

Agenda

February 6, 2014 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Palm Beach County
Commission on Ethics
300 North Dixie Highway
West Palm Beach, FL 33401
561.355.1915
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Commissioners
Robin N. Fiore, Chair
Vice Chair (Vacant)
Salesia V. Smith-Gordon
Michael S. Kridel
Vacant

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 December 9, 2013
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 13-021
 - b. RQO 13-023
 - c. RQO 14-001
 - d. RQO 14-002
- VI. Items Pulled from Consent Agenda
 - a.
- VII. Proposed Advisory Opinions
 - a. RQO 14-003
- VIII. 2013 Annual Report
- IX. Discussion of Commissioner Training Discs 3 & 4
- X. Discussion Re: Rule of Procedure about Notification of Employer of Disposition of Complaint
- XI. Discussion Re: Response to Joint Legislative Auditing Committee Letter of December 2, 2013
- XII. Executive Director Comments
- XIII. Commission Comments
- XIV. Public Comments
- XV. 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**

DECEMBER 9, 2013

**MONDAY
1:30 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

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

STAFF:

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

ADMINISTRATIVE STAFF:

Amanda Canete, Deputy Clerk, Clerk & Comptroller's Office

(CLERK'S NOTE: Senior Investigator Mark Bannon facilitated as the executive director.)

III. INTRODUCTORY REMARKS

Commission on Ethics (COE) Senior Investigator Mark Bannon stated that a quorum was present.

Vice Chair Patricia Archer asked for electronic devices to be turned off. She invited anyone wishing to address the commission to submit a comment card.

COMMISSION ON ETHICS

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DECEMBER 9, 2013

IV. APPROVAL OF MINUTES FROM NOVEMBER 7, 2013

MOTION to approve the November 7, 2013, minutes. Motion by Michael Kridel, seconded by Salesia Smith-Gordon, and carried 3-0. Robin Fiore and Daniel Galo absent.

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA) – None

VI. ITEMS PULLED FROM CONSENT AGENDA – None

VII. PROPOSED ADVISORY OPINIONS

VII.a. Request for Proposal RQO 13-022

Mr. Bannon said that:

- The matter involved the City of Wellington's repayment of Mayor Robert Margolis and Councilmember John Greene for legal fees incurred regarding the 2012 election.
- Mayor Margolis and Councilmember Greene had requested reimbursement of their legal fees.
- The question was whether Mayor Margolis and Councilmember Greene could vote on each other's reimbursement.
- Staff had opined that although the circumstances were intertwined, Mayor Margolis and Councilmember Greene could vote because they had no personal financial benefit.
- A quid pro quo between them could not be determined; however, support for each other was possible.
- No financial benefit in each other's agenda item would exist if the reimbursements remained separate agenda items.
- There were five voting members on the board.

MOTION to accept staff's recommendation on RQO 13-022. Motion by Salesia Smith-Gordon, seconded by Michael Kridel, and carried 3-0. Robin Fiore and Daniel Galo absent.

VIII. DISCUSSION OF COMMISSIONER TRAINING DISCS 1 & 2

Vice Chair Archer said that she and Chair Robin Fiore had encountered problems with training disc 1 and disc 2. She said that the problems could have derived from the disc duplication process.

Commissioner Michael Kridel said that he also encountered a problem with disc 1.

Gina Levesque, COE Intake Manager said that the discs were reduplicated and would be redistributed.

Vice Chair Archer expressed concern about the errors being displayed in different sections on the discs.

Commissioner Salesia Smith-Gordon said that although she experienced a minor problem with disc 2, overall, the information presented was outstanding. She said that the board could consider putting the disc information on the COE's Website. She suggested the commission discuss any matters requiring collective review in a public workshop and Commissioner Kridel said that the matter should be deferred until all members were present.

Ms. Levesque said that she would include all four discs on the agenda next month for the commissioners' review.

IX. EXECUTIVE DIRECTOR COMMENTS

IX.1.

DISCUSSED: Training Sessions.

Mr. Bannon said that several training sessions in the cone of silence and vendor issues had been conducted. He said that staff and the County had discussed providing specialized ethics training to supervisors.

IX. – CONTINUED

IX.2.

DISCUSSED: Staff Counsel's Position.

Mr. Bannon said that eight applicants already showed interest in the staff counsel's position. He said that it would be advertised in the Palm Beach County Bar Association news on December 15, 2013. He added that by mid-January staff hoped to have a large pool of candidates.

Ms. Levesque said that the County's Human Resources Department (HR) had placed advertisements (ads) throughout the county, the state, the local Bar associations, newspapers, and Websites.

Commissioner Smith-Gordon said that she had not seen the ad in the F. Malcolm Cunningham Sr. Bar Association of Palm Beach County's news.

Ms. Levesque said that some Bar associations did not offer ad services; however, she would ask HR to contact the group again.

IX.3.

DISCUSSED: Dismissal of Two Complaints.

Mr. Bannon said that the dismissal of two legally insufficient complaints were processed under the new Rules of Procedure. He added that executive session would not be required for the complaints.

IX.4.

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

Mr. Bannon said that the COE had received the chart of OPPAGA changes from Mr. Cullen. He said that the OPPAGA's requests that did not require ordinance changes were implemented.

IX. – CONTINUED

IX.5.

DISCUSSED: Expression of Appreciation, The Ethics Pocket Guide, Jurisdiction Contact List, and Volunteer Advocates.

Mr. Bannon said that:

- Darlin Jimenez’s work as the COE’s graphics intern was appreciated.
- The Ethics Pocket Guide had been revised and new ones would be printed.
- The list of contacts for each jurisdiction was updated.
- The new volunteer advocates training would begin December 16, 2013. Mr. Cullen, Megan Rogers, Esq, Kai Li Fouts, Esq, and himself would conduct the training.

X. COMMISSION COMMENTS

X.1.

DISCUSSED: Concern.

Vice Chair Archer said that she was certain that Chair Fiore regretted missing the meeting due to illness.

XI. PUBLIC COMMENTS – None

XII. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Salesia Smith-Gordon, seconded by Michael Kridel, and carried 3-0. Robin Fiore and Daniel Galo absent.

At 1:46 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

V Processed Advisory Opinions

RQO 13-021 Timothy Calhoun

Timothy Calhoun, Fleet Director for Palm Beach fire Rescue (PBFR), asked how his son's recent employment with Rechten International (Rechten), a vendor who has supplied new vehicles and repair services to PBFR since 2008, affects his and PBFR's business relationship with Rechten under the PBC Code of Ethics. New vehicles are purchased from various sources that include Rechten, based on recommendation of the Fleet Director to the Deputy Chief of Support Services. However, repair work on "International" brand trucks is supplied solely by Rechten as the only available International Truck dealer in Southeast Florida. Calhoun's son is a Master ASE Truck Technician and has worked at two other truck dealers. He was recently hired by Rechten as an apprentice Technician/Service Advisor. He lives independently from his father and is not a member of his household. As an employee of Rechten, he is paid a set wage, and is not paid commissions based on the amount of work performed or the number of contracts the business has, and has no ownership interest in Rechten.

Staff submits the following for COE review: An official or employee of the county or any municipality located within the county is prohibited from using their official position to provide a "special financial benefit" to any close family relative as defined in Section 2-443(a)(3), *Misuse of public office or employment*, of the code, or to the relative's employer or business. Under this code section, Mr. Calhoun would be prohibited from making any "recommendation" to his supervisor to purchase vehicles from Rechten, as this would cause a conflict of interest similar to an advisory board members voting to recommend action that would result in special financial benefit to a close family relative of their employer or business. However, where Rechten provides repair services as the only source of supply available in Southeast Florida, this business relationship is not affected based on the "sole source" exception found in Section 2-443(e)(3), and the continued use of Rechten for repair work would not be prohibited by the code.

RQO 13-023 Pamela Ryan

The City Attorney for Riviera Beach (the City), asks whether it violates the PBC Code of Ethics for the Mary McKinney, Director of Community Development for the City, to remain as an unpaid director and managing member of the Riviera Beach CDE (CDE), a non-profit entity, where the City wishes to enter into a 30 year leasing agreement with a subordinate limited liability corporation (Riviera Beach Event Center), for the purpose of developing a City owned site near the City's marina property. Ms. McKinney's "essential duties and responsibilities" as Director of Community Development include supervising the preparation and presentation to the City Commission of staff recommendations regarding land use and development issues in the City. She is also tasked with advising the City Manager and Assistant City Manager on these issues.

Staff submits the following for COE review: Because of Ms. McKinney's employment with the City as the Director of Community Development, she is in a unique position of having an inherent influence over issues of land use and development within the City. Based on her influence in these issues, she may not remain a volunteer director of CDE when Riviera Beach Event Center, as a subordinate limited liability corporation of CDE, enters into a contractual relationship with the City for the development of this property, as this would be a violation of Section 2-443(a)(7), *Misuse of public office or employment*, which prohibits the giving of any special financial benefit to, "Any 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." (Emphasis added) Since Riviera Beach Event Center is a subordinate limited liability corporation of CDE, this "special financial benefit" would flow to CDE, and thus would be prohibited. Therefore, Ms. McKinney must resign her position as a CDE director prior to the City and Riviera Beach Event Center entering into this contract to avoid a violation of the code. This opinion is limited to the specific facts of this issue based on Ms. McKinney's unique position with the City, and may not be applicable to all other City employees or officials.

RQO 14-001 Scott Kline

Scott Kline, the Economic Development Manager for the City of Boynton Beach (the City), asked whether it would be a prohibited conflict of interest for him to remain as an unpaid volunteer board member for the not-for-profit organization, Neighborhood Renaissance, Inc., (Neighborhood Renaissance), when \$229,00 in grant funds donated by a private bank are provided to Neighborhood Renaissance, and used for public improvements on City owned property as part of a neighborhood revitalization program.

Staff submits the following for COE Review: While the Section 2-443(a)(7), *Misuse of public office or employment*, prohibits the use of an official or employees official position to provide a special financial benefit to a not-for-profit organization of which he or she (or their spouse or domestic partner) are an officer or director, here we have the opposite relationship. Since it is the City which is to receive the benefit of these grant funds, and the not-for-profit organization that is providing the benefit to the City, (as opposed to obtaining a special financial benefit from the City), there is no violation of the PBC Code of Ethics in this arrangement, and thus no conflict of interest is created for Mr. Kline as a City employee and a board member of Neighborhood Renaissance.

RQO 14-002 John Randolph

The City Attorney for the Town of Palm Beach (the Town), asked on behalf of a Town Council Member, whether the Council member who was previously advised by the PBC Commission on Ethics (COE) that he was prohibited from participation and voting on a zoning change which created a planned unit development (PUD-5) within the City because of his business interests within this area (RQO 12-083), would also be prohibited from participating and voting on a comprehensive plan amendment which incorporates terms that are substantially similar to those found in the zoning ordinance. Based on this advisory opinion and advice of the Town Attorney, the Council Member did not vote on this comprehensive plan amendment. However, Mr. Randolph advises that there may be a future opportunity to vote on matters regarding this comprehensive plan amendment, and he asks for a formal advisory opinion on this specific issue.

Staff Submits the following for COE Review: As the COE advised in RQO 12-083, elected officials are prohibited under Section 2-443(a), *Misuse of public office or employment*, of the PBC Code of Ethics, from using their official position, including voting on issues that come before them on the Town Council, in a manner that would give a special financial benefit to certain entities listed in the code. Included in this prohibition is the official's outside business. Section 2-443(c), *Disclosure of voting conflicts*, requires an official to abstain from voting and not participate in any issue before their board that would violate this prohibition. As discussed in RQO 12-083 and several other advisory opinions, in evaluating conflicts of interest under the Code of Ethics, the COE considers: 1) the number of persons who stand to gain from a decision, and 2) whether the gain or loss is remote or speculative. Where the class of persons who stand to gain from a decision is small, it is more likely a member will have a conflict. Similarly, where a gain or loss to an official or his or her employer is not subject to significant contingencies, it may result in a conflict of interest. Based upon the facts submitted, that the comprehensive plan amendment contains essentially the same language as the PUD-5 ordinance on which the Council Member was prohibited from voting, and that the business relationship that created this conflict has not changed, he is prohibited from voting on this matter because the limited class of persons or entities that stand to gain under this specific section of the proposed amendment remains small, and the potential financial benefit is not so remote and speculative as to eliminate this conflict.



Palm Beach County Commission on Ethics

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

December 18, 2013

Mr. Timothy Calhoun, Fleet Director
Palm Beach County Fire Rescue
2601 Vista Parkway, West Palm Beach, FL 33411

Re: RQO 13-021
Misuse of Office

Dear Mr. Calhoun,

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

YOU ASKED in your email dated November 27, 2013 how the Code of Ethics impacts a your role in a business relationship between Palm Beach County and Rechten International where you are the Palm Beach County Fire Rescue Fleet Director and your son is an employee of Rechten International. You provided information about this relationship in your email and COE staff spoke with you on two occasions. Additionally, you provided follow-up information in an email on December 5, 2013.

IN SUM, you may not use your official position as Fleet Director of Palm Beach County Fire Rescue to specially benefit your son or his employer, Rechten International. Similar to a voting conflict situation for advisory board members who also only make "recommendations" to a governing body, you may not use your official position as PBC Fire Rescue Fleet Director to recommend the purchase of vehicles from your son's employer, Rechten International. To do so will violate the Misuse of public office or employment section of the code. However, where Rechten International is a "sole source" supplier of repair work for International brand trucks in southeast Florida, a decision to use Rechten International for repairs to current International brand equipment within the PBC Fire Rescue fleet is an exception to this prohibition.

THE FACTS, as we understand them, are as follows:

As the Fleet Director of Palm Beach County Fire Rescue, you recommend which vehicles are purchased. You make these recommendations to the Deputy Chief of Support Services who approves these purchases. In this process, the County uses a term contract bid process. Rechten International is a vendor and the County has been purchasing trucks from them since 2008 under purchasing department term contracts.

An additional part of your responsibility as Fleet Director is to oversee the in-house service shop. Palm Beach County Fire Rescue has a sole-source agreement with Rechten International as they are the only International truck dealer in southeast Florida. Under this contract, Rechten does some warranty and repair work on fire rescue vehicles. The shop superintendent, as your direct report, and the shop's foreman manage these transactions.

Your son is a trained Master ASE Truck Technician. He previously worked for two different truck dealers. He recently became employed with Rechten International as an apprentice technician/service advisor. He lives independently and is not a member of your household. He is an hourly rate employee and does not have an employment contract with Rechten. He is not paid any commissions. Additionally, he is not compensated based

on how much work he performs, how the business performs, or how many contracts the business has. Neither he nor you have an ownership interest in the business.

THE LEGAL BASIS for this opinion is found in the relevant section of the 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:
- (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;

For the sake of clarity, because the facts demonstrate some involvement with contracts between the County (your employer) and Rechten International (your son's employer), the provisions of Sec. 2-443 (d), Contractual relationships, have been considered. The question here is whether the facts demonstrate a potential invocation of this section and if so, whether any of the enumerated exceptions in Sec. 2-443 (e) apply. Because neither you nor your son have any ownership interest in Reichen International, the definition of an "Outside employer or business" found in Sec. 2-442 is not satisfied. Sec. 2-443 (d) is therefore inapplicable to this matter.

As a County employee under these circumstances, Code of Ethics Sec. 2-443 (a) (3) prohibits you from using your official position to specially benefit your son or his employer in a manner not shared with similarly situated members of the general public. Sec. 2-443(b) prohibits an employee from using their official position to specially benefit any person or entity if done with corrupt intent. The definition of "Financial benefit" under Sec. 2-442 is:

Financial benefit includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value. This term does not include campaign contributions authorized by law.

Because of the applicability of Sec. 2-443 and the broad definition of "Financial benefit" under Sec. 2-442, you may not to use your official position to specially benefit your son or his employer. Because your son does not live with you, he is not a "household member" under the code, and therefore the circumstances you described to not implicate the prohibition against the county entering into a contractual relationship with Rechten International. You should be aware however that these circumstances may change if your responsibilities change in your position with PBC Fire Rescue, your son's method of compensation by Rechten International changes, or if a significant ownership interest in the company is acquired by you, your spouse, or your son.

In analyzing what would constitute specially benefiting your son's employer under the facts submitted, the COE's opinions construing the conduct of advisory board members making recommendations are instructive. Although advisory boards merely make recommendations (like you do in purchasing trucks from Rechten), the COE has held that this nexus may form the basis of prohibited conduct under Sec. 2-443(a).¹ While the possibility of financial gain must be direct or immediate, rather than remote or speculative, the facts submitted support a determination that recommending the purchase of trucks from Rechten specially benefits your son's employer in a manner not shared with similarly situated members of the general public. The COE therefore concludes that such a recommendation from you would violate Sec. 2-443(a) of the Code. Recommending Rechten to perform warranty

¹ RQO 12-063

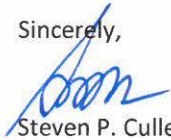
or repair work on existing vehicles does not violate this section because as the only International dealer is south Florida, it is a "sole source" vendor.

IN SUMMARY, The Code of Ethics prohibits you from using your official position to specially benefit your son or his employer. Because the purchase of new vehicles from your son's employer, Reichten International, is based in part on a recommendation from you as the PBC Fire Rescue Fleet Director, to make such a recommendation would be in violation of the Misuse of public office or employment section of the Code of Ethics. Under the circumstances you describe however, the use of Reichten International to repair International brand trucks under a "sole source" agreement is not prohibited. Given the broad definition of "Financial benefit" under the Code, you must be vigilant, particularly if the business relationship between Palm Beach County and Reichten International evolves or changes, your son's method of compensation changes or any ownership interest in the company is acquired.

