



Agenda

December 9, 2013 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Palm Beach County

Commission on Ethics

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Commissioners

Robin N. Fiore, Chair

Patricia L. Archer, Vice Chair

Daniel T. Galo

Salesia V. Smith-Gordon

Michael S. Kridel

Executive Director

Steven P. Cullen

Intake Manager

Gina A. Levesque

Staff Counsel

Vacant

Senior Investigator

Mark E. Bannon

Investigator

Anthony C. Bennett

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from November 7, 2013
- V. Processed Advisory Opinions (Consent Agenda)
 - a.
- VI. Items Pulled from Consent Agenda
 - a.
- VII. Proposed Advisory Opinions
 - a. RQO 13-022
- VIII. Discussion of Commissioner Training Discs 1 & 2
- IX. Executive Director Comments
- X. Commission Comments
- XI. Public Comments
- XII. Adjournment

If a person decides to appeal any decision made by this Commission with respect to any matter considered at this meeting or hearing, (s)he will need a record of the proceedings, and that, for such purpose, (s)he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

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

November 7, 2013

**THURSDAY
1:33 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Robin N. Fiore, Ph.D., Chair
Patricia L. Archer, Vice Chair
Daniel T. Galo, Esq.
Michael S. Kridel, CPA
Salesia V. Smith-Gordon, Esq. – Absent

STAFF:

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

ADMINISTRATIVE STAFF:

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

III. INTRODUCTORY REMARKS

Chair Robin Fiore said that anyone wishing to speak should submit a comment card. She added that Commissioner Salesia Smith-Gordon may be joining the meeting later by telephone.

IV. APPROVAL OF MINUTES FROM OCTOBER 3, 2013

MOTION to approve the October 3, 2013, minutes. Motion by Patricia Archer, seconded by Michael Kridel, and carried 4-0. Salesia Smith-Gordon absent.

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

V.a. RQO 13-018

V.b. RQO 13-019

V.c. RQO 13-020

Chair Fiore stated that Commissioner Smith-Gordon had sent her a letter referencing two consent agenda items. She said that at Commissioner Smith-Gordon's request, Request for Opinion (RQO) 13-018 and RQO 13-019 would be removed from the consent agenda.

MOTION to approve the consent agenda as amended. Motion by Patricia Archer, seconded by Daniel Galo, and carried 4-0. Salesia Smith-Gordon absent.

VI. ITEMS PULLED FROM CONSENT AGENDA

(CLERK'S NOTE: RQOs 13-018 and 13-019 were discussed in tandem and voted on separately.)

VI.a. RQO 13-018

VI.b. RQO 13-019

Chair Fiore said that Commissioner Smith-Gordon's letter had referenced that:

- It may be difficult for nonsupervisory individuals to determine whether someone was a vendor, contractor, or lobbyist.

VI.a. AND VI.b. – CONTINUED

- The Code of Ethics (Code) did not distinguish between entry-level employees and individuals with more responsibility.

Executive Director Steven Cullen, Esq., explained that a searchable vendor database was available on the COE's Web site. He said that the database's availability could be addressed in the COE's training of County employees, elected officials, and advisory board members.

Staff Counsel Megan Rogers said that:

- Municipal employees, officials, and advisory board members could obtain vendor information from their procurement officers.
- The countywide lobbyist registration database was available on the County's Web site for all municipalities except the cities of West Palm Beach, Palm Beach Gardens, and Riviera Beach.

Mr. Cullen said that having a supervisor determine whether someone was covered under the Code's policies for vendors, contractors, or lobbyists was a practical solution that may not require a Code change.

Chair Fiore commented that an employee was recently found to be in Code violation for asking and being given supervisory permission to accept travel expenses from someone later determined to be a municipal contractor.

Vice Chair Patricia Archer said that supervisors should know what their employees could or could not do.

Commissioner Michael Kridel stated that:

- Authority, not responsibility, could be delegated under a basic management theory.
- Governmental and organizational supervisors and managers had certain discretion, and holding them accountable without a written policy was difficult to enforce.

VI.a. AND VI.b. – CONTINUED

Vice Chair Archer suggested approving a written policy or rule requiring that supervisory-level employees be responsible for ensuring that staff met the Code's vendor requirements.

