss would require many steps and be subject to many contingencies, any gain or loss is remote and speculative and cannot be said to inure to one's special financial benefit.² Similarly, for a financial benefit to be "special," the benefit must inure uniquely to the voting member, rather than affecting everyone in a community in the same way. There is no bright line test in determining the number of individuals who must be affected in order to transform a personal gain or loss into a gain or loss shared with similarly situated members of the general public. Where a class is large, a prohibited financial gain would result only if there are circumstances unique to the voting official which would enable him to gain more than the other members of the class. However, where the class of persons benefiting is small, the likelihood of prohibited financial benefit is much greater.³

Each advisory opinion is based upon a unique set of facts and circumstances. Whether a matter rises to the level of a voting conflict will be based upon the facts and circumstances presented to the COE. Based on information gathered from Florida Airmotive by COE staff, you lease 2 of 68 buildings currently available at the Lantana Park Airport. The number of persons or entities directly affected by the RFP is too small a class to be considered similarly situated to members of the general public. Additionally, this is a very limited and specialized class of persons or entities engaged in the pursuit of private aviation.

Second, while you do not intend to renew your lease with the selected FBO, you are a current owner and pursuant to the RFP, have been designated certain rights in relationship to the new FBO. The AAAB and the selection committee will provide input and recommendations to the BCC concerning a contract that would, if adopted, govern your rights, costs and fees as a tenant at the Airport. Should the committee recommend a certain provider, the value of your existing lease may be increased, regardless of whether or not you take advantage of the options made available by a new FBO.

IN SUMMARY, an advisory board member may not use his official position, including participation and voting on issues before the AAAB or its RFP selection committee, where he leases 2 of 68 available hangers at the Lantana Airport. Based upon the facts and circumstances provided, including the limited class of persons or entities that stand to gain from the RFP process and the absence of significant contingencies to obtain that gain if changes are approved, the potential financial benefit to the board member is not so remote and speculative as to eliminate a conflict of interest under the Palm Beach County Code of Ethics.

¹ RQO 12-063

² CEO 05-15, CEO 91-61, CEO 12-19

³ See CEO 92-37 (two percent or eight percent of the property to be affected or 5 of 60 sites and 5 of 168 sites is of sufficient size to result in a "special" gain); CEO 93-19 (measure to construct a sidewalk affecting 40 homes would not affect enough persons in order for its effect not to be considered "special" under the voting conflicts law).

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,

Steven P. Cullen
Executive Director

SPC/mcr/gal

PROPOSED

June 7, 2013

William P. Doney, Esq.
Caldwell, Pacetti, Edwards, Schoech & Viator, LLP
One Clearlake Centre
250 S. Australian Ave., Suite 600
West Palm Beach, FL 33401

Re: RQO 13-012
Gift Law

Dear Mr. Doney,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on June 6, 2013.

YOU ASKED in your email dated May 8, 2013, whether it is permissible under the Code of Ethics for a municipal employee to accept direct donations from Town residents for a legal defense expenses incurred. In the alternative, you asked whether it is permissible under the Code of Ethics for a municipality to collect donations and create a legal defense fund for the benefit of the municipal employee.

IN SUM, as to your first question, the Code of Ethics does not prohibit municipal employees from accepting financial assistance from Town residents who are not otherwise vendors, employees of vendors, lobbyists or principals or employers of lobbyists who sell, lease or lobby the Town, so long as the assistance is not provided in exchange for any official action performed by the Town or any employee. Municipal employees may not use their official position to obtain a financial benefit for themselves that is not available to similarly situated members of the general public. Solicitation for personal benefit while in uniform, or otherwise in an official capacity, is prohibited. If the amount provided to the employee is greater than \$100, he or she must report acceptance of such a gift to the Commission on Ethics as required by the Code.

As to your second question, the Code does not prohibit a municipality from establishing a legal defense fund to benefit a municipal employee. However, such donations may not be solicited, or accepted from, any Town vendor, lobbyist, principal or employer of a lobbyist that lobbies the Town, and the disbursement of the donation may not be based on any official act or legal duty taken or to be taken.

THE FACTS as we understand them are as follows:

You are the Town attorney for Jupiter Inlet Colony (the Town). The Town has a police department comprised of a Chief of Police, a Captain and several full and part-time officers. Several months ago, the Town's Police Chief made accusations of criminal and other wrongdoing against the Town Police Captain. The Captain was suspended from his position as a police officer, but continued to serve the Town in an administrative capacity.

An internal affairs investigation was completed by the Palm Beach County Sheriff's office. The Town also conducted its own investigation. During this time, the Captain hired an attorney and incurred attorney's fees of approximately \$7,500. The Town's investigation revealed no wrongdoing on the part of the Captain. Since the investigation commenced, the Chief was terminated from his employment with the Town. Several Town residents have approached you about assisting the Captain with his legal expenses by making a contribution.

