



Agenda

July 11, 2013

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

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

Palm Beach County

Commission on Ethics

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Commissioners

Manuel Farach, Chair

Robin N. Fiore, Vice Chair

Daniel T. Galo

Patricia L. Archer

Vacant

Executive Director

Steven P. Cullen

Intake Manager

Gina A. Levesque

Staff Counsel

Megan C. Rogers

Senior Investigator

Mark E. Bannon

Investigator

Anthony C. Bennett

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from June 6, 2013
- V. Resignation of Commissioner Ronald Harbison
- VI. Discussion of FS 286.0114, Re: Public Comment at Meetings
- VII. COE Ordinance Interpretation Authority
- VIII. Proposed Settlement C13-001
- IX. Proposed Settlement C13-011
- X. Executive Sessions
 - a. C13-010
 - b. C13-013
- XI. Executive Director Comments
- XII. Commission Comments
- XIII. Public Comments
- XIV. Adjournment

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1
2 An act relating to public meetings; creating s.
3 286.0114, F.S.; defining "board or commission";
4 requiring that a member of the public be given a
5 reasonable opportunity to be heard by a board or
6 commission before it takes official action on a
7 proposition; providing exceptions; establishing
8 requirements for rules or policies adopted by the
9 board or commission; providing that compliance with
10 the requirements of this section is deemed to have
11 occurred under certain circumstances; providing that a
12 circuit court has jurisdiction to issue an injunction
13 under certain circumstances; authorizing a court to
14 assess reasonable attorney fees in actions filed
15 against a board or commission; providing that an
16 action taken by a board or commission which is found
17 in violation of this section is not void; providing
18 that the act fulfills an important state interest;
19 providing an effective date.
20

21 Be It Enacted by the Legislature of the State of Florida:
22

23 Section 1. Section 286.0114, Florida Statutes, is created
24 to read:

25 286.0114 Public meetings; reasonable opportunity to be
26 heard; attorney fees.—

27 (1) For purposes of this section, "board or commission"
28 means a board or commission of any state agency or authority or
29 of any agency or authority of a county, municipal corporation,

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30 or political subdivision.

31 (2) Members of the public shall be given a reasonable
32 opportunity to be heard on a proposition before a board or
33 commission. The opportunity to be heard need not occur at the
34 same meeting at which the board or commission takes official
35 action on the proposition if the opportunity occurs at a meeting
36 that is during the decisionmaking process and is within
37 reasonable proximity in time before the meeting at which the
38 board or commission takes the official action. This section does
39 not prohibit a board or commission from maintaining orderly
40 conduct or proper decorum in a public meeting. The opportunity
41 to be heard is subject to rules or policies adopted by the board
42 or commission, as provided in subsection (4).

43 (3) The requirements in subsection (2) do not apply to:

44 (a) An official act that must be taken to deal with an
45 emergency situation affecting the public health, welfare, or
46 safety, if compliance with the requirements would cause an
47 unreasonable delay in the ability of the board or commission to
48 act;

49 (b) An official act involving no more than a ministerial
50 act, including, but not limited to, approval of minutes and
51 ceremonial proclamations;

52 (c) A meeting that is exempt from s. 286.011; or

53 (d) A meeting during which the board or commission is
54 acting in a quasi-judicial capacity. This paragraph does not
55 affect the right of a person to be heard as otherwise provided
56 by law.

57 (4) Rules or policies of a board or commission which govern
58 the opportunity to be heard are limited to those that:

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59 (a) Provide guidelines regarding the amount of time an
60 individual has to address the board or commission;

61 (b) Prescribe procedures for allowing representatives of
62 groups or factions on a proposition to address the board or
63 commission, rather than all members of such groups or factions,
64 at meetings in which a large number of individuals wish to be
65 heard;

66 (c) Prescribe procedures or forms for an individual to use
67 in order to inform the board or commission of a desire to be
68 heard; to indicate his or her support, opposition, or neutrality
69 on a proposition; and to indicate his or her designation of a
70 representative to speak for him or her or his or her group on a
71 proposition if he or she so chooses; or

72 (d) Designate a specified period of time for public
73 comment.

74 (5) If a board or commission adopts rules or policies in
75 compliance with this section and follows such rules or policies
76 when providing an opportunity for members of the public to be
77 heard, the board or commission is deemed to be acting in
78 compliance with this section.

79 (6) A circuit court has jurisdiction to issue an injunction
80 for the purpose of enforcing this section upon the filing of an
81 application for such injunction by a citizen of this state.

82 (7) (a) Whenever an action is filed against a board or
83 commission to enforce this section, the court shall assess
84 reasonable attorney fees against such board or commission if the
85 court determines that the defendant to such action acted in
86 violation of this section. The court may assess reasonable
87 attorney fees against the individual filing such an action if

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88 the court finds that the action was filed in bad faith or was
89 frivolous. This paragraph does not apply to a state attorney or
90 his or her duly authorized assistants or an officer charged with
91 enforcing this section.

92 (b) Whenever a board or commission appeals a court order
93 that has found the board or commission to have violated this
94 section, and such order is affirmed, the court shall assess
95 reasonable attorney fees for the appeal against such board or
96 commission.

97 (8) An action taken by a board or commission which is found
98 to be in violation of this section is not void as a result of
99 that violation.

100 Section 2. The Legislature finds that a proper and
101 legitimate state purpose is served when members of the public
102 have been given a reasonable opportunity to be heard on a
103 proposition before a board or commission of a state agency or
104 authority, or of an agency or authority of a county, municipal
105 corporation, or political subdivision. Therefore, the
106 Legislature determines and declares that this act fulfills an
107 important state interest.

108 Section 3. This act shall take effect October 1, 2013.

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

JUNE 6, 2013

**THURSDAY
1:33 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 – Appeared later by telephone
Patricia L. Archer
Daniel T. Galo, Esq.
Ronald E. Harbison, CPA - Absent

STAFF:

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

ADMINISTRATIVE STAFF:

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

III. INTRODUCTORY REMARKS

Executive Director Steven Cullen, Esq., stated that a quorum existed.

III. – CONTINUED

Commissioner Farach stated that anyone wishing to speak should submit a public comment card to COE staff. He added that comments were limited to three minutes, and that all electronic devices should be silenced or turned off.

IV. APPROVAL OF MINUTES FROM MAY 2, 2013

MOTION to approve the May 2, 2013, minutes. Motion by Patricia Archer.