Chair Fiore stated that County and municipal human resource policies and employment management were not the COE's responsibility. She added that COE training could highlight resources for supervisors and employees, such as the lobbyist registration Web site and the vendor database.

Vice Chair Archer suggested sending a letter to the supervisor informing him or her of the COE's determination regarding an employee's Code violation.

MOTION to approve processed advisory opinion RQO 13-018 as written. Motion by Daniel Galo, and seconded by Patricia Archer.

Chair Fiore said that the letter should be written after a complaint's adjudication since RQO 13-018 dealt with an advisory opinion.

Commissioner Daniel Galo stated that RQO 13-018 followed the Code's provisions and that no changes were necessary.

UPON CALL FOR A VOTE, the motion carried 4-0. Salesia Smith-Gordon absent.

Chair Fiore said that Vice Chair Archer could readdress her suggestion under item XVI.

Vice Chair Archer stated that her comments regarding RQO 13-018 also applied to RQO 13-019.

MOTION to approved processed advisory opinion RQO 13-019 as written. Motion by Daniel Galo, seconded by Patricia Archer, and carried 4-0. Salesia Smith-Gordon absent.

Commissioner Galo suggested revisiting Commissioner Smith-Gordon's comments later in the meeting.

VII. PROPOSED ADVISORY OPINIONS – None

VIII. PROPOSED NEW RULE OF PROCEDURE 1.6

Ms. Rogers said that:

- Rule 1.6 codified extensive COE discussions regarding the types of disclosures that should be made before taking action on an advisory opinion in a probable cause hearing or any other type of meeting.
- Rule 1.6 reflected that by State statute, the commissioners were required to vote when acting in their quasi-judicial capacity, absent any financial nexus, bias, prejudice or interest.
- Rule 1.6's standard disclosure language was used by many municipalities.

MOTION to approve proposed Rule of Procedure 1.6. Motion by Patricia Archer, seconded by Michael Kridel, and carried 4-0. Salesia Smith-Gordon absent.

IX. REVISION TO RULE OF PROCEDURE 4.2

Ms. Rogers said that:

- The COE ordinance stated that the executive director was vested with authority to determine legal sufficiency.
- Specific ordinance guidelines explained what constituted a legally sufficient complaint.
- The current rule of procedure required that sworn complaints be dismissed by the COE.
- Staff may recommend that a complaint was legally insufficient; however, the COE could request additional information.
 - The revision would allow COE review of sworn legally insufficient complaints within a seven-day period.

IX. – CONTINUED

- The commissioners may request that the executive director place the legally insufficient complaint on the next agenda for an executive session.
- Legally insufficient complaints would be grouped separately from the agenda packet.
- The revision would provide limited COE oversight while leaving the authority to dismiss complaints to the executive director.

Chair Fiore stated that during election time, the COE received increased legally insufficient complaints. She said that the goal was eliminating individuals who used the COE to vet personal issues or matters.

MOTION to approve Rule of Procedure 4.2 as written. Motion by Patricia Archer, and seconded by Michael Kridel.

Commissioner Galo clarified that item IX. was a revision to Rule of Procedure 4.2

RESTATED MOTION to approve the revised Rule of Procedure 4.2 as written. The maker and the seconder agreed, and the motion carried 4-0. Salesia Smith-Gordon absent.

X. PROPOSED NEW RULE OF PROCEDURE 6.4

Ms. Rogers said that:

- Rule 6.4 allowed an advocate, respondent, or respondent's counsel to file a motion disqualifying a commissioner for bias, interest, or prejudice.
- The Office of Program Policy Analysis and Government Accountability's (OPPAGA) report had suggested that the COE clarify commissioner disqualification terms and procedures when serving in a quasi-judicial capacity as a judicial decision maker.
- A model procedure or definition had not been found for the terms, bias, interest, or prejudice.

X. – CONTINUED

- Staff was recommending that the terms remain undefined, and that the COE accept OPPAGA's recommendation that a timeline was unnecessary for providing a disqualification motion to the commissioners.

Vice Chair Archer said that 6.4(c) read, "Unless denied as untimely, the motion shall be ruled on by the Commissioner whose disqualification is sought..." She said that a conflict may exist so the entire commission should rule on a motion.

Ms. Rogers explained that it was a standard procedure, and that judges often ruled on their own motions for bias, prejudice, or interest.