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) 355-1915 should you have any further questions in this matter.

Sincerely,



Steven P. Cullen,
Executive Director

SPC/meb/gal



Palm Beach County Commission on Ethics

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

December 26, 2013

Pamela H. Ryan, B.C.S.
City Attorney
City of Riviera Beach
600 West Blue Heron Blvd.
Riviera Beach, FL 33404

RE: RQO 13-023
Misuse of public office or employment, Contractual relationships

Dear Ms. Ryan,

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

YOU ASKED, in your letter of December 12, 2013 whether it is a violation of the Palm Beach County Code of Ethics for Mary McKinney, Director of Community Development for the City of Riviera Beach (The City), to remain as an unpaid director and managing member of the non-profit Riviera Beach CDE, Inc. (the CDE), where the City wishes to enter into a 30 year leasing agreement with a subordinate limited liability corporation (Newcomb Hall, LLC, aka, Riviera Beach Event Center, LLC), created and controlled by CDE, for the purpose of developing a City owned site located near the City's marina property. Additional information was provided by you via email to COE staff.

IN SUM, a portion the "essential duties and responsibilities" of Mary McKinney listed in the City's job description for Director of Community Development for the City of Riviera Beach, include supervising the preparation and presentation of staff recommendations regarding land development issues made to City officials charged with approval of such matters, and advising the City Manager and Assistant City Manager on land development issues. In these roles she has an inherent influence over decisions made by the City regarding land use matters. It is because of this influence that for her to remain a director or managing member of the CDE, should its subordinate entity, (Newcomb Hall, LLC, aka Riviera Beach Event Center, LLC), enter into a lease agreement to develop City owned land, she would be in violation of the Misuse of public office or employment section of the PBC Code of Ethics. Therefore, Ms. McKinney must resign her voluntary positions as director and managing member of the CDE prior to the City entering into a lease agreement for this property to avoid this potential violation.

THE FACTS as we understand them are as follows:

You are the City Attorney for the City of Riviera Beach (the City), and requested this opinion on behalf of a Mary McKinney, Director of Community Development and an employee of the City. As the Community Development Director, Ms. McKinney works closely with the Riviera Beach Community Redevelopment Agency (CRA), which is an independent special district of the City. In May, 2011, Ms. McKinney also became a non-paid director of a Florida not-for-profit corporation, Riviera Beach CDE, Inc. (CDE). She receives no compensation for this position, except for reimbursement of her reasonable expenses. The articles of incorporation of the CDE require that three (3) of the directors of the CDE must be made up of City and CRA employees.

You advised that in September 2013, the CDE created a Florida limited liability company, "Newcomb Hall, LLC." This company recently began the process of changing its name to "Riviera Beach Event Center, LLC." This limited

liability company (the LLC) wishes to enter into a 30 year lease with the City to develop a City owned site near the City's marina for a consideration of \$1.00 per year. The LLC would then enter into a sub-lease with the CRA to complete the actual construction and development of an "event center" at the site.

You stated in your letter that if the City enters into this lease with the LLC, the CDE (which created the LLC), would receive Federal Market Tax Credits of approximately \$2.7 million to help with construction costs of the event center. When the term on the tax credits expires and the "loan" forgiven (in approximately eight years), the plan is that the lease between the City and the LLC will be terminated. The land and the event center should at that point return to the City's direct control.

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: (Emphasis added)

(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. (Emphasis added)

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

Section 2-443(a) (7), *Misuse of public office or employment*, of the Code of Ethics prohibits officials or employees of the county of any municipality located within the county 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. This section specifically applies to certain entities or persons, and includes under sub-section (a)(7) any non-profit entity, if the official or employee, or if their spouse or domestic partner is a director of officer of this non-profit entity.

In this case, Ms. McKinney is on the board of directors and is also the managing member of the non-profit entity, CDE. CDE in turn created a limited liability company for the purpose of entering into a lease with the City, her government employer. Because she is a volunteer director of the CDE, and receives no compensation other than reimbursement for reasonable expenses (an exception within the rule), the CDE does not qualify as her outside employer or business, so the prohibition of CDE contracting with the City (albeit by indirect means through the CDE created LLC) found in Section 2-443(d), *Contractual relationships*, does not apply in this case.

However, the prohibition against using one's official position or employment to provide a special financial benefit for a non-profit organization while an officer or director of that organization, found within Section 2-443(a)(7), does apply because of the specific employment of Ms. McKinney as the City's Director of Community Development. This is so even where it might not apply to other City employees.

Ms. McKinney is in the unique position of being in charge of supervising and approving the staff recommendation and presentation to City officials, as well as advising City management on all issues concerning land development within the City. As such, she has significant influence over these decisions even where she does not make the final determination. Should she use her position as Community Development Director to influence the award of the 30

year lease of this city owned property to the limited liability company subordinate to CDE, she would be using her official position in a manner she knows or should know will result in a special financial benefit being given to the CBE, in violation of the Code of Ethics. In order to avoid this problem, Ms. McKinney will need to resign her position as a director and managing member of CDE prior to this lease being entered into with the City.

IN SUMMARY, under the facts and circumstances you have submitted, Mary McKinney, Director of Community Development for the City of Riviera Beach, must resign her positions as a director and managing member of the Riviera Beach CDE, Inc. (CDE), prior to the limited liability company created by CDE entering into a lease with the City of Riviera Beach to develop City owned land, in order to avoid being in violation of the Code of Ethics misuse of office section.

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



Palm Beach County Commission on Ethics

Commissioners
Robin N. Fiore, Chair
Vice Chair (Vacant)
Salesia V. Smith-Gordon
Michael S. Kridel
(Vacant)

Executive Director
Steven P. Cullen

January 23, 2014

Scott Kline
Economic Development Manager
City of Boynton Beach
100 E. Boynton Beach Blvd.
Boynton Beach, FL 33435

RE: RQO 14-001
Conflict of interest creating a misuse of public office or employment

Dear Mr. Kline,

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

YOU ASKED, in your e-mail of January 6, 2014, whether it would be a prohibited conflict of interest in violation of the Palm Beach County Code of Ethics for you to remain as an unpaid volunteer member of the board of directors of the not-for-profit corporation, Neighborhood Renaissance, Inc. (Neighborhood Renaissance), while employed as the Economic Development Manager for the City of Boynton Beach (the City), when Neighborhood Renaissance has received grant funds from a private bank to be used to construct public improvements on City owned property. Supplementary information was relayed to staff in additional emails and telephone conversations.

IN SUM, the Palm Beach County Code of Ethics prohibits any employee or official of the county or any local municipality from using their official position in a manner which would result in a special financial benefit being given to specific persons or entities listed within the code, and includes any non-profit organization on which the official or employee serves as an officer or director. Under the facts you provided, where you serve in a volunteer position on the Board of Directors of a non-profit entity which has received \$229,000 in grant funding scheduled to be used for improvements on property owned or controlled by your government employer, the City of Boynton Beach, the "benefit" is essentially given to your government employer by the non-profit by way of services. No prohibited special financial benefit flows to the non-profit organization from the City. Therefore, there is no prohibited conflict of interest created by you remaining on the Board of Directors of Neighborhood Renaissance when it provides this service to your government employer, so long as neither the non-profit entity itself, nor the private business providing this funding grant, receives any improper benefit as a result of any official action by you.

The COE takes no position concerning your decision to abstain from voting as a Neighborhood Renaissance board member when the grant is brought before your board for an approval vote, since this vote involves the internal matters of a private non-profit entity, and therefore does not implicate the PBC Code of Ethics.

THE FACTS as we understand them are as follows:

You are currently employed as the Economic Development Manager for the City of Boynton Beach. In this role you are primarily responsible for assisting in job creation and expanding the City's tax base by working with local businesses seeking to expand, relocate or start-up within the City. You assist these businesses by providing technical assistance, location assistance, and access to available capital. You also oversee three (3) City grant programs that provide incentives to organizations that create jobs, or invest in businesses that create jobs within the City.

You also volunteer some of your time as an unpaid member of the board of directors for a non-profit corporation established under the federal 501(c) (3) tax regulations, Neighborhood Renaissance, Inc. This Palm Beach County based non-profit organization was established in 1992, and states on its website that it is "dedicated to building and supporting strong and diverse communities in Palm Beach County."

Recently, Neighborhood Renaissance was awarded \$229,000 in grant funds from Wells Fargo Bank (Wells Fargo) to construct public improvements on City owned land. These grant funds are provided for neighborhood improvements and administered by a federal program entitled "Neighborhood Works," who provide these grants to local agencies like Neighborhood Renaissance to help refurbish local neighborhoods. Wells Fargo has no input into the determination of where the grant funds are used once it provides these funds. The improvements scheduled for the City include construction and repair of sidewalks, street lights, tree canopies and signage, as well as additional "streetscape" related improvements.

While they will reap the benefits of these public improvements, the City will receive no direct funding from either Wells Fargo Bank or Neighborhood Renaissance, and you will not be directly involved in the regulation or administration of these projects on behalf of the City. The area of the City to receive these improvements was determined by the Neighborhood Renaissance Executive Director with input from the City. In your position with the City you attended a meeting with Neighborhood Renaissance staff, where you discussed where the City might need these improvements. You did not have input into who was to be considered for funds through your position as a Neighborhood Renaissance board member, (which you stated was a staff level decision), although once the grant is finalized it will be put before the Neighborhood Renaissance board for final approval. You advised COE staff that you have decided that you will abstain from that vote of the board of directors based on your employment with the City to avoid any appearance of impropriety. Finally, you advise that neither Neighborhood Renaissance nor Wells Fargo will receive any special benefit from the City based on providing these improvements.

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

Sec. 2-442. Definitions.

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid.

Outside employer or business includes:

Any entity, other than the county, the state, or any other federal regional, local, or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced.

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

Transaction shall refer to the purchase or sale by the county or municipality of goods or services for a consideration.

Based on the information supplied to COE staff, you are an employee of the City of Boynton Beach, and thus under the jurisdiction of the PBC Code of Ethics. Because you serve on the board of directors of Neighborhood Renaissance as an unpaid volunteer, they are not considered to be your outside business or employer. Further, Neighborhood Renaissance is providing \$229,000 worth of services to the City, which would normally make them a customer or client of the City under the code. However, since these services are being provided to the City free of charge, they would not be considered to be a customer or client of the City under these specific facts, so long as the City gives no "consideration" to either Neighborhood Renaissance or Wells Fargo for improvements on City

owned or controlled property. Under the facts you supplied, the grant funds provided by Wells Fargo and the improvements provided by Neighborhood Renaissance would be considered to be "gifts" to the City.

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: (Emphasis added)

(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; (Emphasis added)

Section 2-443(a)(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 any non-profit organization of which they or their spouse or domestic partner are an officer or director. You are on the board of directors of Neighborhood Renaissance. However, under the facts you supplied, Neighborhood Renaissance would receive no financial or other benefit as a result of these improvements to City property. Therefore your participation as a City employee in helping to determine where these improvements should be completed does not violate this code section, so long as Neighborhood Renaissance does not receive any special benefit from your official actions as a public employee.

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

While Neighborhood Renaissance will be entering into some agreement with the City to use these grant funds for the indicated improvements, because you are a volunteer board member, and Neighborhood Renaissance is not your outside employer or business, this code section is not applicable to you under these facts.

Sec. 2-444. Gift law.

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

- (1) An official public action taken or to be taken, or which could be taken;
- (2) A legal duty performed or to be performed or which could be performed; or
- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

From the facts you have provided, neither Wells Fargo nor Neighborhood Renaissance will receive any "special benefit" as a result of your official actions as a City employee. Based on this, this section of the code is also inapplicable under the facts you provided.

IN SUMMARY, under the facts you have submitted, no prohibited conflict of interest or other violation of the PBC Code of Ethics is created for you as an employee of the City of Boynton Beach, and also serving as a volunteer director of the non-profit organization, "Neighborhood Renaissance," by remaining on this board when they provide \$229,000 worth of improvements to City property using donated grant funds, so long as you do not use your official position to provide any prohibited benefit to either the non-profit organization itself, or to the business funding this grant.

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



Palm Beach County Commission on Ethics

Commissioners
Robin N. Fiore, Chair
Vice Chair (Vacant)
Salesia V. Smith-Gordon
Michael S. Kridel
(Vacant)

Executive Director
Steven P. Cullen

January 24, 2014

John C. Randolph, Esquire
Jones, Foster, Johnson & Stubbs, P.A.
505 South Flagler Drive, Suite 1100
West Palm Beach, FL 33401

Re: RQO 14-002
Voting Conflicts

Dear Mr. Randolph,

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

YOU ASKED on your submission dated January 15, 2014, whether an elected town official who was previously advised by the Palm Beach County Commission on Ethics (COE) not to participate in voting on a specific ordinance amendment creating a PUD-5, must also anticipate not voting on a comprehensive plan amendment, which incorporates terms substantially similar to those terms incorporated within the zoning ordinance.

IN SUM, elected officials are prohibited from using their official position, participating or voting on an issue that would give financial benefit to their outside employer, not shared with similarly situated members of the general public. In evaluating conflicts of interest under the Palm Beach County Code of Ethics, the Commission considers 1) the number of persons to stand to gain from a decision, and 2) whether the gain or loss is remote and speculative. Where the class of persons who stand to gain from a decision is small, it is more likely that a member will have a conflict. Similarly, where a gain or loss to an official or his or her employer is not subject to significant contingencies, it may result in a conflict of interest under the Palm Beach County Code of Ethics. Based upon the facts submitted, Councilman Wildrick may not vote on the matter.

THE FACTS, as we understand them are as follows:

You are the attorney for the Town of Palm Beach (the Town). You have asked the above question on behalf of Town Councilman Wildrick. The issue of voting conflicts in the Town, more particularly involving Councilman Wildrick, has been addressed by the COE in three separate requests for Advisory Opinions. In November, 2012 the COE opined that Councilman Wildrick was prohibited by the Code of Ethics from voting or participating in a matter involving zoning changes.¹ In January, 2013 the COE opined that Councilman Wildrick was not precluded from participating and voting on a "cure plan" within the Town.² In February, 2013 the COE opined that Councilman Wildrick was prohibited from voting or participating in a matter involving zoning regulations relating to a five-acre area where an employee who works for his outside employer is a part owner of two restaurants within the plan area.³ This matter involved Ordinance No. 6-2013.

¹ RQO 12-075

² RQO 12-082

³ RQO 12-083

Subsequent to the advisory opinions, Councilman Wildrick, based upon your advice, did not participate or vote in a matter involving a comprehensive plan amendment, Ordinance No. 5-2013. Because there may be an opportunity in the future to vote on matters regarding Ordinance No. 5-2013, you now seek this advisory opinion on behalf of Councilman Wildrick.

Councilman Wildrick's business relationship with an owner of property in PUD-5 has not changed from that detailed in RQO 12-083. In his private capacity, Councilman Wildrick serves as Chairman of the Board for a publicly traded company. A partial owner of two restaurants located within the plan area also serves as a member of the Board. Both Councilman Wildrick and the restaurant owner are compensated for their board positions. As defined by Section 2-442 of the Code, the publicly traded company is considered to be Councilman Wildrick's outside employer. His fellow board member also receives compensation for his position as a member of the Board.

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

Sec. 2-442. Definitions.

Outside employer or business includes:

Any entity, other than the county, the state or any other federal, regional, local or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced.

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;
 - (4) An outside employer or business of his or hers, or of his spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business. (emphasis added)

Section 2-443(a) 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 or their employer. Section 2-443(c) *Disclosure of voting conflicts*, similarly requires an elected official to abstain and not participate in any matter coming before his or her board which would result in a special financial benefit, not shared with similarly situated members of the general public, to a person or entity as described in subsection (a).

The provisions in Ordinance 5-2013 regarding the PUD are identical to the provisions contained in the Zoning Ordinance which was the subject of RQO 12-083. In that case, the matter was determined to involve a small class (15) of property owners. Although there may be an argument that the density provisions affect the entire town (and make the class of persons affected much larger), the provisions of Ordinance No. 5-2013, just like Ordinance No. 6-2013, relate to the small class of persons described. The argument that Ordinance 5-2013 affects a greater class of property owners does not vitiate the fact that the ordinance also affects the small class which formed the basis of the reasoning in RQO 12-083. Where an ordinance may impact both a small and large class, it cannot be said that this larger potential impact "removes" the financial benefit to the small class. The reasoning previously expressed by the COE is therefore applicable and Councilman Wildrick is prohibited from participating or voting in this matter.

IN SUMMARY, Town Councilman Wildrick may not use his official position, including participation and voting on an issue before the Town Council, to give a special financial benefit to a person who is known to him to work for his

The Historic 1916 Palm Beach County Courthouse

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February 6, 2014
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outside employer. Based upon the facts and circumstances provided, including the limited class of persons or entities that stand to gain from the proposed ordinance and the incentives provided by the PUD designation, the potential financial benefit to the restaurant owner is not so remote and speculative as to eliminate a conflict of interest under the Palm Beach County Code of Ethics.

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 if I can be of any further assistance in this matter.