Commissioner Galo stated that since he was not present at the May 2, 2013, meeting, he could not second the motion.

MOTION SECONDED by Manuel Farach, and carried 2-0. Daniel Galo abstaining. Robin Fiore and Ronald Harbison absent.

Intake Manager Gina Levesque stated that a quorum did not exist to vote on the minutes approval.

Commissioner Farach said his understanding was that once a quorum was reached, three votes were not needed to approve an item; only a majority of the members present was necessary.

Mr. Cullen said that he would consult someone regarding the voting procedure.

(CLERK'S NOTE: See page 6 for continuation of item IV.)

V. PRESENTATION TO JAMES POAG

Commissioner Farach said that COE Investigator James Poag had accepted a position with the Village of Wellington. He added that he had enjoyed working with Mr. Poag, and he wished him the best of luck.

Commissioner Galo congratulated Mr. Poag on his new position. He added that his excellent background had made him an asset for the COE, and he wished him good luck.

Commissioner Archer said that Mr. Poag would serve the COE well in his new position. She said that she looked forward to seeing the results of his work, and she wished him good luck.

VI. REQUEST FROM DAVID BAKER (RE: COMMISSIONERS CAPACITY AS MEMBERS OF THE INSPECTOR GENERAL COMMITTEE)

Commissioner Farach stated that by law, the COE functioned differently than the Inspector General Committee (IGC). He said that a presentation could be made; however, the COE members would not discuss matters pertaining to the IGC. He added that accepting information about the IGC without having discussion or taking action would not involve a Sunshine Law issue.

David Baker, Palm Beach County ethics initiative member, thanked the COE members for serving on the IGC. He said that when performing oversight and making evaluations, the COE members might consider individually meeting with Inspector General Sheryl Steckler to become familiar with her duties and her office functions.

Commissioner Farach thanked Mr. Baker for his guidance and direction in helping to draft ethics and inspector general ordinances.

VII. REQUEST FROM ROMA THEUS, ESQ.

Commissioner Farach stated that the May 13, 2013, letter from Victoria McCullough's attorney, Roma Theus, Esq., could not be discussed privately due to Sunshine Law provisions; therefore, he had asked that it be placed on today's agenda.

(CLERK'S NOTE: Commissioner Fiore joined the meeting by telephone.)

Commissioner Farach said he understood that discussions had occurred between Mr. Theus and Mr. Cullen, and that after the May 13, 2013, letter had been placed on the agenda, Mr. Theus sent another on June 5, 2013.

Mr. Theus said that he had received a second set of audio recordings from the January 10, 2013, and February 7, 2013, COE hearings. He said that one inaudible section of the February 7th recording was audible and was also heard by the court reporter; however, a comment from the January 10th hearing was inaudible or absent on the recording. He added that he then sent Mr. Cullen a June 5, 2013, letter that stating his concerns and informing him that a forensic audio expert would listen to the original and copies of the audio recordings and examine the recording equipment.

VII. – CONTINUED

Commissioner Archer stated that she did not make the alleged February 7, 2013, comment that was referenced in the May 13, 2013 letter.

Mr. Theus said that he believed the comment was made by Commissioner Fiore. He stated that he also listened to the February 7, 2013, audio recording regarding C12-015; however, he was not present for that hearing and could not comment. He acknowledged that the Respondents for C12-015 and C12-016 had agreed to the disposition of the three subsequently consolidated hearings.

Commissioner Farach said that according to Mr. Theus' letter, there was no obstruction or obstacle in obtaining the audio recordings, and that Mr. Theus' only concern was the recording quality. He added that the COE was informed that proceedings being held outside of the public's presence could not be transcribed by a court reporter or openly recorded by Channel 20; however, attorneys could bring their own court reporters.

Mr. Theus stated that he would consult Paul Ginsberg, a leading tape-recording expert and a Central Intelligence Agency and Federal Bureau of Investigation contract employee.

Mr. Cullen stated that Ms. McCullough's case had been closed, and that no further COE action was necessary.

Mr. Theus expressed concern that Ms. McCullough's closed case did not remain closed when he wrote an April 1, 2013, letter to the COE interim executive director's attention.

Commissioner Farach said that if Mr. Theus wanted the COE to take any action, he should speak to Mr. Cullen, and the matter would be placed on an upcoming COE agenda.

Commissioner Galo said that he questioned what predicate or procedure would be used to authorize a forensic evaluation of the COE's records.

VII. – CONTINUED

Mr. Cullen stated that the forensic evaluation request had been discussed with the County attorney. He said that according to Mr. Theus, testing of the recordings and recording equipment would be noninvasive and nondestructive. He suggested that after Mr. Theus made a formal request, questions could be addressed by the COE.

Commissioner Galo said that:

- He understood that the three consolidated hearings would have been presented as probable cause hearings; however, the parties had reached a resolution, which was presented to the COE.
- To accept the resolution, the COE should make factual findings whether there was probable cause, whether the case was appropriate to go forward, and whether the allegations, if true, were inadvertent, unintentional, or insignificant.
- He and Staff Counsel Megan Rogers had discussed concerns regarding some facts that were presented as a matter of record in the resolution.
- At the January 10, 2013, hearing, he had limited his comments to the concerns that he had discussed with Ms. Rogers. He did not recall making the comments that Mr. Theus had addressed in his May 13, 2013, and June 5, 2013, letters.
- His comments during the February 7, 2013, hearing, in which Mr. Theus had requested that C12-015 and C12-016, be consolidated, involved Ms. McCullough and were made in her and Mr. Theus' presence.

Mr. Theus stated that Ms. McCullough had provided the COE's members, investigator and advocate with one year of bank statements to support her representations. He said that some COE members had expressed speculation and conjecture regarding his client and an Equestrian Village project; however, his client had repeatedly stated that she never opposed or was involved in the matter. He said that during subsequent proceedings, the COE had acknowledged its investigator's realization that two unrelated projects existed.

VII. – CONTINUED

Commissioner Galo stated that the COE had attempted to present facts that supported its findings. He expressed concern that Mr. Theus may have perceived those attempts as supporting or considering the resolution.

Commissioner Farach suggested that further discussion be scheduled at a later date.

Mr. Theus said that individuals being asked by a governmental entity to account for their actions should only be required to respond to the accusation itself. He added that due process should include background information.

IV. – CONTINUED

(CLERK’S NOTE: See page 2 for earlier discussion.)