You have asked whether town residents may make direct gifts to the Captain to assist with his legal expenses and if so, whether there are any limits on these contributions and or reporting requirements under the Code of Ethics. Secondly, you have asked whether Town residents may make a gift to the Town in order to establish a legal

defense fund for the Captain and if so, whether there are any limits on contributions or reporting requirements that may apply.

The understood purpose of direct gifts by residents or the Town's establishment of a legal defense fund is to reimburse the Captain up to the amount of attorney's fees he has personally incurred by virtue of defending himself against what have proved to be unfounded allegations made against him by the now former Chief.

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:

Direct Gifts to Police Captain from Residents or Other Members of the Community

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." Section 2-444(a)(1) of the Code of Ethics, prohibits municipal employees from accepting, directly or indirectly, gifts valued at more than \$100, annually in the aggregate, from any Town vendor, lobbyist, principal or employer of a Town lobbyist. Accordingly, the Captain would be prohibited from accepting more than \$100 from any vendor, employee of a vendor, lobbyist or principal or employer of a lobbyist who sells, leases or lobbies the Town.

Moreover, Section 2-444(c) prohibits an employee or elected official, or anyone on his or her behalf, from soliciting a gift of *any value* from a vendor or lobbyist of the Town, where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee. Accordingly, Town employees are prohibited from soliciting donations of any value on behalf of the Captain from vendors, lobbyists or principals or employers of lobbyists who sell, lease or lobby the Town.

The Captain is not prohibited from accepting gifts, designed to reimburse him up to the amount of attorney's fees personally incurred in connection with defending himself from allegations, proved to be unfounded, by the Police Chief, from Town residents who are not otherwise vendors, lobbyists, principals or employers of lobbyists as defined by the code. However, should the value of a donation exceed \$100, he must report the contribution on his annual Palm Beach County gift reporting form in accordance with §2-444(f)(2).¹

In addition, § 2-444(e) prohibits *any* person or entity from offering, giving or agreeing to give a gift of any value to any county or municipal official or employee, as well as prohibiting any official or employee from accepting or agreeing to accept a gift of any value, because of the performance or non-performance of an official act or legal duty. A donation to a public employee based on hardship or other circumstances is not prohibited. However employees, especially police officers who wield significant discretionary authority, must take great care to not take an official action, or perform, fail to perform or violate a legal duty because of a gift that accepted by them or on their behalf as prohibited by sec. 2-444(e). For example, a Town police officer may not take an action during a traffic stop based upon his knowledge of the status of the driver as a donor.²

Creation of the Legal Defense Fund by the Town for the Benefit of an Employee

The Code of Ethics does not prohibit the Town from creating a legal defense fund for the Captain designed to reimburse him up to the amount of attorney's fees personally incurred in connection with defending himself from allegations, proved to be unfounded, by the Police Chief, provided that no funds are solicited or accepted into this fund from any vendor or lobbyist of the Town, and the distribution of funds to the Captain is not based on the past, present or future performance of a legal duty.³ Further, assuming the amount collected will exceed \$100, the Captain must report the value of the gift from the City on his annual Commission on Ethics gift reporting form.

¹ RQO 11-055 (acceptance of scholarship dollars)

² RQO 11-056 (solicitation and acceptance of donations to officer emergency fund).

³ RQO 11-110 (solicitation and acceptance of donations from City residents for employee holiday bonus fund).

IN SUMMARY, provided that donations to a legal defense fund established by the Town are not solicited or accepted from any Town vendor, or any lobbyist, or employer or principal of any lobbyist that lobbies the Town, and the disbursement of such donations to the Captain is not based on any official act or legal duty taken or to be taken, the Code of Ethics does not prohibit residents of the Town from making direct donations to the Captain or donating to a legal defense fund which distributes the collected donations to the Captain. Under either scenario, the understood purpose by both the donors (Town residents) and the Captain is to reimburse him up to the amount of attorney's fees personally incurred in connection with defending himself from allegations, proved to be unfounded, by the Police Chief. Should the Captain elect to accept donations in his personal capacity, he is prohibited from accepting more than \$100, in the aggregate over the course of the calendar year, from a vendor, lobbyist or principal or employer of a lobbyist who lobbies the Town. The Captain is not prohibited from accepting donations from Town residents so long as they are not vendors, lobbyists, principals or employers of lobbyists; however, if the donation is greater than \$100, he must report the donation to the Commission on Ethics as required by the Code. This opinion makes no comment or conclusion on any potential tax consequences, which may apply to the donor(s) or donee in the event gifts are made or received.

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,

Steven P. Cullen
Executive Director

SPC/mcr/gal