Sincerely,



Steven P. Cullen,
Executive Director

SPC/gal

ORDINANCE NO. 5-2013

An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Text Of The Future Land Use Element Of The Town Of Palm Beach Comprehensive Plan, By Amending The Future Land Use Element Data & Analysis And Policies 2.3 And 11.1 To Provide For The Creation Of A PUD-5 Within An Area Of Property Designated Commercial On The Future Land Use Map, Which Is Bounded By Bradley Place, Sunset Avenue, North County Road, And Royal Poinciana Way; Further Amending Policy 2.3.3 To Provide For The Creation of Commercial/Mixed-Use PUD's, The Creation Of The PUD-5, Detailing An Increase In The Maximum Allowable Density, And Creating Maximum Lot Coverages For First, Second and Third Stories In The PUD-5 Area; Further Creating Policy 11.1.5 That Details Mixed-Use PUD Development Requirements Within Commercial Land Use Categories Provided Certain Threshold Criteria Are Met, And Providing For Said Certain Threshold Criteria; Providing For Severability; Repealing All Ordinances Or Parts Of Ordinances In Conflict Hereof; Providing For Codification; And Providing For An Effective Date.

WHEREAS, the Town proposes to amend its Comprehensive Plan in accordance with the requirements of the 1993 Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, the Town created the Town of Palm Beach Comprehensive Plan with the adoption of Ordinance No. 11-89, and last amended the Comprehensive Plan on July 13, 2011 with the adoption of Ordinance No. 1-11 and Ordinance No. 3-11; and

WHEREAS, the Town is amending the Data & Analysis and Goals, Objectives and Policies (GOPs) portions of the Future Land Use Element of the Town's Comprehensive Plan, specifically Policies 2.3 and 11.1 as they relate to densities and intensities of mixed-use development within commercial land use areas, provided certain criteria are met, and providing said certain criteria; and

WHEREAS, after reviewing the proposed amendments to the Town's Comprehensive Plan at their May 21, 2013 meeting, the Planning and Zoning Commission, acting as the Local Planning Agency (LPA), recommended approval of said amendments, and transmittal to the Florida Department of Economic Opportunity (DEO); and

WHEREAS, after considering and reviewing the proposed amendments to the Town's Comprehensive Plan, the Town Council determined that the aforementioned changes should be made.

NOW THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA THAT THE TOWN'S COMPREHENSIVE PLAN IS HEREBY AMENDED IN THE DATA AND ANALYSIS, AND THE GOALS, OBJECTIVES, AND POLICIES SECTIONS, as follows:

Section 1. AMENDMENT OF COMPREHENSIVE PLAN

The Data & Analysis found on pages I-21 and the GOPs, Policy 2.3, and Policy 11.1 in the Future Land Use Element in the Town of Palm Beach Comprehensive Plan are hereby amended as follows:

Approved & Future New PUDs

This category represents Planned Unit Developments that have been approved by the Town Council. The Plan designates approximately 168 acres of land for this use. Only the Breaker's PUD contains remaining development potential. If built to maximum density, this PUD could hold another 251 multi-family units and some commercial development.

Densities in new PUD's shall be limited to the maximum density allowable in the land use category, zoning district, and/or applicable PUD regulations in which such new PUDs are located prior to approval of a new PUD application, but shall not exceed thirteen units per acre.

Nonconforming buildings or structures unintentionally damaged or destroyed, such as by fire or other casualty, act of terrorism, war or act of God or nature may exceed what is permitted in this land use category and the land development regulations if rebuilt at the same density and/or intensity, on the same footprint and to the same size and configuration as those nonconforming buildings or structures being replaced. Actual construction to replace, restore or reconstruct the nonconforming building or structure shall commence within the time frame outlined in the land development regulations.

POLICY 2.3

Development orders shall be issued by the Town only for new non-residential development or redevelopment that is consistent with the Future Land Use Map and descriptions and intensities of land use as set forth in the following policies.

2.3.1 The following definitions shall pertain to the application of the non-residential land use designations and associated policies:

- a. "Town-serving" shall mean establishments principally oriented to serving the needs of Town persons and not substantially relying on the patronage of persons not defined as Town persons. Commercial establishments (other than those uses in the "Commercial – Office, Professional & Institutional" (C-OPI) zoning district, which are not required to meet town-serving requirements) of 2,000 square feet or less of gross leasable area in the "Commercial – Planned Center" (C-PC) zoning district, 3,000 square-feet or less of gross leasable area in the C-TS and C-B zoning districts, and 4,000 square-feet or less of gross leasable area in the C-WA zoning district are assumed to meet the intent of the first part of this definition.
- b. "Town persons" shall mean all full-time and seasonal residents of the Town as well as visitors staying at accommodations in, or employees working in establishments located within, the Town.

2.3.2 Conservation – Intended to preserve and protect unique natural areas from development and the negative impacts of public use. No urban development is permitted.

2.3.3 Commercial – Intended to create, preserve, and enhance areas of attractive, small-scale, retail, personal and professional/business services, and mixed commercial/ residential use, developed either as a unit or in individual parcels, providing primarily for the frequently recurring needs of Town persons with limited provision for more intensive commercial uses that are proven to be compatible with the Future Land Use Plan and the character of the Town.

a. Appropriate uses include a wide range of commercial retail, service, professional and business uses for residents and visitors; PUD-5, Historic Preservation Mixed Use Development as set forth in Policy 11.1.5; hotels/motels up to 26 rooms per gross Palm Beach acre (40,000 square feet); timesharing uses up to 9 units per gross Palm Beach acre (40,000 square feet); offices; public uses and facilities; public and private schools; private group uses; and residential uses located above the ground floor.

b. Except for uses located in the Worth Avenue zoning district (C-WA) & PUD-5, Historic Preservation Mixed Use Development (bounded between Bradley Place, North County Road, Royal Poinciana Way and Sunset Avenue), one residential unit may be located above the ground floor, or up to a maximum density of six dwelling units per gross Palm Beach acre, whichever is greater. In the Worth Avenue zoning district the maximum allowable density shall be 10 dwelling units per gross Palm Beach acre provided the Worth Avenue Design Guidelines are met. In PUD-5, Historic Preservation Mixed Use Development, the maximum allowable density shall be 10 dwelling units per gross Palm Beach acre, but can be increased to 13 dwelling units per gross Palm Beach acre if certain conditions are met.

c. Maximum lot coverage for non-residential uses shall be 75%, except for PUD-5, Historic Preservation Mixed Use Development, which will allow for a maximum lot coverage of 70% for the first and second stories of a building, and 35% for the third story (if permitted).

d. In limited circumstances, the maximum building height shall be three stories.

2.3.4 Public – Intended to recognize existing locations of, and provide sites for, public uses, structures and facilities.

a. Appropriate uses include public schools, low intensity public buildings and facilities such as fire and police stations, Town Hall, etc, of a scale and intensity necessary to primarily serve the needs of Town persons. Only public uses owned, operated, franchised, or supervised by a governmental agency are given this designation.

- b. The designation of a property for Public use on the Future Land Use Plan Map recognizes the current use of the property; and, further, that such properties may also be appropriate for residential or commercial development with uses identified under the Single-Family Residential and Commercial land use categories.
 - c. Maximum lot coverage shall be 40%.
 - d. In limited circumstances, the maximum building height shall be three stories.
- 2.3.5 Public Recreation – Intended to provide for low intensity public recreational uses or activities, natural resource and scenic resources of a scale and intensity necessary to primarily serve the needs of Town persons. Only public facilities owned, operated, franchised, or supervised by a public governmental entity are given this designation.
- 2.3.6 Private Group Use – Intended to provide for low intensity uses such as private clubs, golf and country clubs, public and private schools, houses of worship, museums, and non-commercial recreation-type or cultural uses at a scale and intensity intended to primarily serve the needs of Town persons.
- a. The designation of a property for Private Group Use on the Future Land Use Plan Map recognizes the current use of the property; and, further, that such properties may also be appropriate for residential or commercial development with uses identified under the Single-Family Residential, Multi-family Moderate Density, and Commercial land use categories.
 - b. Maximum lot coverage shall be 40%.
 - c. In limited circumstances, the maximum building height shall be three stories.
- 2.3.7 Approved PUD – Intended to recognize existing or previously approved PUD’s and provide for new PUD’s within the density limits of the land use category in which they are located prior to approval of the PUD. PUD densities shall not exceed 13 dwelling units per gross Palm Beach acre.

POLICY 11.1

The following types of Planned Unit Developments shall be allowed in the Town:

- 11.1.1 Single-family PUD’s located within the Single Family Residential Land Use Category not exceeding four dwelling units per gross Palm Beach acre.
- 11.1.2 Mixed residential development located within the Multi-Family Moderate or Multi-Family High Density Land Use Categories, not exceeding the maximum density allowable within the Land Use Category.

11.1.3 Mixed-use development within the Multi-Family Moderate Density or Multi-Family High Density Land Use Categories, allowing for a mix of residential uses not exceeding the maximum allowable density within the Land Use Category and nonresidential development not exceeding 20% of the gross floor area of the PUD.

The following equivalencies shall be used in determining the intensity of the nonresidential components:

| Land Use Type | Unit of Measurement | Equivalence to One Dwelling Unit of Gross Density |
|--|---------------------|---|
| Hotels, motels or similar transient facilities | Number of bedrooms | Two bedrooms |
| Principal Commercial Uses | Total floor area | 750 square feet |
| Accessory Commercial Uses | Total floor area | 1,500 square feet |
| Other Nonresidential Uses | Total floor area | 1,000 square feet |

11.1.4 In order to encourage preservation of historic residential structures, such single-family structures may be permitted to be converted through a historic preservation PUD to contain multiple residential units, within the confines of the existing structure, provided the density does not exceed four dwelling units per gross Palm Beach acre.

11.1.5 PUD-5, Historic Preservation Mixed Use Development, allowing for:

- 70% lot coverage for the first and second stories.
- 35% lot coverage for the third story (if permitted).
- 10 dwelling units per gross Palm Beach acre, with the ability to reach 13 if all required parking is in a sub-basement, or there is a 50% reduction in existing density, if applicable.
- 30% minimum common open space/landscape open space that cannot be used for off-street parking and/or loading.
- Pedestrian access between Royal Poinciana Way and Sunset Avenue through the use of vias whenever possible.
- Encouragement of interior courtyards.
- All parking and loading requirements to be met, unless criteria for exceptions are met as outlined in Town code.

Section 2. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this ordinance for any reason, is held to be unconstitutional, void or otherwise invalid, the validity of the remaining portions of this Ordinance shall not be affected thereby.

Section 3. EFFECTIVE DATE

This Ordinance shall become effective 31 days after the state land planning agency notifies the Town that the plan amendment package is complete or, in the event of a timely challenge to the amendments contained within this Ordinance, upon the state land planning agency or the Administration Commission having entered a final order determining the adopted amendments to be in compliance.

PASSED ON FIRST READING in regular, adjourned session of the Town Council on the 12th day of June, 2013.

PASSED ON SECOND READING in a regular, adjourned session of the Town Council on the 9th day of October, 2013.

PASSED AND ADOPTED ON THIRD READING in a regular, adjourned session of the Town Council on this 13 day of November, 2013.

Refused
Gail L. Coniglio, Mayor

David A. Rosow
David A. Rosow, Town Council President

Refused
Robert N. Wildrick, Council President Pro Tem

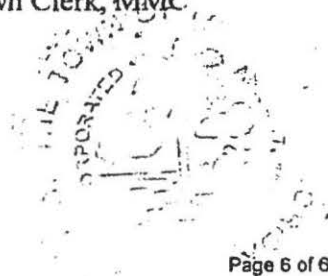
William J. Diamond
William J. Diamond, Town Council Member

Richard M. Kleid
Richard M. Kleid, Town Council Member

Michael J. Pucillo
Michael J. Pucillo, Town Council Member

ATTEST:

Susan A. Owens
Susan A. Owens, Town Clerk, MMC



ORDINANCE NO. 6-2013

An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County Florida, Amending Chapter 134, Zoning, At Section 134-476 By Creating Purpose Language For An Optional PUD-5, Historic Preservation Mixed Use Development, With A Contributing Building Report And PUD-5 Design Guidelines Adopted By Reference For The Five Palm Beach Acres In the C-TS Zoning District Between Royal Poinciana Way And Sunset Avenue And Bradley Place And North County Road And By Prohibiting The Use Of The PUD-5 Regulations For Five Years If A Contributing Building Is Voluntarily Demolished; Section 134-477 By Creating A Review Process For The PUD-5 And Prohibiting Variances From Certain Lot, Yard And Bulk Regulations; Subdivision II, Sections 134-531, 134-532, 134-533 And 134-534 By Adding Submittal Requirements For A PUD-5 By Creating A New Approval Process For PUDs And Amendments To PUDs By Eliminating The Tentative And Final Approval Process And Replacing With A Streamlined Approval Process And By Creating A New Completion Deadline for PUDs; By Eliminating Subdivision III, Sections 134-561 And 134-562 Related To The Tentative And Final PUD Approval Process; By Renumbering 134-563 To 134-561 Adding PUD Amendments And Eliminating Property Owner Consent To Amend PUDs; By Renumbering 134-564 To 134-562, Adding PUD Amendment Language, Eliminating The Existing Time Frame Requirement For Commencement And Providing For New Commencement Language In The PUD Resolution; Section 134-651 By Creating PUD-5 As A Special Exception And Site Plan Review; Section 134-652 By Adding The PUD-5 And Identifying The Area Where A PUD-5 May Be Applied; Section 134-653 By Adding A Maximum PUD-5 Lot Size And Providing A Provision Which Prohibits A Variance From The Maximum Lot Size; Section 134-654 By Creating A Density for the PUD-5 Of Ten Dwelling Units Per Palm Beach Acre With A Maximum Of Thirteen Dwelling Units Per Palm Beach Acre In Lieu Of The Maximum Six Dwelling Units Per Acre Allowed In the Underlying C-TS Zoning District; Section 134-656 By Providing Permitted And Special Exception Uses In The PUD-5 And Creating Separation Requirements Between Residential And Commercial Uses; Section 134-657 By Creating A Minimum Public Open Space Requirement In The PUD-5 With A Provision Prohibiting A Variance From that Requirement; Section 134-687 By Providing Requirements That A PUD-5 Preserve The Main Street Character, Size And Bulk Which Currently Exists In The Five Palm Beach Acres; Section 134-688 By Providing Qualifying Language For The PUD-5 And Further Incorporating By Reference The Contributing Building Report And PUD-5 Design Guidelines; Section 134-689 By Eliminating The Requirement For Street Trees And Adding Language Which Requires Trees Bordering Projects Whenever Possible; Section 134-690 By Adding Language That A PUD-5 Is Required To Have Curb Cuts And Vehicular Access From Only Sunset Avenue; Section 134-691 By Providing A PUD-5 Off-street Parking Exception For Replacement Of Existing Commercial Square Footage Or Intensity Of Use, New Ground Floor Retail Use, Or Retail Use Which Replaces Ground Level Off-street Parking And Curb Cuts Fronting Royal Poinciana Way; Section 134-692 By Adding Language That Prohibits Variances For Lot Coverage, Height, Overall Height and Public Open Space and Providing New Regulations Creating A PUD-5 Density Of Ten to Thirteen Dwelling Units Per Palm Beach Acre In Lieu Of The Six Dwelling Units Per Acre Currently Allowed In The C-TS Zoning District, Provided Certain Conditions Being Met, By Creating Maximum Heights and Overall Heights, Including A Provision For Three Stories Where Only Two Stories Is Currently Allowed, By Adding First Floor And Second Floor Lot Coverage Of Seventy Percent And A Third Story Lot Coverage Of Thirty-five Percent; By Creating Setbacks Based On PUD

Approval, By Eliminating Required Setbacks And Determining Setbacks During The Approval Process And By Creating A Minimum Thirty Percent Public Open Space Requirement; Section 134-693 By Creating Said Section And Providing A Five Year Sunset Provision Unless The Town Council Approves An Extension; Section 134-1109 Creating The PUD-5 As A Special Exception Use Within The Defined Five Palm Beach Acres In The C-TS Zoning District; By Adopting By Reference The Attached Palm Beach PUD-5 Design Guidelines And The Contributing Building Report: The Historic Character Of Royal Poinciana Way; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing For An Effective Date.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

WHEREAS, the Town has determined that the five Palm Beach Acres located between Royal Poinciana Way and Sunset Avenue and Bradley Place and North County Road is an important gateway into the Town;

WHEREAS, the Town believes that the PUD-5 would be a tool to encourage preservation of the existing character of that area during redevelopment;

WHEREAS, after public hearing pursuant to notice required by law, the Local Planning Agency considered all testimony and recommended that the Town Council adopt the subject Ordinance; and,

Whereas, after public hearing pursuant to notice as required by law, the Town Council does hereby find, determine, and declare that the public health, safety, morals and general welfare of the citizens of the Town of Palm Beach require that the aforesaid Chapter 134, Zoning, of the Code of Ordinances, be amended as hereinafter set forth.

Section 1. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-476, Purpose, to read as follows:

Sec. 134-476. Purpose.

(a) The purpose of planned unit development regulations is to:

(1) Encourage flexibility in the design and development of land in order to promote its most appropriate use;

(2) Facilitate the adequate and economical provision of streets, utilities and public spaces;
and

(3) Preserve the natural and scenic qualities of open area and preservation;

All in accordance with the terms and provisions as set forth herein.

(b) The procedure is intended to permit diversification in the location of structures and improve circulation facilities and other site qualities while ensuring adequate standards relating to public health, safety and welfare and morals both in the use and occupancy of buildings and facilities in planned groups.