Commissioner Farach said that Commissioner Galo would be required to vote on the May 2, 2013, minutes although he was not present at the May 2, 2013, COE meeting, and would not be receiving a financial benefit.

Commissioner Fiore said that page 6, the last sentence, second paragraph under X.a., should read: “Was more than apparent.”

MOTION to approve the May 2, 2013, minutes as amended. Motion by Patricia Archer, seconded by Manuel Farach, and carried 4-0. Ronald Harbison absent.

Commissioner Archer said that Florida Statute 286.02 required that an official vote on each item unless there was a financial benefit.

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

VIII. PROPOSED SETTLEMENT C13-004

Senior Investigator Mark Bannon said that:

- On April 15, 2013, the COE found probable cause to believe that Dean Turney had conducted lobbying activities for Equestrian Sports Productions (ESP) within the Village of Wellington (Wellington) during a December 18, 2012, meeting at the Village hall with Wellington Mayor Robert Margolis and Wellington Manager Paul Schofield.

VIII. – CONTINUED

- The parties had agreed at the meeting that its purpose was to discuss a League of Cities issue; however, a proposed settlement agreement between Wellington and ESP was also discussed.
 - Since the discussion involved a proposed settlement agreement that required ratification by Village counsel, it was considered lobbying.
 - At the time of the meeting, Mr. Turney was a registered lobbyist with the Village for two other businesses and not for ESP.
- Wellington had adopted its lobbyist registration ordinance on June 12, 2012; therefore, during the December 18, 2012, meeting, Mr. Turney should have been registered to act in any lobbying capacity.
- On April 2, 2013, Mr. Turney registered as a lobbyist. On May 23, 2013, he and Mr. Turney entered into a proposed settlement agreement regarding the matter.
- Staff recommended that the settlement agreement, a letter of instruction, and a dismissal of the case were reasonable based on the following:
 - Mr. Turney was already a registered lobbyist for other entities.
 - The parties at the December 18, 2012, meeting had agreed that the discussion regarding Wellington and ESP's proposed settlement was not the meeting's main purpose; however, Mr. Turney was responsible for not engaging in the discussion.
 - Evidence did not support a finding that the lobbying was intentional, and could be considered inadvertent.
 - Issuing a letter of instruction would follow a precedent regarding similar COE opinions.

Mr. Turney stated that the signature on the negotiated settlement was his; that the agreement was reached of his own free will; that no one pressured him to enter into the agreement; and that no promises were made to him other than those contained in the agreement.

VIII. – CONTINUED

Commissioner Fiore said it was her understanding that the December 18, 2012, discussion about Wellington and the ESP was inadvertent and was not initiated by Mr. Turney; however, she questioned its inadvertence that the lobbying registration had not been completed.

Mr. Turney clarified that he represented ESP, which produced horse shows, and that the litigation issues dealt with Wellington Equestrian Partners. He said that during the December 18, 2012, discussion, no lobbying registration was in process; however, he has since registered for ESP.

Mr. Bannon said that he was unsure whether staff had asked Mr. Margolis and Mr. Schofield who had initiated the December 18, 2012, discussion regarding Wellington and ESP's proposed settlement. He added that Mr. Turney's lobbying registration was unnecessary if he had met with Wellington officials on matters unrelated to lobbying activities that would come before Wellington's council.

Mr. Turney said he wanted to ensure that the negotiated settlement read: "In light of the facts and circumstances known to the Commission on Ethics, the matter is disposed of by the way of dismissal with this letter of instruction.

MOTION to approve proposed settlement C13-004. Motion by Patricia Archer, and seconded by Daniel Galo.

Commissioner Fiore said she had been informed that she could not vote since she was not present at the meeting.

Ms. Rogers explained that Commissioner Fiore could vote although it would not have any legal sufficiency. She said that the vote would be 3-0 with Commissioner Fiore appearing by phone.

UPON CALL FOR A VOTE, the motion carried 4-0. Ronald Harbison absent.

(CLERK'S NOTE: At a later date and upon further review, Ms. Rogers clarified that based on information provided in Robert's Rules of Order and in Article VIII, Sections 2 and 3 of the COE's bylaws, Commissioner Fiore was not prohibited from voting or participating based on her attendance by phone.)

VIII. – CONTINUED

MOTION to approve that the Respondent's actions as presented in C13-004 were unintentional. Motion by Patricia Archer and seconded by Daniel Galo.

Commissioner Galo said he believed that the incident should be considered inadvertent.

AMENDED MOTION to include the words, unintentional or inadvertent. The maker and the seconder agreed, and the motion carried 4-0. Ronald Harbison absent.

Commissioner Archer read the Public Report and Final Order of Dismissal:

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's 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.

VIII. – CONTINUED

Pursuant to Chapter 2, Article V, Division 8, §2-258(a) of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the Palm Beach County Lobbyist Registration Ordinance 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 unintentional or inadvertent, dismisses the complaint, and issues a Letter of Instruction to Respondent.

VIII. – CONTINUED

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.

Done and ordered by the Palm Beach County Commission on Ethics in public session on June 6, 2013.

Commissioner Archer read the 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.

(This space intentionally left blank.)

VIII. – CONTINUED

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.

VIII. – CONTINUED

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's Central Lobbyist Registration System.

VIII. – CONTINUED

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.

(CLERK'S NOTE: The clerk added the language as printed in the Public Report and Final Order of Dismissal, and the Letter of Instruction.)

IX. PROPOSED ADVISORY OPINIONS

IX.a. RQO 13-010

Mr. Cullen said that RQO 13-010 involved whether a retirement system was subject to the County's lobbyist registration ordinance; and if so, whether investment advisory service providers must register as lobbyists when conducting a meeting with the retirement system's board (board) to specifically review the board's yearly portfolio.

Ms. Rogers said that:

- A lobbyist registration exception applied to the ordinance's lobbyist definition wherein any person who met the definition was required to register as a lobbyist with the central lobbyist registration database.
- The advisory service providers were not required to register as lobbyists if they met with the board to specifically review the portfolio's yearly performance.
- Appearing before the board to lobby for renewal of the portfolio would require lobbyist registration.

MOTION to approve proposed advisory opinion letter RQO 13-010. Motion by Daniel Galo, seconded by Patricia Archer, and carried 4-0. Ronald Harbison absent.

IX. – CONTINUED

IX.b. RQO 13-011

Mr. Cullen said that RQO 13-011 involved whether an Aviation and Airports Advisory Board member (AAAB member) was prohibited from participating and voting on the selection of a fixed-base operator for the Palm Beach County Park Airport where the AAAB member leased two hangers from the existing fixed-base operator.