Commissioner Michael Kridel stated that certain complaints could continue indefinitely by having vague, open-ended terms of what was considered practicable.

Ms. Rogers said that practicability implied that someone would be required to file a motion for bias, prejudice, or interest at the time he or she became aware of a conflict. She added that leaving the terms open-ended provided additional respondent protection during the proceedings.

Commissioner Galo said that under Rule 6.4, once a motion to disqualify was determined to be legally sufficient, a commissioner "shall disqualify himself or herself"; therefore, disqualification by a commissioner was not discretionary.

Mr. Cullen stated that Rule 6.4 language tracked the general law of judicial recusal, and that legal sufficiency provided solid grounds to recuse. He added that commissioners should review only the alleged facts when deciding a motion to disqualify.

Vice Chair Archer expressed concern that merely filing a motion to disqualify disqualified a commissioner.

Commissioner Galo stated that an allegation's truth was not the controlling factor; it was the facts contained in the allegation.

X. – CONTINUED

Commissioner Kridel said that the legal sufficiency concept stopped short of saying that an allegation was likely to have occurred.

Mr. Cullen suggested directing staff to review whether Rule 6.4(c)'s language could be revised or to prepare materials that would better explain the judicial recusal concept.

Commissioner Galo suggested deleting the words, "Unless denied as untimely," in Rule 6.4(c).

MOTION to approve staff's proposed changes to Rule of Procedure 6.4(b). Motion by Daniel Galo, seconded by Michael Kridel, and carried 4-0. Salesia Smith-Gordon absent.

XI. OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY (OPPAGA) – FINAL REPORT ISSUED 10/18/2013

Mr. Cullen said that OPPAGA's report remained unchanged except that it contained the COE's responses.

Chair Fiore stated that Mr. Cullen's responses were clear and assertive.

XII. REVIEW OF APPEARANCE ON NOVEMBER 4, 2013, BEFORE THE JOINT LEGISLATIVE AUDITING COMMITTEE

Mr. Cullen said that:

- He had appeared before the Joint Legislative Auditing Committee (JLAC) to respond to OPPAGA's report findings and to answer questions. The invitation letter requesting his appearance was posted on the COE's Web site.
- A slide presentation of OPPAGA's report was available on the JLAC's Web site with a link on the COE's Web site.
- He had emphasized the COE's implemented changes and had stressed that the ordinances needed revision to effectuate any substantial changes.

XII. – CONTINUED

- He had informed the JLAC that the COE involved a civil enforcement process, and he answered a question regarding the typical disposition of cases.
- Roma Theus, Esq., had appeared on behalf of Victoria McCullough's Complaint 12-016.
 - He had stated that the COE's ordinances and Rules of Procedure contained several structural issues, and that Ms. McCullough was essentially mistreated by the COE at her probable cause hearing.
 - He had presented a report of his investigation into recorded evidence involving Ms. McCullough's case.
- The JLAC had voted to send a letter to the Board of County Commissioners (BCC), requesting that it cease, desist, and suspend the COE. Staff had opined that the letter would raise legal questions.

State Senator Joseph Abruzzo said that:

- After speaking with County staff, he did not believe that the BCC could suspend the COE's operation.
- A JLAC letter would be issued to the COE requesting that it cease operation until its due process and the JLAC's concerns were addressed.
 - The JLAC was concerned that the COE made probable cause recommendations and also presided over the final hearing.
 - He supported the COE's training expansion once OPPAGA's review began.

XII. – CONTINUED

- The JLAC had expressed concern about the audio recording of Ms. McCullough's probable cause hearing. Staff should review requesting that Clerk and Comptroller Sharon Bock handle the COE's evidence and recordings.
- He would be filing State Senate legislation to create a standard set of regulations for statewide ethics commissions. Lake Ray, JLAC vice chair, and State Representative Daphne Campbell would be cosponsoring a House of Representative bill.

Commissioner Kridel said that the Department of Business and Professional Regulation's individual boards had member panels that functioned as subsets of the full boards to find legal sufficiency, probable cause, and final determination.

Senator Abruzzo said that the COE should follow the State's COE guidelines that utilized separate entities for determining probable cause recommendations and final hearing outcomes.