(c) In addition to subsections (a) and (b) of this section, PUD-4 historical preservation-residential development is intended to preserve structures and premises of significant historical or architectural value to the town by allowing for low-density residential development at a density calculated on the area of the entire property, excluding the area of property required by the town to be assigned to the historical structure. Structures and/or premises listed in the national record or in any historical report recognized by the town council may be considered significant for the purposes of this article. In addition, the town council may declare any other structure and/or premises to be of historical or architectural significance.

(d) In addition to subsection (a), (b) and (c) of this section, PUD-5 historical preservation mixed use development or redevelopment is intended to (i) incentivize property owners in this area with greater density and fewer parking requirements for commercial and retail uses than C-TS zoning in return for preservation of buildings, structures, vias and/or facades for buildings that contribute to the historical size, scale, feel and character of Royal Poinciana Way, as a major gateway into the town and our historic "Main Street"; and (ii) further incentivize new development or redevelopment of noncontributing buildings in accordance with the PUD-5 Design Guidelines and Contributing Buildings Report, which are adopted by reference and consistent with the existing character, architecture, scale, massing and placement of those buildings that have been designated as Contributing. "Contributing" means those buildings, vias and structures identified in various categories in the Contributing Building Report, adopted by reference, which have been determined to be representative of the Town's historic Main Street in terms of the architecture, character, size, height and bulk in the five Palm Beach acres between Royal Poinciana Way and Sunset Avenue and Bradley Place and North County Road. The PUD-5 development is a commercial mixed-use district wherein the residential component is secondary or accessory to the primary commercial uses for retail, office and entertainment. Maintaining the predominantly commercial character of the street and minimizing potential conflicts between commercial and residential uses shall be a consideration used in determining scale, height, placement, bulk and cubic footage of new or redeveloped residential units. Design of structures or buildings in a PUD-5 application shall be consistent with the character of Contributing buildings in this area, the PUD-5 requirements and the PUD-5 Design Guidelines or said application shall be denied. The Bradley House Hotel, a landmark and Contributing building in this area, shall only be considered as an appropriate example of architecture and design and not used in determining bulk and height in future development or redevelopment.

(e) Specific design standards that are required to be met when applying for the PUD-5 are in the PUD-5 Design Guidelines, the Contributing Building Report, which are both adopted by reference, and the provisions in Sec. 54-122 through Sec. 54-125(b), Sec. 134-226 through Sec. 134-229, and Sec. 134-326 through Sec 134-330 of the Code of Ordinances. These standards and regulations ensure that development/redevelopment using the PUD-5 regulations is consistent with the existing character, architecture, scale and massing of those buildings that have been designated as Contributing in this area. Properties where Contributing buildings are voluntarily demolished shall not be eligible to apply for the PUD-5 regulations for a period of five years subsequent to demolition.

Section 2. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-477, District regulations, to read as follows:

Sec. 134-477. District regulations.

With the exception of the PUD-5, the requirements and regulations for a PUD district are contained in division 14 of article VI of this chapter. The use, lot, yard and bulk requirements for the PUD-5 are contained in Sec. 134-651 through 134-692.

Sec. 134-478. Town council approval for permitted use and special exception use; review by planning and zoning commission; hearing; site plan review of application.

(a) A planned unit development, when a permitted use, shall be subject to the approval of the town council after a review and report by the planning and zoning commission and after a public hearing is held by the town council in accordance with law.

(b) A planned unit development, when a special exception use, shall be subject to the approval of the town council after a review and report by the planning and zoning commission and after a public hearing is held by the town council in accordance with law. The review by the planning and zoning commission shall be to make findings pursuant to sections 134-227 through 134-233 and other applicable sections of this chapter and to make recommendations thereon.

(c) Every application for approval of a planned unit development shall require concurrent site plan review in accordance with article III of this chapter.

(d) Every building and/or structure in the PUD-5 shall require Landmark Preservation Commission approval. In addition, if variances are being requested from the zoning code, the Director of the Planning, Zoning and Building Department may require the applicant to obtain a recommendation from Landmark Preservation Commission for the benefit of the Planning and Zoning Commission and Town Council. Variances as to lot coverage, height, overall height and public open space are prohibited.

Section 3. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Subdivision II and Section 134-531, Application, to read as follows:

Subdivision II. Approval Process.

Sec. 134-531. Application.

In order to provide an expeditious method for processing a plan for a planned unit development, under the terms of this chapter, it is declared to be in the public interest that all procedures with respect to the approval or disapproval of a plan for a planned unit development or an amendment thereto, and the continuing administration thereof, shall be consistent with the following:

(1) An application for approval of the plan for a planned unit development or an amendment thereto shall be filed by or on behalf of the landowner with the Planning, Zoning and Building Director or designee.

- (2) The following information shall be submitted with the application:
- a. The location and size of the site and the nature of the landowner's interest in the land proposed to be developed.
 - b. The density of land use to be allocated to parts of the site to be developed.
 - c. The location and size of any common open space and the form or organization proposed to own and maintain any common open space.
 - d. The use and the approximate height, bulk and location of buildings and other structures.
 - e. The feasibility of proposals for the disposition of sanitary waste and storm water.
 - f. The substance of covenants, grants of easements or other restrictions proposed to be imposed upon the use of the land, buildings and structures including proposed easements or grants for public utilities.
 - g. The provisions for parking of vehicles and the location and width of proposed streets and public ways.
 - h. For plans that call for development over a period of years, a schedule showing the proposed times within which application for final approval of all sections of the planned unit development are intended to be filed.
 - i. For PUD-4 and PUD-5, a complete description of the historical and/or architecturally significant structures and/or premises and provisions for their preservation. The portion of the property to be devoted to preservation shall be delineated.
 - j. For PUD-5, a complete description of the Contributing buildings and/or premises and provisions for their preservation. If applicable, the portion of the property to be devoted to preservation shall be delineated.
 - k. For PUD-5, a site elevation plan shall be submitted of the proposed development or redevelopment, including a streetscape of the proposed development or redevelopment and surrounding buildings together with an appropriately scaled model.
 - l. For PUD-5 development or redevelopment that has a condominium component, the applicant shall submit commercial and/or residential condominium documents for review.
 - m. PUD development shall meet all of the requirements for special exception in Secs. 134-226 through 134-231 and site plan review in Secs. 134-326 through 134-330.

(3) The application for approval of a planned unit development or an amendment thereto shall include a written statement by the landowner or any other entity having a cognizable interest in the land, setting forth the reasons why a planned unit development or an amendment thereto would be in the public interest and would be consistent with the town's statement of purposes on planned unit development.

(Ord. No. 2-74, § 7.31, 3-26-74; Ord. No. 5-78, § 13, 3-31-78)

Section 4. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-531, Public hearings, to read as follows:

Sec. 134-532. Public hearings.

(a) Upon submission of a complete planned unit development or amendment application, the planning and zoning commission, and the landmark preservation commission in those cases involving the PUD-5 shall hear said application within 60 days of the application being deemed complete by the director of the planning, zoning and building department or designee. A public hearing on the planned unit development or amendment application shall then be held by the town council after public notice is given in accordance with law.

(b) The planning and zoning commission and the landmark preservation commission in those cases involving the PUD-5 shall make recommendations on the proposed planned unit development, or amendment thereto, not less than 15 days before the public hearing by the Town Council, and the report shall be available for public inspection during reasonable hours.

(Ord. No. 2-74, § 7.32, 3-26-74; Ord. No. 2-83, § 6, 2-23-83; Ord. No. 1-04, §§ 38, 43, 3-9-04; Ord. No. 5-09, § 26, 4-15-09)

Section 5. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-531, Grant or denial, to read as follows:

Sec. 134-533. Grant or denial.

(a) The town council shall, within 60 days following the conclusion of the public hearing at which a planned unit development or amendment thereto has been approved by written resolution either (i) grant approval of the plan as submitted, or (ii) grant approval subject to specified conditions not included in the plan as submitted.

(b) If a planned unit development or an amendment thereto is denied, the determination as to denial shall be rendered in writing within thirty (30) days of the denial.

(c) If approval is granted, the town council shall, as part of its resolution, specify the conditions of approval, drawings, specifications and form of performance bond, if any, that shall be required.

(d) If a plan is granted approval, with or without conditions, the town council shall set forth in the written resolution the time within which the approved plan is required to be commenced or, for an approved plan that provides for development over a period of years, the periods of time within which phases of the approved plan have to be commenced. For the purposes of this Section, commencement shall be the issuance of a building permit. All authorized work under the building permit for said approved plan must be completed within the construction schedule contained in section 105.4.1.6 of the Florida Building Code as amended in section 18-242 of this Code or some alternative period approved by Council or said approval shall expire.

(Ord. No. 2-74, § 7.33, 3-26-74; Ord. No. 5-78, § 13, 3-31-78)

Section 6. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Subdivision III, Final Approval, Section 134-534, Status of plan after tentative approval, to read as follows:

Sec. 134-534. Status of plan after approval.

- (a) Within five working days after the adoption of the written resolution provided for in section 134-533, it shall be certified by the town clerk and shall be filed in the clerk's office, and a certified copy shall be mailed to the landowner. Where approval has been granted, the approval shall be noted on the zoning map maintained in the office of the town clerk.
- (b) Approval of a plan shall not qualify a plat of the planned unit development for recording or authorize development or issuance of any building permits. A plan which has been approved by the Town Council may only be modified by PUD approval as outlined in the process identified in this Article.

Secs. 134-535--134-560. Reserved.

Section 7. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Subdivision III, Final Approval, Section 134-561, Application, by eliminating said section.

Section 8. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-562, Refusal to grant for variations in tentative approved plan, by eliminating said section.

Section 9. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-563, Certification; filing of record plat, by renumbering 134-563 to 134-561 and to read as follows:

Sec. 134-561. Certification; filing of record plat; modification before completion of development.

A plan for a planned unit development or any part thereof, or an amendment thereto, that has been given approval by the town council shall be so certified without delay by the town clerk, and a record plat, if required, shall be filed on record forthwith in the office of the county clerk in accordance with F.S. ch. 177 before any development shall take place in accordance therewith. Upon the filing on record of the plan, all other ordinances and subdivision regulations otherwise applicable to the land included in the plan shall cease to apply thereto.

Section 10. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-564, Abandonment; termination, by renumbering from 134-564 to 134-562 and to read as follows:

Sec. 134-562. Abandonment; termination.

If a plan for a planned unit development or portion thereof, or an amendment thereto, is given approval and thereafter the landowner abandons the plan or a portion thereof that has been approved or if the landowner fails to commence the planned unit development within the timeframe identified in the planned unit development resolution, such approval shall terminate and be deemed null and void unless such time period is extended by the town upon written request of the landowner.

Secs. 134-563--134-590. Reserved.

Section 11. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-651, Establishment of special exception planned unit developments, to read as follows:

Sec. 134-651. Establishment of special exception planned unit developments.

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| The following special exception planned unit development districts are established and shall be subject to all applicable requirements of this article and of the district in which they are located. In addition, the following planned unit developments shall be required to meet all of the requirements as set forth for special exception in Secs. 134-226 through 134-229 and site plan review in Sec. 134-326 through Sec 134-330. PUD-1 | Single-family development |
| PUD-2 | Residential mix development |
| PUD-3 | Mixed use development |
| PUD-4 | Historical preservation residential development |
| PUD-5 | Historical preservation mixed use development |

Section 12. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-652, Districts where permitted, to read as follows:

Sec. 134-652. Districts where permitted.

Planned unit developments as established by this article may be permitted as special exceptions only in specifically designated districts as follows:

- (1) *PUD-1, single-family development.* Permitted only in portions of R-B districts which are in close proximity to intensive developments in an R-C, R-D(1) or R-D(2) district.
- (2) *PUD-2, residential mix development.* Permitted only in R-C, R-D(1) and R-D(2) districts.
- (3) *PUD-3, mixed use development.* Permitted only in R-C, R-D(1) and R-D(2) districts.
- (4) *PUD-4, historical preservation residential development.* Permitted only in R-AA, R-A and R-B districts.

(5) *PUD-5, historical preservation mixed use development.* Permitted only in that portion of the C-TS district in the five Palm Beach acres bounded between Royal Poinciana Way and Sunset Avenue, and Bradley Place and North County Road.

Section 13. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-653, Minimum area requirements, to read as follows:

Sec. 134-653. Minimum area requirements.

Minimum area requirements for special exception planned unit developments are as follows:

(1) *PUD-1, single-family development.* One contiguous acre undivided by any public right-of-way or easement.

(2) *PUD-2, residential mix development.* Ten contiguous acres undivided by any public right-of-way or easement.

(3) *PUD-3, mixed use district.* Twenty contiguous acres undivided by any public right-of-way or easement.

(4) *PUD-4, historical preservation residential development.* One or more contiguous acres undivided by any public right-of-way or easement.

(5) *PUD-5, historical preservation mixed use development.* No minimum size requirement, however the maximum lot size shall be 1.5 Palm Beach acres. No variance shall be allowed which increases the maximum size of a PUD-5 lot.

Section 14. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-654, Residential density, to read as follows:

Sec. 134-654. Residential density.

Residential densities in special exception planned unit developments permitted under this article shall be as follows:

| PUD District | Use District | Maximum Density Permitted under PUD* (units per acre) |
|--------------|--------------|---|
| PUD-1 | R-B | 4 |
| PUD-2 | R-C | 6** |
| | R-D(1) | 13** |
| PUD-3 | R-C | 6** |
| | R-D(1) | 13** |
| | R-D(2) | 13** |
| PUD-4 | R-AA | 2/3** |
| | R-A | 2** |

| | | |
|-------|---------|---|
| | R-B | 4** |
| PUD-5 | C-TS*** | 10 with the ability to reach 13 if all required off-street parking is in a sub-basement or there is a 50 percent reduction in existing density. |

* See section 134-656 for conversion of nonresidential uses to equivalent dwelling unit amounts for the purpose of calculating gross density.

** See section 134-655 for special provisions covering densities in those portions of the planned unit development site adjoining lower density residential districts.

*** Only that part of the C-TS zoning district bounded between Bradley Place and North County Road and Royal Poinciana Way and Sunset Avenue.

Section 15. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-656, Permitted land use, to read as follows:

Sec. 134-656. Permitted land use.

The uses permitted in planned unit developments shall be as follows:

(1) *PUD-1.*

a. Any use permitted in the R-AA large estate residential district, R-A estate residential district or R-B low density residential district; provided, however, that such uses are grouped in cluster development in accordance with division 5 of this article.

b. Townhouses, subject to applicable requirements in subdivision II of division 10 of article VIII of this chapter.

(2) *PUD-2.*

a. Any use permitted in the R-C medium density residential district.

b. Newsstands, dining rooms and personal service uses for the convenience of residents shall be permitted in such district; provided, however, that no exterior or external advertising of such facilities shall be permitted nor shall the gross floor area devoted to such uses exceed ten percent of the gross ground floor area of buildings included within the planned unit development.

(3) *PUD-3.*

a. Any use permitted in the R-D(1) moderate density residential district.

b. In PUD-3 developments containing 100 or more residential dwelling units, commercial uses permitted in the C-TS, C-WA, C-OPI or C-PC commercial district may be permitted; provided, however, that any commercial development in the planned unit development shall front on a major thoroughfare and further provided that such commercial development, including its required parking area, shall not occupy more than 20 percent of the gross floor area of the planned unit development. For the purpose of calculating gross density, as set forth in section 134-620, the following land use measurements shall be equivalent to a dwelling unit as defined:

| Land Use Type | Unit of Measurement | Equivalence to One Dwelling Unit of Gross Density |
|--|---------------------|---|
| Hotels, motels or similar places of transient occupation | Number of bedrooms | Two bedrooms |
| Principal commercial uses | Total floor area | 750 square feet |
| Accessory commercial uses | Total floor area | 1,500 square feet |
| All other nonresidential floor spaces | Total floor area | 1,000 square feet |

(4) *PUD-4.*

Any use permitted in the R-AA large estate residential or R-A estate residential district, provided the uses are developed compatibly with an historical or architecturally significant structure or premises.

(5) *PUD-5.*

Any permitted or special exception uses within the C-TS district with the exception of non-profit cultural centers, professional and studio type schools, public and private parking lots, storage garages, parking garages which are not part of a principal use, auto rental lots, private social, swimming, golf, tennis and yacht clubs, public or private academic schools, drive-in business service facilities, churches, synagogues and other houses of worship, roof deck parking and museums. Residential uses are allowed by special exception on the first floor on those platted lots that front on the south side of Sunset Avenue within the PUD-5 area which are identified as Lots 31 through 65, Floral Park.

Residential access to dwelling units shall be physically separated from commercial uses in a mixed use building. In addition, in mixed commercial/residential buildings, the applicant shall use noise reduction construction techniques such as additional insulation and storm rated windows in both the commercial and residential units to reduce possible negative impacts between those types of uses.

Section 16. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-657, Open Space, to read as follows:

Sec. 134-657. Open space.

(1) *PUD-1 through PUD-4.* A minimum of 15 percent of a planned unit site area shall be developed as common open space. Parking areas and vehicle access facilities shall not be considered in calculating such common open space. In no event, however, shall the lot coverage of all structures located within a planned unit development site exceed 35 percent of the gross area included within such planned unit development site.

(2) *PUD-5.* There is a minimum 30 percent public open space requirement. Public open space is defined as landscape or hardscape areas, including vias, dedicated for use of the general public. Said public open space shall be open to the sky and not closed for public access at any time. Public open space shall not be used for off-street parking or loading, and the minimum landscape open space within the public open space shall be determined during the approval process of the PUD, special exception

and site plan review process by the Town Council. Variances shall not be permitted from the minimum 30 percent public open space requirement.