Ms. Rogers said that:

- In a similar situation, the COE had determined that an AAAB member, who took advantage of set fuel rates for countywide airports, was similarly situated to the general public who used the airports and took advantage of those fuel rates.
- In RQO 13-011, the AAAB member was leasing two of the 68 hangers; therefore, his interest was greater in selecting a fixed-base operator who essentially would serve as his landlord.
- Staff recommended that the AAAB member may not use his official position or participate in the fixed-base operator voting process before the AAAB or the Request for Proposal Selection Committee.

MOTION to approve proposed advisory opinion letter RQO 13-011. Motion by Patricia Archer, seconded by Daniel Galo, and carried 4-0. Ronald Harbison absent.

IX.c. RQO 13-012

Mr. Cullen said that RQO 13-012 involved whether a municipal employee could accept direct donations from the Town of Jupiter Inlet Colony (Town) for legal defense expenses incurred, and whether the Town could establish a legal defense fund for the municipal employee's benefit.

Ms. Rogers said that:

- Although somewhat unique, RQO 13-012's situation followed similar opinions regarding gifts to police officers from the towns of Ocean Ridge, Manalapan, and Palm Beach.

IX.c. – CONTINUED

- The Town's police department was comprised of a police chief, a captain, and several full-time and part-time officers.
- Several months ago, the police chief had accused the captain of criminal activity and other wrongdoing. The captain was suspended, but he continued to administratively serve the Town.
 - The Palm Beach County Sheriff's Office and the Town subsequently conducted an internal affairs investigation. During the investigation, the captain had hired an attorney and had incurred approximately \$7,500 in attorney's fees.
 - The Town's investigation revealed no wrongdoing by the captain; however, the police chief was terminated.
- Several Town residents had approached the Town's attorney to assist the captain with his legal expenses.
- The Code of Ethics (Code) did not prohibit municipal employees from accepting financial assistance from Town residents who were not otherwise vendors, lobbyists, employees of vendors, lobbyists, or principals, or employers of lobbyists who sold, leased, or lobbied the Town, provided that the assistance was not in exchange for any official action taken by the Town or its employees.
- Municipal employees were prohibited from using their official positions or from wearing their uniforms in an official capacity to obtain or solicit a personal financial benefit not available to the similarly situated general public. If the financial assistance to the municipal employee was greater than \$100, he or she must report the gift to the COE.
- The Code did not prohibit municipalities from establishing legal defense funds to benefit municipal employees; however, funds may not be solicited or accepted from any Town vendor, lobbyist, principal, or employer of a lobbyist that lobbied the Town. The donation's disbursement may not be based on any past, present, or future official act or legal duty.

IX.c. – CONTINUED

Commissioner Galo questioned the provision that police officers were prohibited from soliciting or obtaining donations while in uniform when the solicitations involved employment issues.

Ms. Rogers explained that previous charitable solicitation opinions made the distinction that an elected official, who served on the board of a nonprofit organization, was not prohibited from soliciting for the nonprofit provided that the elected official did not use his or her official title.

Mr. Cullen said that the opinion letter referenced that the Town and its residents wanted to help the captain. He added that staff was never informed that the captain would knock on doors to solicit donations.

Ms. Rogers stated that one option to consider would provide that the Town sponsor the legal defense fund, collect and log the donations, and disburse the funds to the captain and any other employees who met the provision's definition. She said that another option would provide that the captain directly accept the donations.

Commissioner Fiore stated that she would not support the second option since the legal defense fund would not be considered the Town's program or considered a general legal defense fund available to all individuals who needed this type of self-defense while performing their public duties.

Ms. Rogers said that under the Code, unless an exception applied, Town residents would not be prohibited from donating to the high-ranking captain's legal defense fund as long as the donations were reported. She added that the COE could address situations involving evidence of a quid pro quo or an exchange of money for official duty; however, no facts were presented that those situations had occurred.

Mr. Cullen stated that the opinion letter contained the sentence: "Solicitation for personal benefit while in uniform, or otherwise in an official capacity, is prohibited" addressed the concern regarding direct solicitation while in uniform.

IX.c. – CONTINUED

Commissioner Galo said that collecting donations for the police officer was directly related to his position so he should not be administering the fund. He suggested adding the sentence, “Additionally, the funds should be managed by someone other than the recipient” to the last paragraph on page two of the opinion letter before the sentence that began, “Further, assuming...”

Ms. Levesque read the added sentence as follows: “Additionally, the funds should be managed by someone other than the recipient to avoid the appearance of impropriety.”

Commissioner Farach suggested changing the word, “managed,” to the words, “solicited or managed.”

MOTION to approve proposed advisory opinion letter RQO 13-012 as amended to include the language as discussed. Motion by Daniel Galo, seconded by Patricia Archer, and carried 4-0. Ronald Harbison absent.

X. EXECUTIVE SESSIONS

Mr. Cullen stated that the executive session would take approximately 15 minutes. Ms. Rogers stated that as long as the COE members returned from executive session at the anticipated, noticed time, no Sunshine Law violation existed.

Commissioner Farach said that Ms. Rogers would consult Assistant County Attorney Leonard Berger regarding the Sunshine Law matter.

RECESS

At 3:07 p.m., the chair declared the meeting recessed for an executive session.

X.a. C13-011

RECONVENE

At 3:46 p.m., the meeting reconvened with Commissioners Archer, Farach, Fiore, and Galo present.

XI. EXECUTIVE DIRECTOR COMMENTS

XI.a.

DISCUSSED: Office of Program Policy Analysis and Government Accountability (OPPAGA) Update.

Mr. Cullen stated that:

- The OPPAGA team leader had advised him that field work was being conducted and that information continued to be gathered regarding OPPAGA's review of the COE.
- An OPPAGA supplemental information request was furnished to the COE members, and a draft response would be filed by the June 10, 2013, requested date.
- After receiving the requested information, OPPAGA could project a timeframe for completion.
- Senator Joseph Abruzzo had expressed a desire to attend a COE meeting although he had noted that he did not want to address any OPPAGA matters. Staff would inform his office of upcoming meeting dates.

XI.b.

DISCUSSED: COE Investigator Update.

Mr. Cullen said that the COE investigator's position had been advertised, and that Anthony Bennett was selected. He added that Mr. Bennett would bring significant law enforcement experience to the position, and that his expected start date was July 1, 2013.