Alan Johnson, Esq., former COE executive director, said that:

- To put the COE's intangible benefit into perspective was to compare its status four years ago with that of now.
- The label, "corruption county," no longer existed due to the COE and the Office of Inspector General's excellent implementations.
- Ms. McCullough's case was dismissed regardless of alleged real or perceived comments being made about her during an executive session.
- The COE had no motive to tamper with the audio recording of Ms. McCullough's probable cause hearing.
- Requesting that the COE suspend its operations was an abuse of political power, and requiring that the COE voluntarily suspend operations was a disservice to the public.
- The COE had no motive to tamper with the audio recording of Ms. McCullough's probable cause hearing.

XII. – CONTINUED

- Senator Abruzzo should re-review the State's COE, which could not initiate complaints.
- The BCC would need to put the COE sunseting matter before the public.

Senator Abruzzo said that the COE's procedural issues were based on the OPPAGA report. He added that his intent was to work with the COE to improve its procedures, and to ensure that everyone who came before the commission received due process.

Chair Fiore said that:

- Some complaints, although legally sufficient, appeared to be inadvertent.
- The COE began asking questions, which led to issuing letters of instruction and dismissing cases rather than finding probable cause with hearings.
- In being fair, the COE's intent was to educate the public so that better decisions could be made.
- Various avenues were available to appeal a COE action.
 - No appeal was filed in Ms. McCullough's case since no factual basis existed for being dissatisfied with the COE's determinations.
 - Senator Abruzzo and the JLAC's actions attempted to garner press and attention, and to use the COE's process to accomplish other goals.

Senator Abruzzo said that his intentions were not for publicity purposes but to implement or change certain COE procedures.

Chair Fiore stated that although the COE disagreed with some of OPPAGA's recommendations, a few of them were implemented.

XII. – CONTINUED

Mr. Cullen said that:

- Staff had completed the commissioner training DVDs before OPPAGA had issued its report.
- The commissioners had received revised copies of the COE's ordinances, rules, and procedures, and the Florida Sunshine Manual.
- Commissioner Kridel had previously suggested watching the first part of the DVDs together, with the remaining to be viewed individually.

Commissioner Kridel commented that his suggestion would create a common body of knowledge and accountability.

Chair Fiore stated that:

- The first action plan should be to review the training that was listed in the DVDs' index.
- In her November 6, 2013, letter, Commissioner Smith-Gordon had requested that Senator Abruzzo be formally invited to attend a COE public meeting.
- The COE's consensus was to request that Mr. Cullen send Senator Abruzzo a letter with potential meeting dates.

Vice Chair Archer suggested that the commissioners review:

- the first three DVD sections in disks 1, 2, and 3 together;
- next four sections individually; and,
- the fourth disk titled, "Executive Sessions and Best Practices for Quasi-judicial Hearings," together.

Chair Fiore said that it may be better to individually review all the sections, and then meet to determine which ones should be discussed together.

XII. – CONTINUED

Commissioner Galo said that the most relevant topics should be the COE's Code of Ethics, procedures, and quasi-judicial aspects. He suggested individually viewing those topics, then conducting a workshop to discuss them.

Mr. Cullen stated that PowerPoint presentations used within the training DVDs could be provided to the commissioners. Chair Fiore said that they would be a useful resource when discussing the DVD topics.

Chair Fiore stated that by consensus, disks 1 and 2-C would be individually viewed by each commissioner and discussed at the December 2013 meeting, and that disks 3 and 4 would be placed on the January 2014 agenda for discussion.

Mr. Cullen said that:

- Finding 8 in the OPPAGA report was completed.
- Staff believed that Finding 1 had been corrected. With Ms. Rogers' October 2013 resignation as staff counsel, an opportunity may exist to remodel the position or to create a part-time or full-time advocate position.
- Finding 2 was still an issue and would require a rule change. The COE had requested further study, which would be completed and brought back for discussion.
- Findings 3 and 4 were addressed today by approving a rule for divulging conflicts, and revising the rule that motions to recuse should be filed at least five days before a hearing.
- Findings 5 and 6 were under continued discussion.
 - The County was responsible for mandatory vendor and lobbyist training; however, the COE could discuss the issue.

XII. – CONTINUED

- The County's Legislative Affairs director had offered some vendor and lobbyist training ideas so he could be asked to attend a COE meeting.

Chair Fiore queried the commissioners about placing a chart on the Web site indicating each OPPAGA recommendation and how the COE addressed them without referencing OPPAGA's report.