Section 17. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-687, General standards, to read as follows:

Sec. 134-687. General standards.

(a) The planned unit development shall be consistent with the regulations governing planned unit developments as set forth within division 3 of this article.

(b) The planned unit development plan shall be consistent with the Palm Beach Comprehensive Plan.

(c) The planned unit development shall provide for an effective and unified treatment of the development possibilities on the project site making appropriate provision for the preservation of scenic features and amenities of the site and the surrounding areas. For the PUD-5, this shall include the preservation of the Main Street appearance with separations and building breaks which are currently prevalent for the Contributing and noncontributing buildings in the PUD-5 area.

(d) The planned unit development shall be planned and developed to harmonize with any existing or proposed development in the area surrounding the project site.

(e) The historical preservation mixed use planned unit development (PUD-5) shall be complimentary to the architecture, character, size, height and bulk of land uses and the historically contributing buildings which exist on the five Palm Beach acres bounded between Royal Poinciana Way and Sunset Avenue, and Bradley Place and North County Road. Bradley House Hotel, as a Contributing building, shall only be used as an example of architecture and design and not height and bulk when looking at the compatibility of development and redevelopment.

Section 18. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-688, Design standards, to read as follows:

Sec. 134-688. Design standards.

(a) In a planned unit development, all buildings in the layout and design shall be an integral part of the development and shall have convenient access to and from adjacent uses and blocks.

(b) Individual buildings shall be related to each other in design, masses, materials, placement and connections to provide a visually and physically integrated development. In addition, proposed buildings and/or structures utilizing the PUD-5 shall be complimentary to the architecture, character, size, height and bulk of the Historically and Architecturally Contributing buildings, as identified in the Contributing Buildings Report, and land uses within the five Palm Beach acres bounded between Royal Poinciana Way and Sunset Avenue, and Bradley Place and North County Road. Bradley House Hotel, as a Contributing building, shall only be used as an example of architecture and design and not height and bulk when looking at the compatibility of development and redevelopment.

(c) Treatment of the sides and rear of all buildings within the planned unit development group shall be comparable in amenity and appearance to the treatment given to street frontage of these same buildings.

(d) The design of buildings and the parking facilities shall take advantage of the natural features, topography of the project site, where appropriate.

(e) All building walls shall be so oriented as to ensure adequate light and air exposures to the room within.

(f) All buildings shall be arranged so as to avoid undue exposure to concentrated loading or parking facilities. Wherever possible, loading and parking facilities shall be so oriented as to preserve visual and audible privacy between adjacent buildings.

(g) All buildings shall be arranged so as to be accessible to emergency vehicles.

(h) All PUD-5 development or redevelopment shall (i) preserve and enhance the unique quality and "Main Street" character of the area which is captured in the Contributing Building Report and PUD-5 Design Guidelines, which are adopted by reference, so as to support its unique heritage; (ii) encourage small scale retail, entertainment and office establishments providing for the frequently recurring needs of the townspeople in a mixed-use environment with an accessory or secondary, small scale residential component; (iii) create a pedestrian friendly environment, which shall include, wherever possible, pedestrian access between Royal Poinciana Way and Sunset Avenue, through vias; and (iv) encourage interior courtyards and pedestrian friendly public open spaces. As such, all applications for PUD-5 development or redevelopment shall have a site elevation plan of the proposed development or redevelopment, including a streetscape of the proposed development and surrounding buildings together with an appropriately scaled model.

Section 19. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-689, Landscape design standards, to read as follows:

Sec. 134-689. Landscape design standards.

(a) In a planned unit development, landscape treatment for plazas, roads, paths, service and parking areas shall be designed as an integral part of a coordinated landscape design for the entire project area.

(b) Primary landscape treatment shall consist of shrubs, ground cover, and shade trees and shall combine with appropriate walks and street surfaces to provide an attractive development pattern. Landscape materials selected should be appropriate to local growing conditions.

(c) Whenever appropriate, existing trees shall be conserved and integrated into the landscape design plan.

(d) Wherever possible all streets bordering the project area shall be planted at appropriate intervals with trees.

Section 20. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-690, Circulation system design standards, to read as follows:

Sec. 134-690. Circulation system design standards.

(a) In a planned unit development, there shall be an adequate, safe and convenient arrangement of pedestrian circulation facilities, roadways, driveways, off-street parking and loading space.

(b) Roads, pedestrian walks and open space shall be designed as integral parts of an overall site design. They shall be properly related to existing and proposed buildings and appropriately landscaped.

(c) Buildings and vehicular circulation with open spaces shall be arranged so that pedestrians moving between buildings are not unnecessarily exposed to vehicular traffic.

(d) Landscaped, paved and comfortably graded pedestrian walks shall be provided along the lines of the most intense use, particularly from building entrances to streets, parking areas and adjacent buildings.

(e) Materials and design of paving, lighting fixtures, retaining walls, fences, curbs, benches, etc., shall be of good appearance, easily maintained and indicative of their function.

(f) PUD-5 development or redevelopment shall not have curb cuts and vehicular access from Royal Poinciana Way, Bradley Place or North County Road. All curb cuts and vehicular off-street parking access shall be from Sunset Avenue.

Section 21. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-691, Parking and loading design standards, to read as follows:

Sec. 134-691. Parking and loading design standards.

(a) In a planned unit development, parking facilities shall be landscaped and screened from public view to the extent necessary to eliminate unsightliness and monotony of parked cars.

(b) Pedestrian connections between areas and buildings shall be via special pedestrian walkways and/or elevators.

(c) Parking facilities shall be designed with careful regard to orderly arrangement, landscaping, ease of access, and shall be developed as an integral part of an overall site design.

(d) Any above grade loading facility should be screened from public view to the extent necessary to eliminate unsightliness.

(e) Parking and loading facilities shall be provided in accordance with divisions 2 and 3 of article IX of this chapter with the exception of the PUD-5 which shall be in accordance with the requirements in Sec. 134-69(f) and sub-section (f) of this section.

(f) PUD-5 development or redevelopment shall meet the parking and loading requirements in division 2 and 3 of Article IX of this chapter with the exception of the required off-street parking. The PUD-5 off-street parking requirements are as follows:

1. Residential and existing hotel uses shall be required to provide the required off-street parking as provided for in division 2 of Article IX except when said redevelopment results in at least 50 percent reduction from the density that previously existed. In such case, the applicant shall not be required to provide any additional off-street parking for the redevelopment other than what existed prior to the redevelopment.

2. Off-street parking for replacing commercial square footage and/or intensity of use that existed prior to redevelopment and for first floor building area to be utilized as retail space shall not be required. Any existing off-street parking shall be required to be recaptured, except as provided for in subsection 4. Any increase in the demand for off-street parking for additional commercial square footage and/or intensity of use, other than first floor retail use, based on Article IX, OFF-STREET PARKING AND LOADING in Chapter 134 of the Code shall be required, except as provided for in sub-sections 3 and 4 of this section.

3. PUD-5 development and redevelopment shall be exempt from the off-street loading requirements in Sec. 134-2211. However, the applicant shall demonstrate that there is adequate loading and unloading zones that are not on Royal Poinciana Way to service the proposed PUD-5.

4. In the PUD-5, properties fronting on Royal Poinciana Way should be encouraged to eliminate parking lots and curb cuts that front on the street and curb cuts which interfere with the flow of pedestrian traffic. Accordingly, any parking lots and associated curb cuts fronting on Royal Poinciana Way that are replaced by street fronting, one story retail space, and set aside 30% of the prior parking lot area as public open space, need not provide onsite parking for the retail space that replaces the parking area.

Section 22. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, creating Section 134-692, Lot, yard and bulk requirements, to read as follows:

Sec. 134-692. Lot, yard and bulk requirements.

(a) With the exception of the open space in Sec. 134-657 and density requirements in Sec. 134-654, the lot, yard and bulk requirements for the PUD-1, PUD-2, PUD-3 and PUD-4 are intended to meet the requirements in the district in which the PUD is proposed.

(b) The lot, yard and bulk requirements for PUD-5 applications are as follows. Variances shall not be permitted from the lot coverage, height, overall height and public open space requirements as set forth herein.

1. Maximum density: 10 dwelling units per Palm Beach acre with a maximum of 13 dwelling units per Palm Beach acre if one of the following are met (Sec. 134-654):
 - a. All required off-street parking is in a sub-basement.
 - b. The existing density is decreased by not less than 50%.
2. Maximum height:

| | |
|----------------------|---|
| One-story portion: | 15 feet |
| Two-story portion: | 25 feet |
| Three-story portion: | 35 feet - provided, however, that buildings on Royal Poinciana Way designated in the Contributing Building Report as Contributing, may not exceed two stories or 25 feet in height. |
3. Maximum overall height: An additional 3 feet for a parapet on a flat roof building and an additional 8 feet for a pitched roof building.

4. Maximum lot coverage:
- One story portion: 70 percent
 - Two story portion: 70 percent
 - Three story portion: 35 percent

5. Setbacks: All setbacks shall be determined through the PUD approval process.

6. Public Open Space: There is a minimum 30 percent public open space requirement. Public open space is defined as landscape or hardscape areas, including vias, dedicated for use of the general public. Said public open space shall be open to the sky and not closed from public access at any time. Public open space shall not be used for off-street parking or loading, and the minimum landscape open space within the public open space shall be determined during the approval process of the PUD, special exception and site plan review process by the Town Council.

Section 23. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, creating Section 134-693, Sunset Provision, to read as follows:

Sec. 134-693. Sunset Provision.

The PUD-5 Regulations within sec. 134-476 through sec. 134-693 and sec. 134-1109 shall sunset on September 11, 2018, unless the town council by a majority vote approves an extension of these regulations at a regularly scheduled town council meeting prior to their expiration.

Section 24. Amend ARTICLE VI, DISTRICT REGULATIONS, Section 134-1109, Special exception uses, to read as follows:

Sec. 134-1109. Special exception uses.

- (a) The special exception uses require a site plan and review as provided in Article III of this chapter. The special exception uses in the C-TS town-serving commercial district are as follows:
 - (1) Planned Unit Development (PUD-5) for an area of the District bounded between Royal Poinciana Way and Sunset Avenue and Bradley Place and North County Road.

Section 25. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, incorporating by reference the attached Palm Beach PUD-5 Design Guidelines and Contributing Building Report: The Historic Character Of Royal Poinciana Way, as provided for in that above amendments.

Section 26. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 27. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 28. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 29. Effective Date.

This Ordinance shall become effective 32 days after the state land planning agency notifies the Town that the plan amendment package relating to Ordinance No. 5-2013 is complete or, in the event of a timely challenge to the amendments contained within Ordinance No. 5-2013, upon the state land planning agency or the Administration Commission having entered a final order determining the adopted amendments contained within Ordinance No. 5-2013 to be in compliance, all as provided in Florida Statute 163.3184.

PASSED AND ADOPTED in regular, adjourned session assembled on first reading on the 9th day of October, 2013, and second and final reading on this 13 day of November, 2013.

Recused
Gail L. Coniglio, Mayor

David A. Rosow
David A. Rosow, Town Council President

Recused
Robert N. Wildrick, Council President Pro Tem

William J. Diamond
William J. Diamond, Town Council Member

Richard M. Kleid
Richard M. Kleid, Town Council Member

Michael J. Pucillo
Michael J. Pucillo, Town Council Member

ATTEST:

Susan A. Owens
Susan A. Owens, Town Clerk, MMC

Ordinance No. 6-2013

Page 17 of 17

VII Proposed Advisory Opinions

RQO 14-003 Lee Forshner

An employee of Palm Beach County Fire Rescue asked whether he could sell a “training prop” he designed and manufactured on his own time with his own materials through his outside business to other federal, state, regional, local or municipal government entities excluding Palm Beach County.

Staff Submits the following for COE Review: A county or municipal employee may contract to sell property or services to any governmental entity other than the entity that employs him without violating the PBC Code of Ethics. Section 2-443(d), *Contractual relationships*, prohibits only contracts and transactions for goods and services with an official or employee and their respective county or municipality, where no exception to this prohibition applies. It does not prohibit or regulate contracts and transactions for goods and services between an official and employee and any other governmental entity.

February 7, 2014

Mr. Lee Forshner
Palm Beach County Fire Rescue
Training and Safety Division
405 Pike Road
West Palm Beach, FL 33411-3815

Re: RQO 14-003
Contractual Relationships

Dear Mr. Forshner,

The Palm Beach County Commission on Ethics considered your request for an advisory opinion, and rendered its opinion at a public meeting held on February 6, 2014.

YOU ASKED in your submission dated January 27, 2014 whether you, as an employee of Palm Beach County, may sell a training prop you have designed to other federal regional, local or municipal government entities. Staff sought and received additional information from you regarding this matter.

IN SUM, the Code of Ethics does not prohibit you from selling a training prop which you designed and manufactured on your own time with your own materials through your outside business to state, federal regional, local or municipal government entities excluding Palm Beach County. Thus, it would not constitute a prohibited contractual relationship under Sec. 2-443(a)(d) of the Code of Ethics. In this opinion, the COE addresses only matters involving the Code of Ethics and does not express any opinion on matters of intellectual property rights, the use of employer time or materials, or other matters in connection with the creation and marketing of the training prop.

THE FACTS, as we understand them, are as follows:

You are an employee of Palm Beach County Fire Rescue. On your off-duty time, you have designed a training prop designed for use in the fire service. Your employer has also given you the opportunity to use your design and build this prop for Palm Beach County while on duty with supplies provided by it. You would like, through your separate business on your own time using your own materials, to produce the item for sale to other state, federal regional, local or municipal government entities. You will not sell it to Palm Beach County or any agency or entity acting for the county.

THE LEGAL BASIS for this opinion is found in Sec. 2-442(a)(d) of the code. This section regulates contractual relationships.

You are not proposing to "enter into any contract or other transaction for goods or services" with your employer, Palm Beach County. Because you propose selling the prop through your outside business only to other state, federal regional, local or municipal government entities, this would not be "Prohibited conduct" under Sec. 2-443(a)(d) of the code.

The COE does not opine or express any opinion on matters of intellectual property rights, potential use of employer time or materials to create a training prop for Palm Beach County, or potential personnel issues surrounding this matter.

IN SUMMARY, you are not prohibited from selling a training prop which you designed and manufacture on your own time with your own materials through your outside business to state, federal regional, local or municipal

government entities excluding Palm Beach County. Selling the prop to other entities only (not your employer, Palm Beach County) does not violate Sec. 2-443(a)(d) of the code.

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

Please feel free to contact me at 561-355-1922 if I can be of any further assistance in this matter.

Sincerely,

Steven P. Cullen,
Executive Director

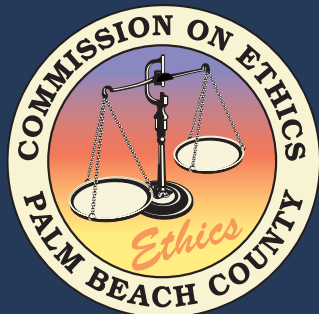
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PROPOSED

2013



Palm Beach County Commission On Ethics

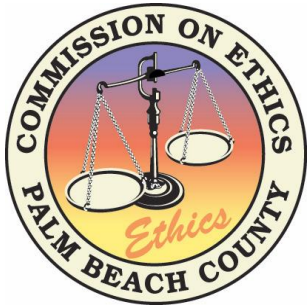


2013 ANNUAL REPORT

PALM BEACH COUNTY COMMISSION ON ETHICS



300 NORTH DIXIE HIGHWAY
WEST PALM BEACH,
FLORIDA 33401



Palm Beach County Commission on Ethics

Commissioners

Robin N. Fiore, Chair
Patricia L. Archer, Vice Chair
Salesia V. Smith-Gordon
Michael T. Kridel

Executive Director

Steven P. Cullen

January 2, 2014

Chair Robin N. Fiore
Palm Beach County Commission on Ethics
300 N. Dixie Highway, Suite 450
West Palm Beach, FL 33401

Dear Madam Chair,

As you know, the Commission on Ethics (COE) has completed its third full calendar year of operation. Established in May, 2010, the COE has been given the legal responsibility to review, interpret, render advisory opinions and enforce the Countywide Code of Ethics, County Post-employment and Lobbyist Registration Ordinances. Additional duties include ongoing ethics training for public officials, employees, vendors, lobbyists and their principals as well as the delivery of community outreach programs.

With these duties and mandates in mind, I am pleased to present the 2013 annual report to the Palm Beach County Commission on Ethics.

In 2013, COE staff processed 23 advisory opinions, 14 sworn complaints and 24 Inquiries based on anonymous or attributed unsworn "tips" and other information provided by the citizens of Palm Beach County. Additionally, staff handled 76 advisory opinion requests by referring the requesting party to prior COE opinions directly addressing the submitted issues. The office hot-line received 640 calls and visits to the COE website exceeded 35,000 for the year. COE staff made 75 referrals to other local, state or federal governmental agencies. We are currently staffed with four full-time employees. We anticipate filling the vacant staff counsel position in the first quarter of 2014.

Community collaborations, training and outreach remain critical components of our mission. In 2013, staff conducted over 58 live training sessions for public employees, officials, vendors and lobbyists as well as 9 community presentations, forums, workshops and other events before civic and social organizations, non-profits and professional associations. Over 100 training DVDs have been distributed. After much research and collaboration, staff created this year a new interactive training platform. With less technical language, more examples and audience involvement, the training has been very well received. A comprehensive 6 hour training program for Commissioners has been delivered. Staff also completed a 3 hour training for volunteer advocates with Florida Bar CLE credit awarded.