(This space intentionally left blank.)

XI. – CONTINUED

XI.c.

DISCUSSED: Public Comments During COE Meetings.

Mr. Cullen said that:

- He had participated in a panel discussion sponsored by the City of West Palm Beach (City) concerning the legalities and practicalities of handling public comments at COE meetings.
- The COE had done an excellent job of balancing public comments with following the meetings' schedules.
- The panel discussion was televised by the City. Staff would review placing the video on the COE's Web site, or creating a video link.

XI.d.

DISCUSSED: COE Web Site Administrator's Ethics Debate Report.

Mr. Cullen said that:

- The COE's Web site had received over 2,500 visits during the month-long ethics debate.
- Many ethics debate participants had commented that citizens should remain vigilant in the ethics movement.
- A link could be published on the COE's Web site showing the results of the ethics debate.

(This space intentionally left blank.)

XI. – CONTINUED

XI.e.

DISCUSSED: Metrics Performance Measures.

Mr. Cullen stated that he had met with Kim Ardila-Morgan, Palm Beach State College Center for Applied Ethics Executive Director, to discuss her help in projects such as the COE's Web site revision and possibly referring a metrics professional to discuss performance measures. He added that County and COE staff would work to augment the Web site with an interactive format for the public.

Ms. Rogers commented that she and former Executive Director Alan Johnson, Esq., had attended the Council on Governmental Ethics Laws (COGEL) conference. She said that she and Mr. Cullen had spoken to Virlindia Doss, Florida's COE Executive Director, who regularly attended COGEL conferences. She said that although Ms. Doss was unaware of the metrics approach for analyzing performance measures, she had expressed interest in the COE's development of that standard.

Mr. Cullen said that a metrics standard was probably nonexistent; however, another existing process could be adapted to the COE's needs. He added that in probable cause or final hearings, adoption of a judicial poll-type metric could be used to evaluate that portion of the COE's functions.

Commissioner Fiore said that before utilizing various metrics measures, the COE should first determine what information it was seeking at the end of the measuring process.

Mr. Cullen commented that after reviewing some academic literature, he believed that the process would be a hybrid-type evaluative process. He said that he and Ms. Rogers would bring back additional metrics information.

Commissioner Farach said that he was more concerned about being an effective, responsive, and flexible organization rather than filling a numbers quota.

XI. – CONTINUED

XI.f.

DISCUSSED: Ethics Training.

Mr. Cullen said that:

- Ms. Rogers and Mr. Bannon have been conducting ethics training this past week.
- Ms. Rogers had reviewed the PowerPoint presentations that were being used in the training sessions.
- Some surveys requesting feedback from training participants have been returned.

Commissioner Archer recommended that the COE members review the Code and ethics training program biannually during designated months.

Mr. Cullen said that staff could tailor a video or PowerPoint presentation for the COE members.

Ms. Levesque noted that the COE's Web site contained training dates and information.

XI.g.

DISCUSSED: COE Relocation Update.

Mr. Cullen said that the COE was scheduled to move into the old historic county courthouse at the end of June. He added that the COE would receive new telephone numbers.

XIII. COMMISSION COMMENTS – None

XIII. PUBLIC COMMENTS – None

XIV. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Patricia Archer, seconded by Daniel Galo, and carried 4-0. Ronald Harbison absent.

At 4:05 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

VII COMMISSION AUTHORITY RE: STATUTORY INTERPRETATION

STAFF ANALYSIS:

In RQO 13-006 the Commission was presented with the following question: whether an elected official who owns a property management company that provides services to a condominium association (COA) is prohibited from participating or voting on a matter that may financially benefit an investor whose business entities own a majority interest of the COA property. At the time the draft opinion was presented at the COE meeting in May, there was significant discussion of the language of the code.

The Code defines a “Customer or Client” of an official/employee’s outside business as any person or entity to which the official/employee provides at least \$10,000 worth of goods or services over a two year period. Under the facts presented the official’s outside business provided over \$10,000 worth of services to the COA. The question debated by the Commission at the May meeting was whether those services may be attributable to an investor whose various business entities own over 80% of the property within the COA and accordingly, whether the investor is the official’s customer or client. It is anticipated that an applicant may come before the City for a project that is unrelated to the COA and is not proposed by one of the COA ownership entities. For this prospective project, the investor in the COA may have an interest in the underlying property as an owner or investor. The definition of “Customer or Client” does not include managing members, owners, employees or subsidiary entities.

The Commission has previously opined that “where entities are effectively interchangeable in terms of identity or purpose” that an official, employee or advisory board member is prohibited from using their official position to give a special financial benefit to those entities. Under the facts presented in complaint C11-027, a member of a municipal advisory board substantially participated in board discussion of an application submitted by wholly-owned subsidiary of a customer or client of the board member’s outside business. The directors and managing members of the parent company and subsidiary were identical and the application referenced both entities. The Commission opined that an entity cannot use multiple corporate forms to circumvent the Code and that if the vote or official action at issue benefits the customer or client of the official or employee that benefit is a sufficient basis for a code violation.

LEGAL ANALYSIS:

Administrative bodies are granted broad latitude in the interpretation given to a legislative enactment. Legislative intent and public policy considerations are appropriate and a literal interpretation is not required “when to do so would lead to an unreasonable conclusion or defeat legislative intent or result in a manifest incongruity.” *Las Olas Tower Company v. City of Ft. Lauderdale*, 742 So.2d 308 (4th DCA 1999), *See also, Rotemi Realty, Inc. v. Act Realty Company, Inc.*, 911 So. 2d 1181 (Fla. 2005).

That being said, any agency, judicial or otherwise that is responsible for application and interpretation of a law or ordinance must first look to the actual language and text of the regulation itself. Most recently in *Diamond Aircraft Industries v. Horowich*, the Florida Supreme Court noted that “statutory analysis begins with the plain meaning of the actual language of the statute.” 107 So.3d 362, 367 (Fla. 2013). When an ordinance is clear and unambiguous, conveying a clear and definite meaning, that meaning controls unless it leads to a result that is

either unreasonable or clearly contrary to legislative intent. *J.M. v. Gargett*, 101 So.3d 352, 356 (Fla. 2012). Even where an agency is convinced that the legislative body really meant and intended something not expressed in the regulation, an agency is not authorized to depart from an unambiguous definition or from the clear language of the regulation. *Florida Birth-Related Neurological Injury Compensation Ass'n v. Department of Administrative Hearings*, 29 So.3d 992, 997-98 (Fla. 2010).