Vice Chair Archer suggested that staff review and bring back information whether the Web site chart would be appropriate.

Chair Fiore stated that adding the information to the Web site would show the COE's continued seriousness about quality improvements.

XIII. REVIEW OF APPEARANCE ON NOVEMBER 4, 2013, BEFORE THE SENATE COMMITTEE ON ETHICS AND ELECTIONS

Mr. Cullen said that:

- By invitation, he had appeared before the Senate Committee on Ethics and Elections (SCEE) to discuss and address questions relating to local independent ethics commissions.
 - The invitation letter was posted on the Web site with a link to the SCEE's materials packet.
 - He had briefly explained the COE's current operations, rules, primary function, and budgetary/organizational structures.
- Other COE executive directors from the cities of Miami-Dade and Jacksonville made similar presentations. The SCEE had asked questions about each COE's differences.
- A State COE representative had explained that its self-initiation of complaints was very limited.

XIV. NEW COMMISSION ON ETHICS WEB SITE

Heather Shirm, Digital Marketing and Communications Manager, County Public Affairs said that:

- The COE's new Web site now utilized the entire screen.
- A new feature included a scrolling of items that could be accessed by clicking its title. Staff could add or delete items as requested.
- The top, left-hand side of the Web site contained a menu where meeting schedules, agendas, minutes, videos, and backup materials could be accessed.

BOARD DIRECTION:

Chair Fiore requested that staff adjust the font and color for readability purposes.

Ms. Shirm continued:

- Contact information was available at the top and bottom of the Web site.
- Information about the commissioners and staff members was condensed to two pages.
- The commissioners' photo above the mission statement would be updated.
- The left-hand side navigation list was updated to provide specific categories that contained subcategories.
- The Web screen could be resized to fit tablet or smartphone screens.
- Clicking the COE's logo anywhere on the site returned users to the home page.
- Before the next meeting, staff would address being able to quickly access meeting agendas.

XIV. – CONTINUED

- Staff could maintain the Web site as before since many of the new features were built into the digital technology.
- Web site visitors could adjust the font size on certain items.

XV. EXECUTIVE DIRECTOR COMMENTS

XV.1.

DISCUSSED: Staff Counsel Megan Rogers' Resignation.

Mr. Cullen stated that Ms. Rogers had tendered her resignation on October 31, 2013. He added that the position would be advertised, and that staff was reviewing ways to improve the structures of the staff counsel and investigative positions.

XV.2.

DISCUSSED: Commission on Ethics' Volunteer Advocate Training.

Mr. Cullen said that 11 COE volunteer advocates were enrolled in the training program. He thanked the Legal Aid Society of Palm Beach County for recruiting suitable volunteers. He added that continued legal education credits were pending with the Florida Bar Association, and that the training would be taped for those unable to attend the sessions.

XV.3.

DISCUSSED: Commission on Ethics' Training.

Mr. Cullen said that the COE training disks would be distributed to the commissioners at the end of today's meeting. He thanked Palm Beach County's Channel 20 personnel and his staff for their work on the project.

XV. – CONTINUED

XV.4.

DISCUSSED: Community Appearances.

Mr. Cullen stated that:

- He was a panelist in the Ethics and New World Order Program at Palm Beach State College, and he was a guest of the County Criminal Justice Commission's citizen group.
- He had appeared before a City of Boca Raton planning conference of professional planners.
- He would be attending the Council on Government Ethics Laws conference in December 2013 and would not be present at the next COE meeting.

XVI. COMMISSION COMMENTS

XVI.1.

DISCUSSED WITH DIRECTION: Commission on Ethics Evidence.

Chair Fiore requested that Senior Investigator Mark Bannon review Senator Abruzzo's proposal that the Clerk and Comptroller's Office handle COE evidence and bring back information to the December 2013 meeting.

Mr. Cullen said that:

- Marked evidence was not received during probable cause hearings.
- Staff would amend the policy and procedure manual to state that announcements would be made at the beginning and conclusion of taped sessions.
- Court reporting services were somewhat expensive; however, staff would review that option.

XVI.1 – CONTINUED

Commissioner Galo stated that court clerks monitored recording devices during courthouse criminal cases. He said he believed that Senator Abruzzo's concern involved using separate entities to record the hearing and to maintain the documentation.