COE Staff continues to participate in Palm Beach County *Ethics Awareness Day*. Staff will serve as judges in the "Ethics Bowl" involving debate teams selected by the Palm Beach County School Board to participate in the National Ethics Bowl finals. We continue to maintain and develop a close working relationship with the Center for Applied Ethics at Palm Beach State College. These alliances, along with a broad outreach to community groups and organizations, provide a solid foundation for educating the public as to the functions and duties of the COE. It is hoped that these connections and efforts place the COE in the forefront of national local ethics commissions.

300 N. Dixie Highway, Suite 400, West Palm Beach, FL 33401 561.355.1904 FAX: 561.355.1915
Hotline: 877.766.5920 E-mail: ethics@palmbeachcountyethics.com
Website: www.palmbeachcountyethics.com

We continue to maintain a vibrant and viable virtual and social media presence including Facebook – www.facebook.com/pbccoe and Twitter – [@pbccoe](https://twitter.com/pbccoe). In addition to providing web-based training modules for public officials, employees and vendors, we maintain a public database for annual and quarterly gift reports, voting conflict of interest disclosures and outside employment waivers. We also continue to maintain links to Palm Beach County maintained databases, including lists of active registered vendors, registered lobbyists and their principals, as well as annual lobbyist expenditure reports. All sworn complaints, related documents and live hearings are posted to our website once the cases become public record. Additionally, all COE advisory opinions are posted and catalogued by subject matter. Our updated website is fully searchable including all processed complaints and advisory opinions. From our inception, through December 31, 2013, the commission has issued 282 advisory opinions.

Throughout 2012 we continued our efforts to save taxpayer dollars by utilizing cost saving initiatives such as the COE Volunteer Advocate Program. The Legal Aid Society of Palm Beach County graciously helped us expand our roster this year. Experienced trial lawyers continue to volunteer their time to process complaints before the ethics commission on a pro bono basis. By continuing our careful stewardship in regards to staff, operational and procurement costs, the COE continues to come in under budget, resulting in a fiscal year 2012-2013 savings of approximately \$70,000.

Our move in June to the Historic 1916 Palm Beach County Courthouse places us in proximity to the center of government in Palm Beach County. It thus provides new opportunities for interaction and visibility.

This year, the COE underwent a legislatively mandated review by the Office of Program Policy Analysis & Government Accountability (OPPAGA). All of the documentation, emails, reports and responses are found at: <http://www.palmbeachcountyethics.com/OPPAGA.htm>. We are grateful for OPPAGA's finding that "The commission was created using several best practices and has achieved a number of milestones." The COE, both before and after the OPPAGA Report, has instituted a number of structural and procedural changes in its practices. These changes are detailed in Page 25 of this Report. The Ordinances under which the COE operates control its practices. Although the COE or other entities may propose changes to these laws, only the Palm Beach County Commission may change them. Existing Ordinances, Rules and practices contain many substantive and procedural safeguards designed to protect the due process rights of those accused of violating the Code of Ethics or other laws. The COE and its staff have always afforded full due process to respondents, and will continue to do so, while following all of the duties and mandates of the Ordinances.

On the legislative front, we will monitor this year the possibility that the state legislature may take up a bill addressing local ethics commissions.

I am personally privileged and pleased to serve as your Executive Director since April 2013. Former Executive Director Alan S. Johnson, in last year's report, predicted that I would "...find a vibrant, efficient, effective and fiscally prudent operation dedicated to increasing awareness of, and compliance with, county ethics rules." He was right. His great work, along with that of many Commissioners, staff, and stakeholders has served the COE well. I intend to work hard with staff over the next year to build on that solid foundation and make the COE even stronger. The citizens of Palm Beach County deserve no less. Thank you your support of our operations and your ongoing efforts to promote the highest standard of public service within Palm Beach County.

Sincerely,



Steven P. Cullen,
Executive Director

SPC/gal

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MISSION STATEMENT

The mission of the Palm Beach County Commission on Ethics is to foster integrity in public service, to promote the public's trust and confidence in that service, and to prevent conflicts between private interests and public duties.

We strive to accomplish this mission by conducting ongoing educational programs, community outreach, providing clear and timely advice, and fairly and impartially interpreting and enforcing the conflict of interest and financial disclosure laws. In doing so, the commission is guided by principles of fairness, clarity, and common sense. We encourage you to spend time learning about our efforts by going to our website at www.palmbeachcountyethics.com and to contact our office with any questions or comments.

HISTORY

In framing a government which is to be administered by men over men the great difficulty lies in this: you must first enable government to control the governed, and in the next place, oblige it to control itself.

- Federalist #51

Now in its third year, the Commission on Ethics is an independent organization that administers and enforces the Palm Beach County Code of Ethics, Lobbyist Registration Ordinance and Post Employment Ordinance. The Code of Ethics is designed to help ensure that public officials and employees perform their public responsibilities impartially, do not use their public positions for private gain, and to foster public confidence in the integrity of local government. The Lobbyist Registration Ordinance was enacted to regulate certain lobbying activity and enhance lobbying transparency by establishing a central lobbyist registration and expenditure reporting system. While the commission has statutory license to punish offenders, commission staff strives to educate public employees, public officials, vendors, and lobbyists on how the new rules will affect governance and implementation of policy throughout the county.

Palm Beach County has a current estimated population of 1.35 million residents and has grown significantly in the past decade in terms of size and diversity. The county has over 6,000 full and part-time employees and approximately 1,000 volunteer officials staffing 95 committees and boards. There are 38 municipalities within Palm Beach County who are served by over 9,000 full and part time employees, 258 municipal boards and committees with more than 1,800 volunteer advisory board members, and 198 elected officials.

As recommended by a 2010 grand jury convened to monitor the progress of the new ethics measures, a county-wide referendum was included on the November 2010 ballot. Voters overwhelmingly supported the measure to place the Commission on Ethics provisions into the county charter, expanding the jurisdiction of the ethics commission to all local municipal governments. In 2012, the Lobbyist Registration Ordinance was adopted by 35 of the 38 municipalities within the County. Commission staff stands ready to inform citizen groups, county and municipal governments alike about the services and benefits of the Commission on Ethics and Code of Ethics initiatives.

AN INDEPENDENT ETHICS INSTITUTION

- Ethics is knowing the difference between what you have the right to do and what is the right thing to do.*
- Justice Potter Stewart

The Ethics Commission oversees, administers and enforces local governmental ethics laws; receives and investigates complaints; provides formal advice to persons who fall within the jurisdiction of the Commission; conducts training sessions for the community, municipal and county employees, and vendors; and proposes governmental ethics law reform.

Governmental ethics laws include the Ethics Ordinance, the Lobbyist Registration Ordinance, and the Post Employment Ordinance. The Ethics Commission accepts sworn complaints regarding alleged violations of these laws and protects individuals from retaliation for reporting violations.

Persons who fall within the jurisdiction of the Ethics Commission include:

- County and Municipal Elected Officials
- County and Municipal Advisory Board Members and other non-elected officials
- County and Municipal staff and contract employees
- Lobbyists and their principals
- Vendors
- Entities subject to jurisdiction pursuant to contract or Memoranda of Understanding

Our specific statutory authority is derived from Palm Beach County Code §2-254. This ordinance grants the Ethics Commission the power to review, interpret, enforce and render opinions regarding the above-mentioned County ordinances.

The key to our ethics commission is independence. In fact, by definition the Commission on Ethics is an independent office. The Palm Beach County Board of County Commissioners Organizational Structure chart reflects this independence by designating the Executive Director as an “Independent Official.” Ethics commissioners cannot be removed or otherwise influenced by the County Commission and are appointed by various non-political civic, educational and professional organizations. The position of commissioner is non-partisan and non-political. Appointees may not participate in or contribute to a candidate for state or local office or allow his or her name to be used in support of or against a candidate or ballot issue. Appointees may not participate in or contribute to political action committees, campaign for office or referenda, and may not hold office in a political party or committee.

ABOUT THE COMMISSION

The Commission on Ethics is composed of five volunteer members who serve staggered terms of four years each. Each member of the commission on ethics must also have an outstanding reputation for integrity, responsibility, and commitment to serving the community. Moreover, as representatives of Palm Beach County, appointments are made with an eye towards the racial, gender and ethnic make-up of the community.

Members are appointed by the following individuals or institutions:

- **President of the Palm Beach County Association of Chiefs of Police**- one appointment with the following qualifications: A former law enforcement official with experience in investigating white collar crime or public corruption.
- **President of the F. Malcolm Cunningham, Sr. Bar Association, the President of the Hispanic Bar Association of Palm Beach County and the President of the Palm Beach County Bar Association** – one shared appointment with the following qualifications: An attorney with experience in ethics regulation of public officials and employees.
- **President of Florida Atlantic University (FAU)** - one appointment with the following qualifications: A faculty member who teaches at an institution of higher education with a campus located in the county and who has taught a course in professional legal ethics or has published or performed services in the field of professional legal ethics.
- **President of the Palm Beach Chapter of the Florida Institute of Certified Public Accountants (CPA)** – one appointment with the following qualifications: A member with at least five (5) years experience as a CPA with forensic audit experience.
- **Palm Beach County League of Cities** - one appointment with the following qualifications: A person who has served as a former elected official for a governmental entity in the county.

This calendar year, two new commissioners were seated. Commissioner Michael Kridel was appointed by the President of the Palm Beach Chapter of the Florida Institute of Certified Public Accountants. Commissioner Salesia V. Smith-Gordon was appointed by the Presidents of the three local bar associations.

THE COMMISSIONERS

Robin N. Fiore, Ph.D., Chair

Dr. Fiore joined the University of Miami Ethics Program at the University Of Miami Miller School Of Medicine in 2010. Previously, she served as the Adelaide R. Snyder Professor of Ethics at Florida Atlantic University. Dr. Fiore specializes in biomedical ethics and professional ethics. She has served as an ethics consultant or ethics advisory committee member for a number of governmental agencies, including the Florida Public Service Commission, Florida Department of Health, Florida Department of Corrections Bioethics Committee, Florida Department of Children and Families and Florida Developmental Disabilities Council.

Dr. Fiore earned her Doctorate in Philosophy from Georgetown University in Washington, DC, after post-baccalaureate studies in religion and ethics at Drew University Graduate and Theological School in Madison, New Jersey. From 1977 through 1990, she enjoyed a corporate career in employee benefits consulting.



Patricia L. Archer, Vice-Chair

Ms. Archer is a former Vice Mayor of Delray Beach and served as a Delray Beach City Commissioner from 1999-2006. Ms Archer has been a member of or served on the following boards: the Delray Beach Planning & Zoning Board, the Parking Management Advisory Board (founding member), the South County Regional Wastewater Treatment Board (former chair), the Regional Trans. Authority Citizens Advisory Committee (former vice chair), the Palm Beach County Metropolitan Planning Organization, the Florida League of Cities Inter-Government Affairs Committee, the Delray Beach Chamber of Commerce (former board of directors member), Chamber Government Affairs Committee (former co-chair), Rotary Club of Delray Beach (past president & member), AVDA (past president & member), Delray Beach Sister City Tanzania Committee (former member, lead first delegation to Tanzania), and the Sherwood Forest Home Owner’s Association (former vice president).



Ms. Archer is a graduate of the following municipal programs: Florida League of Cities Municipal Leadership, the Delray Beach Citizens Police Academy, Leadership Delray, and Palm Beach County World Class Schools.

Ms. Archer has been a Real Estate Broker/Salesperson, a Mortgage Broker, a Life & Health Insurance Salesperson and held a Series 7 Securities License

Michael S. Kridel, CPA, CFF, CITP, CFA

Michael Kridel is a Principal with Rehmann Robson and practices primarily from the Boca Raton office. He is a practice leader in the litigation services area of Rehmann Consulting and its corporate investigation group. Mr. Kridel has practiced public accounting in South Florida since graduation from The George Washington University. Prior to joining Rehmann in 2013, he was a partner with a large Palm Beach County accounting firm for nearly 17 years. Since 1974, Mr. Kridel has provided litigation services in a broad range of matters including family law, stockholder actions, financial damages, fraud detection, criminal and civil tax matters, wrongful discharge and professional malpractice. Mr. Kridel is a frequent speaker, garnering numerous awards, at national and local conferences for accountants and attorneys on topics such as litigation services, professional ethics, eDiscovery, practice management, information technology and human resources. He is a certified ethics instructor in Florida and is an online instructor in fraud courses for the University of North Carolina at Charlotte. He is a longtime member of the Editorial Review Panels of the Journal of Accountancy and Florida CPA Today. He is also active in several community service organizations and is a Partner in Education at numerous Broward County high schools. For more than twenty years, Mr. Kridel has facilitated an award-winning seminar, Ethical Decision Making in the Workplace and Society, for Broward County high schools, positively influencing nearly 1,500 students annually. He is also the profession's representative member of the Education Advisory Committee of the Florida Board of Accountancy.



Salesia V. Smith-Gordon, Esquire

Following in her mother's legal footsteps, Salesia is proudly a second generation lawyer. Completing pharmacy studies at Florida A & M University College of Pharmacy & Pharmaceutical Sciences in 1989 and becoming a registered pharmacist was not enough. In 1992 Salesia graduated from Florida State University College of Law and opened her law practice in 1993.

Salesia has handled an array of cases in federal and state courts. Her boutique civil law practice concentrates its advocacy for justice on behalf of those who have suffered serious injuries or death through the wrongdoing of others. Her education and professional experiences as a pharmacist is an asset in understanding the complex medical issues suffered by her clients. Salesia Smith-Gordon is a civil trial specialist trained and experienced in the rules and procedures of law to help protect the public against large corporations and private entities that cause serious harm for which the remedy is compensatory justice. For over 20 years as a lawyer, she has zealously represented clients with competence and integrity with professional courtesy and civility. She has won multimillion dollar awards for clients through verdict and settlement. Twice the firm has been awarded the Christian Business of the Year Award.



Salesia organizes and balances her time between family, work, civil organizations, and hobbies. Appointed by the joint bar associations in Palm Beach County, she is the first African American

female to serve on the Palm Beach County Commission on Ethics. Salesia is an active member of several professional and civic organizations to include F. Malcolm Cunningham Sr., Bar Association-President (2012-2013), National Bar Association-Life Member, and The Florida Bar Grievance Committee for the 15th Judicial Circuit Division D (chair 2010-2011), Palm Beach County Bar Association, Palm Beach Justice Association, Florida Pharmacy Association, American Society for Pharmacy Law. Her community service includes active participation in the West Palm Beach Chapter, The Links, Inc., Zeta Tau Omega Chapter, Alpha Kappa Alpha Sorority, Inc., Street Beat Inc. Board of Directors (2009-present), League of Women Voters of Florida and the Urban League of Palm Beach County. Salesia has received various honors including “25 Most Prominent & Influential Black Women in 2007” by Success South Florida magazine and named “25 of the most powerful & influential black business leaders of 2012” by Legacy Palm Beach. She is married to Lawrence Gordon, Councilman Town of Haverhill.

Commissioner appointed by the President of the Palm Beach County Association of Chiefs of Police (Currently Vacant)

COMMISSION STAFF

Steven P. Cullen, Executive Director

Coming to the position of Executive Director in April, 2013, Steve brings 30 years of legal experience. After receiving undergraduate and law degrees from the State University of New York, Steve was admitted to the Florida Bar in 1983. He is also admitted in New York, and the District of Columbia. He began his legal career representing plaintiffs in personal injury, medical malpractice, and commercial litigation with a small West Palm Beach firm. In 1987, at the age of 30, he was nominated by the Fourth District Court of Appeal Judicial Nominating Commission and appointed by Governor Martinez as a Judge of Compensation Claims.



Leaving the bench after 12 years, Steve founded a practice focused on mediation, arbitration and private judging. He has conducted in excess of 6000 dispute resolution proceedings with tens of thousands of litigants, lawyers and insurers. Throughout his career, he has served as a lecturer, panel discussant, and moot court judge for numerous professional societies. He is the author of continuing legal education materials for many groups as well as book reviews for the Florida Bar Journal. He has served on the Florida Bar Judicial Evaluation Committee, the Florida Bar Law Related Education Committee, and the Editorial Board of the Florida Bar Journal and News. As an attorney, judge, mediator and Executive Director, Steve always strives to maintain and promote the highest ethical standards. Adherence to such principles makes our personal and professional worlds better places.

Gina Levesque, Intake Manager

Ms. Levesque is a former certified law enforcement officer and worked at the Broward County Sheriff's Office for 4 years. In addition to her law enforcement experience, Ms. Levesque served as a legal assistant in the Office of the State Attorney, 15th Judicial Circuit from 1999-2010. Her duties included victim/witness coordination, expungement processing, attorney/witness travel facilitation, case file management and maintaining trial statistics.

Ms. Levesque graduated with a degree in education from Southern Illinois University at Edwardsville in 1988.



Mark Bannon, Senior Investigator

A U.S Army veteran, Mr. Bannon spent nearly 25 years serving as a deputy sheriff, supervisor and Commander with the Palm Beach County Sheriff's Office where he worked in patrol, investigative and community support assignments before retiring from policing in 2005.

He is a graduate of Florida Atlantic University, and holds a Master of Public Administration degree from Nova Southeastern University. Mr. Bannon attended law school at the University of Miami, and was admitted to the Florida Bar in 2005. He is also a former Assistant State Attorney who prosecuted criminal cases in the 15th Judicial Circuit before entering private law practice.