Moreover, when a term is specifically defined by an ordinance and ordinance drafters have selected or used particular words to define that term, interpretive bodies lack the authority to redefine it, absent evidence of manifest incongruity as described in *Las Olas*.

STAFF RECOMMENDATION:

The term customer or client is defined by the Code as any person or entity to which an official or employer or business has supplied goods or services during the previous twenty-four months, having in the aggregate, a value greater than ten thousand dollars (\$10,000). The code does not speak to subsidiary organizations or ownership of those entities. Yet other sections of the Code specifically refer to ownership or other employment relationship with a business entity. For example, the definition of outside employer or business includes

Any entity located in the county or which does business with or is regulated by the county or municipality as applicable, in which the official or employee has an ownership interest. For purposes of this definition, an "ownership interest" shall mean at least five (5) percent of the total assets of common stock owned by the official or employee...

The drafting committee specifically included the definition of an ownership interest in *outside business*, but failed to do so in regards to the definition of *customer or client*. Similarly, the definition of "vendor" specifically includes owners, directors, managers or employees of the business that sells or leases to the county or municipality as applicable.

This reflects that the drafting committee limited the definition of *customer or client* to the entities themselves rather than the employees or owners of those entities. Moreover, this is consistent with the Commission's reasoning in C11-027. In C11-027, the applicant and its subsidiary corporation benefited from the substantial participation of the advisory board member.

While there is much to be said for considering substance over form especially in the case of ethics regulations, the commission's function is to interpret and enforce the code as drafted. As detailed in the Commission on Ethics Ordinance, the COE must leave it to a drafting committee to correct any inconsistencies or perceived deficiencies in the application of a regulation, aside from those that result in a manifest incongruity. Perhaps most importantly for the 12,000 plus employees, officials and advisory board members subject to the COE's oversight, were the COE, the Palm Beach County League of Cities or the Board of County Commissioners to convene a drafting committee, that committee would have to follow the statutory procedural requirements of notice and public hearing to discuss and propose clarifying legislation, which then may be considered for adoption by the Board of County Commissioners. Concluding that a voting conflict exists in reliance on a general philosophy of what should or what should not constitute a voting conflict would result in the establishment of a new legislative policy without the support of adopted, legislative language or the protections of the legislative process required by the ordinance.

Palm Beach County Commission on Ethics



In Re: Robert Margolis, Respondent

Case No.: C13-001

Negotiated Settlement

Pursuant to section 2-260.3 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, Robert Saul Margolis, 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 accepts a letter of instruction regarding the allegation that he accepted a prohibited gift in excess of \$100 from a principal or employer of a lobbyist who lobbied the Village of Wellington.
2. Pursuant to this Proposed Settlement Agreement, the Commission on Ethics, having found on May 2, 2013 that probable cause exists to believe that Respondent violated Article VIII, §2-444(a) and §2-444(e) of the Palm Beach County Code of Ethics, agrees to dismiss this matter and issue a Letter of Instruction, believing that the public interest would not be served by proceeding further and that the alleged violation was inadvertent and unintentional.
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; nor does it constitute an admission with respect to any other complaint or proceeding initiated by or pending before any other administrative or judicial body or venue.
7. Respondent understands and agrees that **NO OFFER IS FINAL UNTIL ACCEPTED BY THE COMMISSION ON ETHICS.**

Megan C. Rogers, Esquire, Advocate

Date

Robert Margolis, Respondent

Date

Mark Heron, Esquire
Attorney for Respondent

Date

PUBLIC REPORT AND FINAL ORDER OF DISMISSAL

COMPLAINANT, Mark Bellisimo, filed the above-referenced COMPLAINT on January 6th, 2013, alleging a possible ethics violation involving RESPONDENT, Robert Margolis, Village of Wellington Mayor.

The COMPLAINT alleges that on or about May 17, 2012, RESPONDENT, Robert Margolis, knowingly accepted a gift in excess of one hundred dollars (\$100) from a principal of a lobbyist. An official may not knowingly accept any gift with a value of greater than one hundred dollars (\$100) from any person or business entity that the recipient knows or should know with the exercise of reasonable care is a lobbyist or any principal or employer of a lobbyist.¹

On March 14, 2013, the COMPLAINT was determined by staff to be LEGALLY SUFFICIENT. The Memorandum of Probable Cause and Memoranda of Inquiry and Investigation, adopted by reference, were presented to the Commission on Ethics on May 2, 2013 with a recommendation that PROBABLE CAUSE existed to believe there was a Code of Ethics Violation. At that time, the Commission conducted a hearing. The Commission reviewed and considered the Memoranda of Inquiry, Supplemental Investigation and Probable Cause, recommendation of staff, as well as oral statements of the RESPONDENT and ADVOCATE. At that time the Commission also reviewed Article V, §2-260.3 of the Commission on Ethics ordinance. At the conclusion of the hearing the Commission on Ethics determined that PROBABLE CAUSE existed to believe that RESPONDENT may have violated the Code of Ethics and this matter was set for final hearing.

¹ Article XIII, sec. 2-444(a) of the Palm Beach County Code

On July 11, 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 within the LETTER OF INSTRUCTION. Pursuant to the Commission on Ethics Ordinance 2-260.1, Public Hearing Procedures, the Commission has determined that the public interest would not be served by proceeding further, DISMISSES the complaint, and issues a LETTER OF INSTRUCTION to RESPONDENT.

Therefore it is:

ORDERED AND ADJUDGED that the COMPLAINT against RESPONDENT Robert Margolis is hereby DISMISSED and a LETTER OF INSTRUCTION is to be issued in this case.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on July 11, 2013.

By: _____

Manuel Farach, Chair
Palm Beach County Commission on Ethics

LETTER OF INSTRUCTION

Mark Bellissimo (Complainant) filed the above captioned complaint against Robert Margolis, Mayor, Village of Wellington (Respondent), alleging violations of the Palm Beach County Code of Ethics, Article XIII, §2-443(a)(Misuse of office), §2-443(b)(Corrupt misuse of office) and Article XIII, §2-444(a)(1) (Gift law). The complaint alleges, in part, that Respondent accepted a gift in excess of \$100 from a person who is a principal of a lobbyist who lobbies the Village of Wellington (the Village) in violation of the gift law.