Ms. Levesque said that minutes clerks could continue to record the meetings and transcribe the minutes in summary format or, at the COE's request, produce a verbatim transcript. She added that the same could be done for the executive sessions.

Vice Chair Archer suggested using one of the two recording devices that did not have editing features.

Mr. Cullen commented that staff had researched obtaining a nonediting recording device for the McEaddy conference room.

Ms. Levesque clarified that the County-purchased recording device was used for all public meetings.

Chair Fiore requested that staff research all recording options and bring back information at the January 2014 meeting.

Daryl Skolnick, electronics technician, County Electronic Services and Security, stated that it was almost impossible to edit the Marantz recording devices. He explained that the central recording clerks and the minutes clerks performed similar recording processes.

XVI.2.

DISCUSSED: Expression of Appreciation.

Commissioner Galo commented that he appreciated working with Ms. Rogers. He said that her quality of work was excellent, and that her opinions were well written.

XVI.2. – CONTINUED

Vice Chair Archer said that she had relied on Ms. Rogers' expertise. She added that she had performed a wonderful job, and that she enjoyed working with her.

Chair Fiore congratulated Ms. Rogers on her new venture. She said that her qualities would be missed, and that she was the right person at the right time for the COE.

XVI.3.

DISCUSSED: Request for Opinion (RQO) 13-018 and RQO 13-019.

Vice Chair Archer reiterated her suggestion to send letters to supervisors or decision-making individuals informing them of employees' Code violations and recommending that they review their employee training procedures. She recommended implementing a procedure to ensure that the process was appropriately handled.

XVII. PUBLIC COMMENTS

XVII.1.

DISCUSSED: Expression of Commendation.

Richard Radcliffe, Palm Beach County League of Cities Executive Director, stated that the COE had performed in a professional manner. He said that Ms. Rogers would be missed, and he wished her the best.

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XVIII. ADJOURNMENT

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

At 3:52 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

Megan C. Rogers
Assistant Village Attorney
Village of Wellington
12300 Forest Hill Blvd.
Wellington, FL 33414

RE: RQO 13-022
Voting Conflicts

Dear Ms. Rogers,

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 December 9, 2013

YOU ASKED, in your e-mail of December 2, 2013 whether it would be a violation of the Palm Beach County Code of Ethics for Mayor Robert Margolis to vote on reimbursement from the Village of Wellington to be paid to Councilmember John Greene for attorney's fees he incurred in defending lawsuits in which he was a named party, filed as a result of the March, 2012 municipal elections. You also ask whether Councilmember John Green may vote on such reimbursement for Mayor Robert Margolis, who was also named in lawsuits and incurred legal fees stemming from this same election. Finally, you ask whether Councilmember Matt Willhite would be in violation of the Code of Ethics if he voted on these reimbursement requests, since he also may have incurred legal expenses from the March, 2012 municipal elections, although he has not as of this time made a request to be reimbursed. Additional information was provided during your discussions with COE staff.

IN SUM, so long as the requests for reimbursement are discussed and voted on as individual agenda items by the Village Council, and neither Mayor Margolis nor Councilmember Greene participate in discussions or vote on their individual requests for reimbursement, the Code of Ethics does not prohibit them from participating in or voting on the reimbursement request of another member of the same governing body, even where the circumstances appear to be based on a similar set of facts that surround the March, 2012 municipal election and subsequent lawsuits. Using this same reasoning, Councilmember Matt Willhite would not be prohibited from voting on either request for reimbursement currently before the Village Council.

The COE takes no position on the issues raised as to the authority of the Village of Wellington to reimburse these legal expenses, as the authority to do so as stated is based on state statute and municipal ordinance, and does not implicate the PBC Code of Ethics.

THE FACTS as we understand them are as follows:

Following the municipal election of March, 2012, lawsuits were filed against Robert Margolis, John Greene and Matt Willhite as well as the Village of Wellington Canvassing Board and others, challenging the election results. The Complaint sought (1) an injunction prohibiting Wellington's Canvassing Board from certifying the results of the March 13, 2012 election and enjoining the Village from swearing in anyone other than those originally certified by the Supervisor of Elections; and (2) a writ of mandamus directing the Canvassing Board to certify the original election results provided by the Supervisor of Elections and directing the Village Council to swear in two other candidates as the winners of the Village Council elections. Both John Greene and Robert Margolis hired counsel as a result of these lawsuits, and both are now seeking reimbursement for their legal expenses by the Village. Robert Margolis, John Greene and Matt Willhite were eventually seated as Mayor and Council Members respectively in April, 2012.