Mr. Bannon authored a book on criminal procedure for law enforcement officers, which was published in 2003 and has taught criminal justice courses to both police officers and undergraduate students. He brings a unique blend of law enforcement and legal education and experience to the Commission.



Anthony C. Bennett, Investigator

Joining the Commission in July of 2013, Anthony C. Bennett comes from a background that expands through both the public and private sectors.

Anthony spent 15 years serving the citizens of Broward County, Florida, while employed with the Broward County Sheriff's Office, rising through several ranks within the agency from Deputy Sheriff to eventually becoming the Executive Officer/Ombudsman to the Executive Director of the BSO's Detention and Community Control Divisions, before leaving public service for private sector employment. Anthony held an Executive level position as the Director of Corporate Security for an infrastructure company based in Washington D.C., and is a proud United States Army veteran, previously serving on active duty during the time of the first Gulf War, Operation Desert Storm.



Anthony holds a Bachelor's Degree in Criminal Justice from Lynn University (Boca Raton, FL), is a graduate of the University of Louisville's Southern Police Institute Command Officers' Development Program, Nova Southeastern University's Executive Leadership Program, and is also a graduate of the United States Army Rehabilitation Training Instructor Course (Fort McClellan, AL). Anthony holds active State of Florida certifications in both Law Enforcement and Corrections.

EDUCATION

One of the Commission's critical responsibilities is to inform county and municipal employees, officials, persons with or seeking government contracts, lobbyists and the public about the ethical standards expected by the Code of Ethics and related ordinances. Commission staff also endeavors to keep Commissioners educated as to their particular duties and responsibilities under the Ordinances.

Commissioner Training

At their own request and in response to the OPPAGA review, staff organized a comprehensive training program for Commissioners. Palm Beach County Channel 20 videotaped and edited the 6 hour training program. All staff members (Executive Director, Staff Counsel, Senior Investigator, Investigator and Intake Manager) participated in the process. Topics included a comprehensive review of all ordinances, rules and

procedures, investigative overview, advisory opinions, quasi-judicial functions, best practices during final hearings, and the Sunshine Law. Staff will augment and update these training modules as necessary.

Employee and Official Training

Ethics training is required for all county and municipal elected officials, employees, contract employees and volunteer officials and advisory board members. The Commission and its staff seek at all times to be proactive in its outreach efforts and its relationship with the community in order to increase citizen understanding and participation in government accountability efforts.

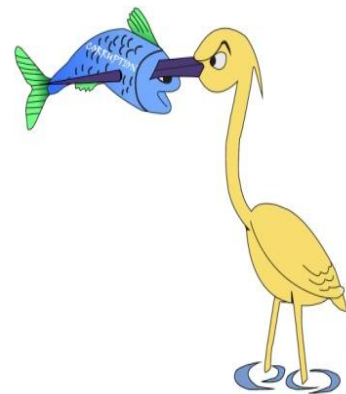
This year, staff researched the nationwide successes of other state and local ethics commissions in presenting training. Academic literature was also consulted. The most successful training programs utilize an interactive format and minimize rote legal concepts. Trainees also benefit from specific examples. Staff, therefore, created new training materials in line with these concepts. Rather than just reviewing the statutes, the new training involves the audience and seeks to empower trainees with an understanding the key concepts and rationales. “Pocket Guides” containing a summary and full text of the Code of Ethics are distributed. A new survey form, distributed to the trainees, is utilized in an effort to critique the training and continue to examine ways to improve it.

In 2013, COE staff conducted over 58 in-person trainings and provided over 100 training DVD’s to County departments and municipalities. A video version of the training is available on the website. The timeframe and method of training continues to be under the control of the municipalities.

Other Training

Staff designed and conducted other ethics training seminars or presentations for both government and non-government personnel, including new specialized trainings for vendors and lobbyists subject to the code. This past year, these included:

- Lake Osbourne Presbyterian Church
- Lantana Chamber of Commerce
- FCC Anthem Educational College
- Palm Beach County Housing Authority
- The City of Delray Beach



Staff delivered general information presentations to a number of community groups including:

- The Center for Applied Ethics, Palm Beach State College
- Palm Beach County Criminal Justice Commission, 25th Citizen’s Criminal Justice Academy
- Palm Beach County Planning Congress
- Company “A,” Delray Beach, Florida

Volunteer Advocate Training

In December, staff delivered 3 hours of training for volunteer advocates. Palm Beach County Channel 20 videotaped the session for future use. The Florida Bar awarded the program 3.5 CLE credits through June, 2015. In addition to the general ethics training, topics included applicable ordinances, rules and procedures as well as practical considerations. Former staff counsel and an experienced volunteer advocate kindly served as guest lecturers.

Web-Based Training

In addition to the employee and official training programs provided by Commission staff, an interactive online quiz is also available. The Ethics Quiz addresses fifteen of the most frequently asked questions on the Code of Ethics.

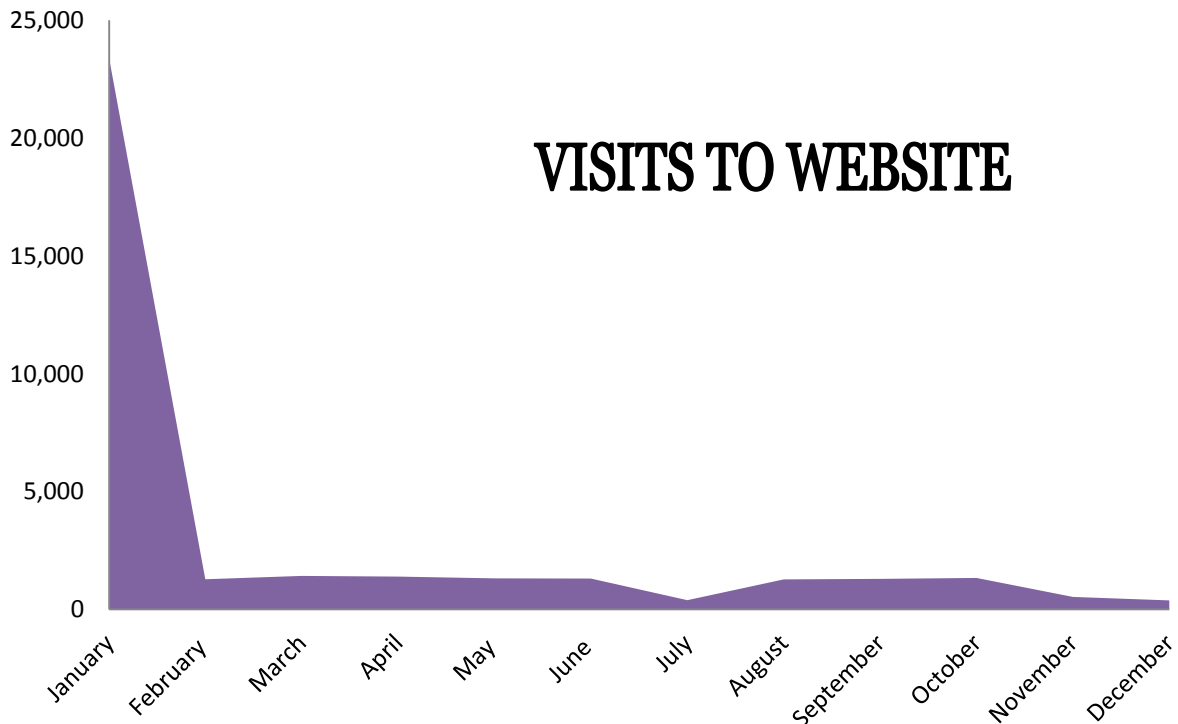
Social Media

With pages on Facebook and Twitter the public can now access the COE through their favorite new media sites. In this way, individuals as well as organizations can stay up to date with recent COE decisions, meeting dates, and related reporting on ethics within the county, state and nationwide. The COE looks forward to launching its own YouTube channel in 2013. You can contact the COE on Twitter at @PBCCOE or visit us on Facebook at www.facebook.com/PBCCOE.

WEBSITE

In 2010, Commission staff launched the COE website. This year, the entire site was rewritten with the assistance of Palm Beach County ISS. The new site employs a user-friendly format with improved capabilities and graphics. An e-book, designed to provide an interactive guide to the functions of the COE as well as the Code's major provisions, is prominently placed on the main page. The new format is compatible with wireless technology, tablets and mobile devices.

With over **35,000** visits to the website in 2013, the site is designed to enhance transparency, outreach efforts and provide public access to all relevant forms, documents, databases, advisory opinions and investigations.



Multimedia

Video of commission meetings, drafting committee meetings and channel 20 programming can be found under the Meetings tab at the top of the main page.

Complaints

All investigative materials, reports and audio files of sworn complaints referred to the COE are available for review under the Databases tab on the left side of the main page.

Training

Commission staff provides both in-person and video trainings. In addition to the over 58 in-person trainings provided to municipal and county employees and officials by COE staff and the over 100 DVD's distributed to the county and 38 municipalities, employees and officials can complete their training requirement by streaming training videos at home or at work. Under our training tab you will find a full text copy of the Code of Ethics and plain language guides for public employees and advisory board members. These trainings and guides are available not only to officials and employees, but also to members of the public who are interested in learning more about the Code of Ethics and its real world application. Employees, officials and advisory board members can always access their training acknowledgement forms via our website. Ongoing Code of Ethics training is mandatory for all public officials and employees. Most jurisdictions require ethics training every two years.

Searchable Databases

The commission website currently maintains gift reporting, outside employment and voting conflicts databases. This feature allows the public to view employee and official filings with the COE. Moreover advisory opinions are now searchable through a tab on the left side of the main page.

Other Information

Serving as a gateway to information on ethics both locally and nationwide, the COE website provides users with access and links to the Palm Beach County Inspector General, the State Attorney's Office, the Palm Beach County lobbyist registration database and county vendor database. The public, employees, and officials will always be able to access up to date information on the Code of Ethics, applicable forms and other resources on our site, including frequently asked questions.

FISCAL REPORT

In fiscal year 2012-2013, the COE expended eighty-eight percent of budgeted expenditures, a savings of four percentage points over projected savings, a savings of approximately \$70,000.

PALM BEACH COUNTY COMMISSION ON ETHICS
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES

Budget and Actual- General Revenue Funds
October 1, 2012 to September 30, 2013

REVENUES:

| | <u>Budget</u> | <u>Actual</u> | <u>Variance- Favorable</u> <u>(Unfavorable)</u> |
|-----------------------|------------------|---------------------|--|
| Ad Valorem Funding | 475,626 | 475,626 | 0 |
| Fines/Other | <u>0</u> | <u>(258.70)</u> | <u>(258.70)</u> |
| Total Revenues | \$475,626 | \$475,367.30 | (\$258.70) |

EXPENDITURES:

| | <u>Budget</u> | <u>Actual</u> | <u>Variance-Favorable</u> |
|---------------------------|------------------|---------------------|---------------------------|
| Personal Services | 477,442 | 464,652.70 | 12,789.30 |
| Operating Expenses | 63,903 | 41,463.86 | 22,439.14 |
| Capital | <u>4,500.00</u> | <u>0</u> | <u>4,500.00</u> |
| Total Expenditures | \$545,845 | \$506,116.56 | \$39,728.44 |

BALANCES BROUGHT FORWARD:

| | <u>Actual</u> | <u>Variance-Favorable</u> |
|---------------------------------------|------------------|---------------------------|
| Balance Brought Forward 2010 | 70,770 | 70,770 |
| Balance Brought Forward 2011 | 90,112 | 90,112 |
| Balance Brought Forward 2012 | (19,406) | (19,406) |
| Balance Brought Forward 2013 | (30,749) | (30,749) |
| Cumulative department reserves | \$110,727 | \$110,727 |

ADVISORY OPINIONS: ASK FIRST, ACT LATER

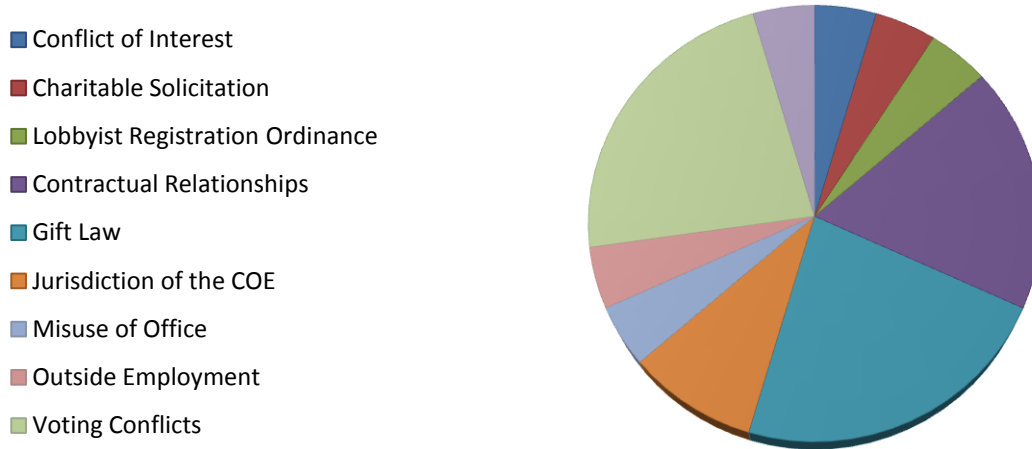
In 2013, the Commission on Ethics issued 23 advisory opinions. Staff is of the view that a steady decline in the number of requests for opinions is due to the fact that the Commission has already opined on many of the recurring questions under the code. This body of existing opinions serves as a “body of law” which may be relied upon in similar situations.

Advisory opinions are designed to assist employees, officials and advisory board members and any other persons or entities subject to the Code of Ethics or related ordinances in understanding their obligations under the codes. When in doubt about the applicability or interpretation of the ethics codes, employees, officials and advisory board members may submit the facts of their particular situation to the Commission on Ethics in writing and request an advisory opinion. As long as the facts submitted to the Commission are complete and accurate, the requesting party may rely on the Commission’s response. Advisory opinions concern only the application of the Palm Beach County Code of Ethics and do not analyze other rules or laws that may apply.

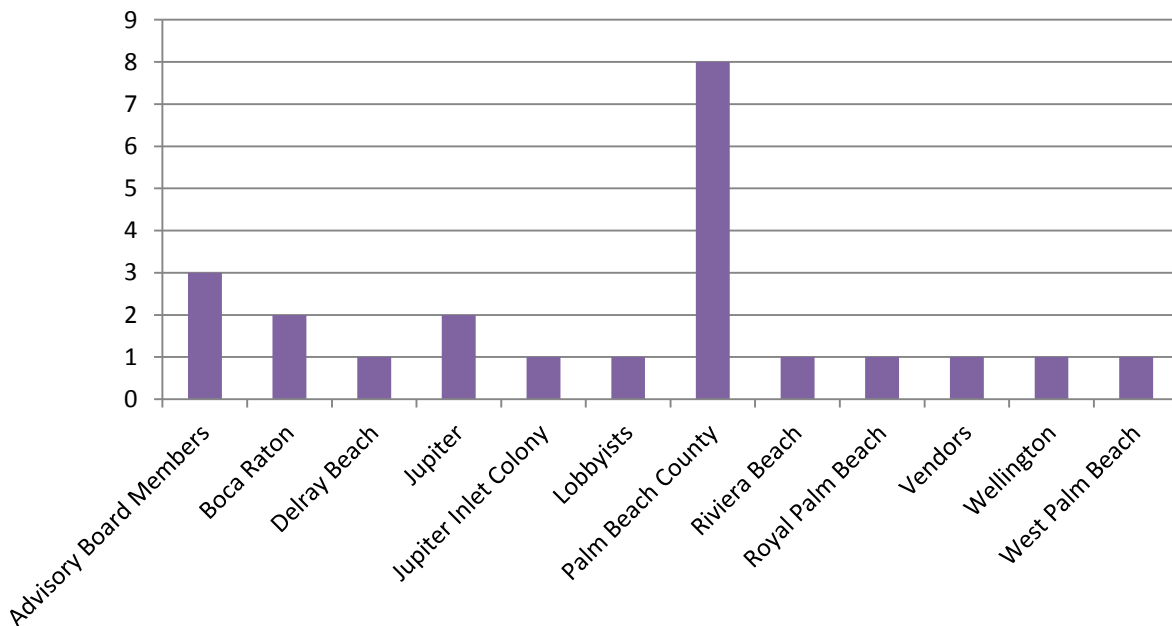
Copies of every advisory opinion issued since the Commission’s establishment are available in PDF format on the COE website. They are indexed by subject matter and are searchable by clicking on the Google search bar available at the top of each page.

As may be seen below, questions on voting conflicts, contractual relationships and misuse of office are the most common.

Advisory Opinions By Subject Matter



Advisory Opinions by Entity



SUMMARIES OF NOTABLE 2013 ADVISORY OPINIONS

The Code of Ethics is an 11 page document that does not account for every possible scenario or situation but provides overall guidance to employees, officials, government vendors, lobbyists and their principals. Accordingly, the COE must interpret the words of the code and offer common sense advice to those subject to its jurisdiction. The following summaries are based upon actual advice given in the form of advisory opinions issued by the Commission during 2013. They are included here for educational purposes only. Summaries are not intended as legal advice.¹ If you have a question, please ask commission staff to prepare an advisory opinion as each opinion is based upon the specific facts and circumstances associated with that opinion. On occasion, COE staff may refer callers to prior opinions when the issues involve settled general interpretation of the Code. Over the past year, Commission staff provided 58 referrals to existing opinions to local officials, employees, vendors, lobbyists, members of the public and the media.