- **Facts and analysis**

Respondent is the elected Mayor for the Village. As an elected municipal official in Palm Beach County, Respondent is subject to the Palm Beach County Code of Ethics.

Pursuant to gift disclosure requirements, Respondent submitted a State of Florida Quarterly Gift Disclosure Form (Form 9) indicating that he received a \$2500 gift on or about May 17, 2012 for his legal defense fund regarding a voter recount in the mayoral race. It was determined through inquiry that the donor, Neil Hirsch, served on the board of the Wellington Equestrian Preservation Alliance (The Alliance), a non-profit civic organization. At the time the gift was given to Respondent, the Alliance was active in publicly advocating positions regarding the development of an area in the Village known as the Equestrian Preserve. The Executive Director of the Alliance, Mat Forrest, is a registered lobbyist for Solarsports Systems, Inc. (Solar). Forrest is an employee of Ballard Partners and has a contract to provide governmental affairs services to Solar.

In Forrest's sworn statement to COE Investigator Bannon, he noted that he became involved with the Alliance through his work with Solar. Specifically, Forrest stated that Lou Jacobs, Forrest's primary contact with Solar tasked him to create an organization to advocate for the preservation of the equestrian area of Wellington. Public records obtained by COE staff demonstrate that Forrest appeared before the Wellington Planning, Zoning and Adjustment Board on behalf of the Alliance in regards to the development of a parcel of land within the Equestrian Preserve. The Commission has previously opined that where a person lobbying on behalf of an organization receives compensation for that representation, from whatever source, that person is a lobbyist and the organization is the principal under the Code.

- **Holding**

Sec. 2-444(a) – Gift law, states in relevant part:

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

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.

Respondent accepted a prohibited gift from a principal of a lobbyist.

On May 2, 2013 the Commission on Ethics met in executive session and determined that there was probable cause to believe that Respondent may have violated the Palm Beach County Code of Ethics. Prior to the filing of the above referenced complaint, former COE Executive Director Alan S. Johnson filed a self-initiated complaint against Respondent for accepting a gift in excess of \$100 from the principal or employer of a lobbyist (C12-015).

The Commission is mindful that the facts and circumstances indicate Respondent transparently filed the gift on his state quarterly gift form as required. The \$2500 donation given by Neil Hirsch to Respondent's legal defense fund was reported at the same time as the prohibited donation in ethics complaint C12-015. The Commission dismissed C12-015 with a letter of instruction, advising Respondent that accepting a prohibited gift from a principal of a lobbyist without inquiring as to the status of the donor would result in an actionable violation of the Code.

The Respondent has testified under oath that 1) he was unaware that the donor served on the board of the non-profit organization at the time the gift was given and 2) that members of his campaign staff reviewed Wellington lobbyist records and confirmed that Hirsch was not personally registered as a principal or employer of a lobbyist. While there is significant evidence to indicate that a compensated lobbyist, Mat Forrest, was lobbying on behalf of the Alliance, Forrest was not registered as a representative of the Alliance. Staff investigation following the Commission's probable cause determination has developed no additional evidence that Respondent had actual knowledge that Hirsch was a director of the Alliance at the time he accepted the gift or that the gift was given in exchange for official action. In addition, Respondent voluntarily returned the prohibited portion of the gift to the donor.

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 has determined that the public interest would not be served by proceeding further. However, Respondent is again advised as he was previously in regard to the gift in C12-015 and accompanying Letter of Instruction, that the filing of Ethics Complaint C13-001 is to serve as notice that actions taken by Respondent in accepting a prohibited gift from a principal of a lobbyist without inquiring as to the status of the donor, will result in an actionable violation of the Code. Due to the unique circumstances of this transaction the matter is appropriately addressed through this letter of instruction.

Respondent is hereby instructed proceed with great caution in the future to ensure that he avoid accepting prohibited gifts and to use due diligence in identifying the status of a donor, whether or not the gift is given directly, or indirectly, so as to conform his activities to this Letter of Instruction and to the requirements of §2-444(a)(1) to avoid any future enforcement action. In consideration of this disposition, the Commission also dismisses the allegation that Respondent violated Article XIII, sec. 2-444(e) of the Palm Beach County Code of Ethics.

This letter of instruction is issued by the Palm Beach County Commission on Ethics in public session on July 11, 2013.

Palm Beach County Commission on Ethics,

By: _____
Manuel Farach, Chair

Negotiated Settlement

In Re: Gail James (Vorpagel),
Respondent

Case No.: C13-011

Pursuant To section 2-260(d) of the Palm Beach County Commission on Ethics ordinance, the Palm Beach County Commission on Ethics (COE) *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 COE 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. Based on the findings by the COE and the facts and circumstances as set forth in the attached Letter of Reprimand, Respondent admits to Count 1 and Count 2 as alleged in the Complaint.
2. Pursuant to this Proposed Settlement Agreement, the Commission on Ethics agrees to dismiss Count 3 of the Complaint, *Misuse of Public Office*, and impose a \$163 fine as to Counts 1 and 2 and issue a Letter of Reprimand. The Respondent is hereby ordered to pay \$163 to the Palm Beach County Board of County Commissioners within 30 days of settlement of this action.
3. Respondent understands and agrees to abide by the decision of the Commission regarding its finding, required pursuant to §2-260.1(g) of the Commission on Ethics ordinance, as to whether this violation was intentional or unintentional.
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 she is doing so freely, voluntarily and without duress; that she is competent to enter this agreement; that she has reviewed this Proposed Settlement Agreement with her attorney; and that she has fully and completely read and understands the terms and conditions herein.
5. Advocate and Respondent agree that settlement of this action in the manner described above is just and in the best interest of the Respondent and the citizens of Palm Beach County.
6. Evidence of this offer of compromise and settlement is inadmissible to prove any of the allegations alleged.
7. Respondent understands and agrees that **NO OFFER IS FINAL UNTIL ACCEPTED BY THE COMMISSION ON ETHICS.**

Megan C. Rogers, Esquire
Advocate

Date

Gail James (Vorpagel)
Respondent

Date

Bruce Reinhart, Esquire
Respondent's Representative

Date

In Re: Gail James (Vorpapel),
Respondent

C13-011

PUBLIC REPORT AND FINAL ORDER

COMPLAINANT, Steven P. Cullen, filed the above referenced COMPLAINT on April 16, 2013, alleging that the RESPONDENT, Ms. Gail James, violated Chapter 8, Article XIII, Section 2-443(a), (f) and 2-444 (a) of the Palm Beach County Code of Ethics when, as a Palm Beach County Employee, RESPONDENT accepted travel expenses from a vendor of the county, accepted a gift in excess of \$100 from a county vendor and used her official position to give a special financial benefit to a non-profit organization where she served on the board of directors.