In your email you list §111.07, Florida Statutes, and Article III, Section 2-157 of the Wellington Code of Ordinances as authority for allowing this reimbursement by the Village. Reimbursement was denied by the Village's insurer. You also point out that since the Village has a reimbursement ordinance currently in place, such a Council vote would not have the effect of creating a reimbursement method, but would instead be to determine whether the

Village Council agrees that the Village should reimburse Robert Margolis and John Greene for these legal fees under existing law. You advised that the issues concerning each petitioner's individual reimbursement request are scheduled to be discussed and decided as separate agenda items on December 10, 2013. As such, the Council will weigh the application of existing law to the specific facts and circumstances of each official's claim for reimbursement individually. Both Mayor Margolis and Councilmember Greene are aware they must abstain from voting and not participate in the process concerning their specific individual reimbursement requests. Finally, you state that Councilmember Matt Willhite may have also incurred attorney's fees during the March, 2013 municipal election, and while he has not submitted a request for reimbursement, that action is available to him should he choose to do so later.

During telephone discussions with COE staff, you also advised that while the legal fees for both Robert Margolis and John Greene were incurred based on the March, 2013 municipal elections, there are different circumstances surrounding the issues of that election leading to their individual need for legal services. Robert Margolis was declared the winner of this election for Village Mayor, and the issues in his case were based not on whether he won the election, but by what percentage of the vote. On the other hand, Councilmember Greene was initially thought to have lost the election for Village Council, and won his seat based on a re-count of votes. Finally, while both Robert Margolis and John Greene hired attorneys to defend the lawsuit, each hired a different law firm to represent them in this matter.

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

Sec. 2-443. Prohibited conduct.

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
 - (1) Himself or herself;
- (c) *Disclosure of voting conflicts.* County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. (Emphasis added)

Section 2-443(a)(1-7) prohibits elected officials from using their official position to take or fail to take any action if they know or should know with the exercise of reasonable care that the action would result in a special financial benefit not shared with similarly situated members of the general public, for certain entities or persons including themselves. Section 2-443(c) *Disclosure of voting conflicts*, similarly requires an official to abstain from voting and not participate in any matter coming before their governing body 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 §(a)(1-7). The plain language of these code sections make it clear that in order to require an official to abstain from voting and participation on an issue, the official must be in a position where their actions result in a "special financial benefit" being given to themselves, or one of the other persons or entities listed under §2-443(a)(1-7).

In the case of their individual petitions for reimbursement, neither Mayor Margolis nor Councilmember Greene can participate in discussions or vote for this reimbursement. However, where the request only gives reimbursement to the other petitioner, neither is prohibited from voting, as no special financial benefit is incurred from these actions for themselves or any person or entity listed within §2-443(a)(1-7). Councilman Matt Willhite is not prohibited from voting on either of the reimbursement petitions currently before the Village Council, as neither affords him a special financial benefit. This is true even where there are common issues of fact and circumstance that led to the incurring of legal fees. The Code of Ethics makes no provision for finding a nexus

between voting on a similar measure (here another Councilmember's reimbursement claim) and one's own special financial benefit. It is the recipient of the financial gain that is the determining factor regarding participation and voting. Participation and voting is prohibited only if the recipient of the financial benefit is a person or entity listed in §2-443(a)(1-7).

IN SUMMARY, under the facts and circumstances you have submitted, Mayor Margolis is prohibited from participating in discussions and voting on the agenda item pertaining only to his reimbursement request. Similarly, Councilmember Greene is prohibited from participation in discussions and voting only on the agenda item regarding his specific request for reimbursement. Councilmember Matt Willhite is not prohibited from participating in discussions or voting on either Mayor Margolis' or Councilmember Greene's petition for reimbursement of legal fees, but would be prohibited from taking such actions concerning his own reimbursement should he choose to file a request in the future.

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) 355-1922 should you have any further questions in this matter.

Sincerely,

Steven P. Cullen,
Executive Director

SPC/meb/gal

PROPOSED