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

Pursuant to Chapter 8, Article XIII, 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.

Pursuant to Chapter 8, Article XIII, Section 2-444(a) Gift Law: No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.

Pursuant to Chapter 8, Article XIII, Section 2-443(a) Misuse of Office: 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 Article V, Division 8, section 2-258(a). *Powers and Duties.* 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) Countywide Code of Ethics;
- (2) County Post-employment Ordinance; and
- (3) County Lobbyist Registration Ordinance

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

On April 26, 2013 the COMPLAINT was determined by staff to be LEGALLY SUFFICIENT. On July 11th, 2013, the RESPONDENT stipulated to PROBABLE CAUSE and RESPONDENT and ADVOCATE submitted a NEGOTIATED SETTLEMENT including a LETTER OF REPRIMAND to the COE for approval. RESPONDENT stipulates to the facts and circumstances as contained in the aforementioned LETTER OF REPRIMAND.

According to the NEGOTIATED SETTLEMENT and based on the facts as set forth in the LETTER OF REPRIMAND, RESPONDENT admits to the allegations contained in counts one and two of the COMPLAINT that she violated §2-443(f) and §2-444(a) of the Palm Beach County Code of Ethics. RESPONDENT agrees to accept a LETTER OF REPRIMAND and to pay a total of One Hundred Sixty-Three Dollars in fines. Count three is DISMISSED. Pursuant to The Commission on Ethics Ordinance §2-260.1 *Public hearing procedures*, the Commission finds that the violation was **unintentional/intentional**. As to counts one and two, the Commission assesses a fine of One Hundred Sixty Three Dollars; and the RESPONDENT has been issued a LETTER OF REPRIMAND.

Therefore it is:

ORDERED AND ADJUDGED THAT this matter is concluded upon acceptance of the LETTER OF REPRIMAND and proof of payment of the aforementioned fine in the amount of \$163.96.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on this 11th day of July, 2013.

Palm Beach County Commission on Ethics

By: _____

Manuel Farach, Chair

July 11, 2013

Ms. Gail James
c/o Bruce Reinhart, Esquire
McDonald Hopkins
500 South Flagler Drive, Suite 300
West Palm Beach, FL 33401

Re: Complaint No. C13-011
Letter of Reprimand

Dear Ms. James,

When the Commission on Ethics met in executive session on March 1, 2013, it found that probable cause existed to believe that you may have violated the Palm Beach County Code of Ethics, specifically §§2-443(a), (b) and (c). On July 11, 2013, you waived your right to a probable cause hearing, stipulated to probable cause and admitted to violating §2-443(f) and §2-444(a) of the Palm Beach County Code of Ethics. The settlement agreement in this case provides for you to accept this public reprimand.

*Chapter 8, Article XIII, 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 incidental 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. (emphasis added).*

Chapter 8, Article XIII, Section 2-444 Gift law.

(a)(1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employee of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.

(g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single setting or meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift

may consult, among other sources, §112.3148, Florida Statutes and the Florida Administrative Code as may be amended.

The facts are as follows:

You are a Senior Code Enforcement officer for Palm Beach County. In October of 2011, the Palm Beach County Board of County Commissioners entered into a contract for services with Federal Property Registry Corporation (FRPC). Vacant Property Registry (VPR) is a wholly-owned subsidiary of FRPC. FRPC is a vendor of Palm Beach County. Specifically, the county contracts with FRPC/VPR to track foreclosed homes, requiring that within 10 days of foreclosure the lender must pay \$150 to list the property with the company and provide contact information for the bank and a local property maintenance contact. In your official position you are the County liaison FRPC and VPR.

On January 22, 2013 you were contacted by Thomas Darnell, managing director of VPR and invited to attend a sales meeting and training in Melbourne, Florida. After seeking and obtaining your supervisor's approval, you attended the training event and accepted travel expenses including a hotel stay and dining costs totaling \$163.96. The Palm Beach County Code of Ethics expressly prohibits employees and officials from accepting travel expenses from a County vendor unless the travel is waived by the Board of County Commissioners. While your travel on county time was approved by your supervisor, you accepted travel expenses from a County vendor in violation of the Code of Ethics. Furthermore, County employees are prohibited from accepting anything of value in excess of \$100, in the aggregate over the course of the calendar year, from a vendor, lobbyist, principal or employer of a lobbyist, who sells, leases or lobbies Palm Beach County.

Your actions constituted two violations of the Palm Beach County Code of Ethics.

The Commission on Ethics is of the strong belief that all public employees and officials are responsible for making sure their actions fully comply with the law and are beyond reproach. As a public employee, you are an agent of the people and hold your position for the benefit of the public. The people's confidence in their government is eroded when they perceive that official actions may be based upon private goals rather than the public welfare. Violations of the Palm Beach County Code of Ethics contribute to the erosion of public confidence and confirm the opinion of those who believe the worst about public employees.

You are hereby admonished and urged to consider the letter and spirit of the Palm Beach County Code of Ethics and apply them in all future actions as a member of any public body to which you may be a part.

Sincerely,

Manuel Farach, Chairman
Palm Beach County Commission on Ethics

MF/gal

In Re: Gail James (Vorpapel),
Respondent

C13-011

ORDER

IN ADDITION TO a Letter of Reprimand imposed by the Commission on Ethics, a \$163.00 Fine has been imposed. Therefore, it is hereby:

ORDERED AND ADJUDGED that The Palm Beach County Board of County Commissioners shall have and recover from the Respondent, Gail James (Vorpapel), the sum of \$163.00. Said sum is to be made payable to the Board of County Commissioners in the form of a certified check or money order and to be paid within 30 days of the date of this Order. Said payment shall be sent to the Palm Beach County Commission on Ethics, 300 North Dixie Highway, Suite 450, West Palm Beach, FL 33401.

Pursuant to Article V, Division 8, §2-260.1(g), this Order may be enforced by application to any Circuit Court of The State of Florida, which shall have jurisdiction to order Respondent to comply with an Order of the Commission on Ethics.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in Public Session on the 11th day of July, 2013.

Manuel Farach, Chairman
Palm Beach County Commission on Ethics