Lobbyists and Lobbying

A lobbyist is defined as someone who is paid to lobby on behalf of a principal. A lobbyist can be an outside contractor or an employee whose principal responsibility is lobbying government on behalf of their employer. The Code of Ethics defines lobbying as seeking to influence a decision through oral or written communication or an attempt to obtain the goodwill of an official or employee with respect to the passage, defeat or modification of any item which may foreseeably be presented for consideration to the advisory board or governing body. The Code prohibits lobbyists from giving gifts in excess of \$100 to a person the lobbyist knows is an elected official or advisory board member of the county or municipality they are lobbying. Moreover, lobbyists engaged in lobbying activities are required to register pursuant to the Countywide Lobbyist Registration Ordinance effective April 2, 2012.

Question: An associate of a compliance firm asked whether he has to register as a lobbyist. His compliance firm contracts with investment funds and provides services to retirement system boards. Yearly, he meets with a city's retirement fund board members to review the investment portfolio. At these meetings, there is no attempt to influence any person on an issue to be presented to a municipal governing body or advisory board. ***RQO 13-010***

Answer: The city is subject to the Lobbyist Registration Ordinance. Under Sec. 2-352 of the Ordinance, a lobbyist is any person who is employed and receives payment, or who contracts for economic consideration for the purpose of lobbying on behalf of a principal. Lobbying is defined as seeking to influence a decision of a public employee or official on an issue which foreseeably will come before a municipal governing body or advisory board. Lobbyists must register unless a stated exception applies.

Here, Sec. 2-353(c) provides an exception for vendor representatives who meet with members of local governing bodies regarding issues related only to the performance of services under the contract. Because the associate here is meeting with retirement system members for the sole purpose of reviewing investment strategy, this exception applies. As such, the representative here does not need to register as a lobbyist.

¹ To the extent that these summaries differ from the language of the original advisory opinion or ordinance, the language in the ordinance and opinion controls.

Nepotism

The Anti-nepotism law within the Code of Ethics prohibits an official from appointing, employing, promoting or advancing a relative or domestic partner in the county or municipality in which the official is serving or over which he exercises jurisdiction or control. The official similarly may not advocate these actions on behalf of a relative or domestic partner. The section does not apply to board appointments, other than those with land-planning or zoning responsibilities, in those municipalities with less than 35,000 population. The section does not apply to persons who volunteer to provide emergency medical, firefighting, or police services.

Question: The County Administrator asked whether it would violate the Anti-nepotism law for his son to be hired as the Assistant Director of the Traffic Engineering Department. He would not be directly involved in the hiring or supervision process as these functions are delegated to other county employees. **RQO 13-014**

Answer: Under the Palm Beach County Code, the County Administrator is the "...chief administrative officer of the County." As such, he employs, appoints and supervises all county personnel unless an exception applies. Although the decisions involving the potential hiring of his son would be several administrative levels removed from his control, he is by Code the ultimate hiring authority. State law has held that this duty is non-delegable in this context. It would, therefore violate the Anti-nepotism law if his son was hired.

Question: An Assistant County Administrator asked whether the Anti-nepotism law prohibits his fiancé from continuing to work for the county after marriage. Additionally, he asked whether she would be precluded from receiving any promotion or advancement. **RQO 13-015**

Answer: The Anti-nepotism law does not require the discharge of a person who becomes a relative. Additionally, the Assistant County Administrator does not have hiring authority over his soon-to-be wife. As long as he does not advocate for any future promotion or advancement, there is no violation of the Code.

Misuse of Office

The Code of Ethics prohibits employees, officials and advisory board members from using their position to give a *special financial benefit*, not shared with *similarly situated members of the general public*, to 1) themselves; 2) a household member, spouse or domestic partner or their outside business or employer; 3) certain relatives or their outside business or employer; 4) their outside employer or business or someone who they know works for that business; 5) a customer or client of their outside employer or business (\$12,000 in goods or services over the preceding 24 months); 6) a debtor or creditor of an employee or official (at least \$10,000, not including financial institutions); 7) a non-profit organization where the employee or official serves as an officer or director. Simply put, a financial benefit is anything of value. Similarly situated means that everyone in the class of persons or entities affected by a decision benefits in the same way.

Question: A mayor asked whether it would constitute misuse of office to participate and vote in a matter coming before the city commission involving the sale of property to the city by a development company of which he is president. **RQO 13-017**

Answer: Because the mayor is the president of a development company which owns the property in question, any actions taken by the city on a purchase and sale agreement will result in a special financial benefit, not shared with similarly situated members of the general public to persons or entities specified under Sec. 2-443(a) (1) & (4) of the Code of Ethics. It would, therefore, constitute misuse of office for him to participate or vote on any matter relating to this issue. His conclusion, therefore, to abstain and not participate in the matter is correct.

Gifts

The Code of Ethics prohibits employees, officials and advisory board members from accepting anything of value in exchange for the past, present, or future performance of their job. This includes thank you gifts or tips for an official public action or legal duty performed, withheld, or violated. Employees and officials are prohibited from soliciting gifts of any value from someone they know to be a vendor, lobbyist or principal of a lobbyist who sells, leases or lobbies their governmental entity for their personal financial benefit, the benefit of a relative or household member, or another employee. Over the course of the calendar year, employees and officials may not solicit or accept gifts worth more than \$100 in the aggregate from a person they know or reasonably should know to be a vendor or lobbyist of their public employer. Gifts in excess of \$100 that are not prohibited are reportable unless one of several exceptions applies.

Question: A town police major asked whether it would violate the gift law section of the Code of Ethics to permit police officers to live in a residence located on property within the jurisdiction of the Police Department. The purpose of the officers living on the property is in attempt to diminish potential crime in the area. The officers would not pay rent but would be responsible for their normal household expenses. *RQO 13-013*

Answer: Police officers subject to the Code of Ethics are required to report gifts in excess of \$100 unless one of several exceptions applies. Based upon the facts submitted, the police officers selected to reside on the property will do so in connection with their ongoing service to the department. Additionally, they are subject to terms and conditions including a more restricted time off schedule. Any “benefit” of rent-free housing would be part of their overall compensation or expense reimbursement as employees of the department and not in the nature of a “gift.” Similarly, the facts submitted do not establish any other potential violation of the Code by this arrangement.

Voting Conflicts

Section 2-443(c), voting conflicts, addresses the scenario where, by participating or voting on an issue, an elected official would violate the misuse of office section of the code by giving a special benefit to one of the prohibited persons or entities listed under §2-443(a). In such a scenario officials and advisory board members must 1) disclose the nature of his or her conflict before their board discusses the issue; 2) abstain from any discussion or vote or otherwise participate in the matter; and 3) file a state voting conflict form (8B), submitting a copy to the recording clerk and the Palm Beach County COE.

Question: A city attorney asked whether an elected official who owns a property management company that provides services to a condominium association may vote on a matter that may financially benefit an investor whose family and/or business entities own a significant percentage of property within the condominium. *RQO 13-006*

Answer: There is an insufficient nexus here between the condominium association, the investor and the proposed project to prohibit the official from voting. The association is not involved in any way with the project and has no interest in it. Florida Statute §286.012 requires an official to vote on matters where there is no evidence of a financial conflict or other misuse of office. The official here may vote on the matter.

Question: An Aviation and Airports Advisory Board member asked whether he is prohibited from participating and voting on the selection of a fixed base operator for the Palm Beach County Park Airport where he leases two hangers from the existing fixed base operator. **RQO 13-011**

Answer: An advisory board member may not use his official position, including participation and voting on issues regarding the selection of a fixed base operator for an airport, where he leases 2 of 68 available hangers. Due to the limited class of persons or entities that stand to gain from the process and the absence of significant contingencies to obtain that gain if changes are approved, the potential financial benefit to the board member is not so remote and speculative as to eliminate a conflict of interest under the Palm Beach County Code of Ethics. Under these circumstances, the advisory board member is prohibited from participating and voting on the matter involving the selection of a fixed based operator.

Charitable Solicitation

The code prohibits an official from using his or her official position to give a special financial benefit to a non-profit organization if they are an officer or director of that organization. Therefore, solicitation of charitable donations made on behalf of a non-profit organization by an officer or director in one's official capacity, for example Commissioner or Police Chief, is *per se* a violation of section 2-443(a)(7), *misuse of office*, of the Palm Beach County Code of Ethics. In order for an official to use their official title to solicit donations on behalf of the non-profit they serve, they must resign their position with the charity. Public officials and employees may not solicit or accept anything of value because of the performance of an official act, or the past, present or future performance or violation of a legal duty. Nor may they solicit a gift of *any value* from a vendor, lobbyist, principal or employer or a lobbyist who sells, leases or lobbies the municipality they serve for their own personal benefit, the benefit of their relatives or household members or the benefit of another employee. If a public official or employee solicits on behalf of a charitable organization recognized under the Internal Revenue Code, the official or employee must maintain a log of any solicitation in excess of \$100 from vendors, lobbyists, principals or employers of lobbyists and submit the log to the Palm Beach County Commission on Ethics within 30 days of the event, or if no event, within 30 days of the solicitation.

Question: A county employee asked whether she may solicit donations from friends to support the work of a non-profit organization. **RQO 13-019**

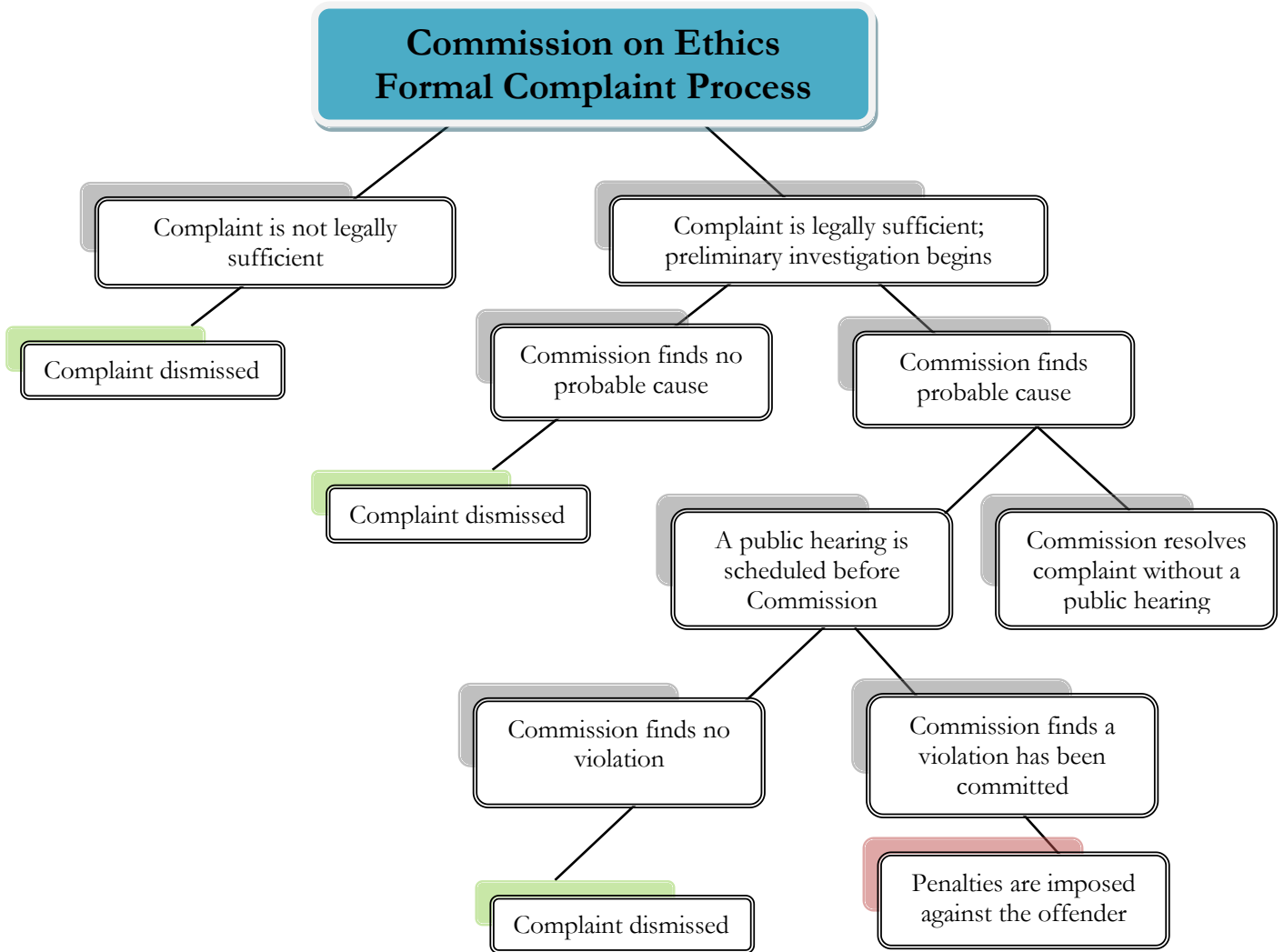
Answer: The Code of Ethics does not prohibit employees from participating and using their official title in charitable fundraising events, provided neither they nor their spouse or domestic partner is an officer or director of the organization. Any solicitation or acceptance of donations in excess of \$100 from a person they know, or should know with the exercise of reasonable care is a vendor, lobbyist, principal or employer of a lobbyist of their municipal government, must be transparently recorded and submitted in accordance with the charitable solicitation log requirements of the code.

Here, the employee is not on the board of the organization and is soliciting only from a limited class of persons (friends). The solicitation is thus permitted under these circumstances. She was cautioned that each such solicitation must meet these requirements to be non-reportable.

THE COMPLAINT PROCESS

Any person can file a complaint with the Commission on Ethics by submitting a written notarized complaint executed on an approved form available by mail or on our website (www.palmbeachcountyethics.com). The complaint must allege a violation of the code of ethics, lobbyist registration or post-employment ordinance, be based substantially upon personal knowledge and be signed under oath or affirmation by the complaining person. The commission maintains a searchable library of all public reports and final orders regarding the disposition of all sworn complaints. You may request a copy of a complaint form or visit our website.

In addition, citizens can leave information and tips anonymously on the Commission on Ethics hotline at 877-766-5920 or by email to ethics@palmbeachcountyethics.com. If you chose to remain anonymous, you must be sure to provide specific, detailed information that will allow investigators to determine the identity of persons may have personal knowledge of the alleged violation, as well as any available documentary evidence of a violation, or where such documents may be located.



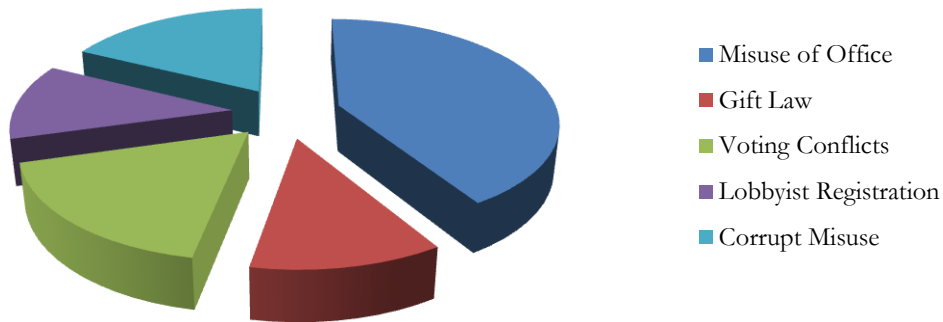
COMPLAINTS

STATISTICAL SUMMARY OF COMPLAINTS FILED
JANUARY 1, 2013 THROUGH DECEMBER 31, 2013

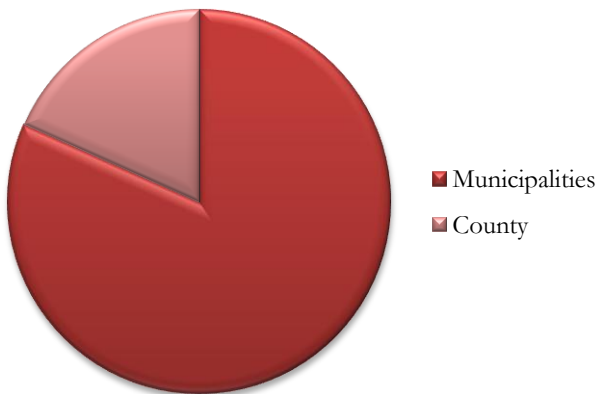
The COE receive 14 sworn complaints and self-initiated 2 complaints in 2013. There were 8 sworn complaints dismissed for lack of legal sufficiency and 7 sworn complaints found to be legally sufficient. There is 1 additional case pending legal sufficiency and probable cause determinations. Of the 7 cases found to be legally sufficient, 4 were dismissed at probable cause hearings and probable cause was found in the remaining 3 cases. All three cases, C13-001, C13-004 and C13-011 resulted in settlement agreements.

In addition to handling the 16 sworn complaints received in 2013, staff opened inquiries into 24 matters based upon information received other than by formal complaint. Of these inquiries, 17 were closed as not legally sufficient, 2 became the basis for a self-initiated complaint and 5 inquiries are ongoing. In 2013, the COE staff fielded approximately 640 calls on the COE Hotline (1-877-766-5920), 75 calls were referred to another agency and 13 calls resulted in an inquiry or investigation.

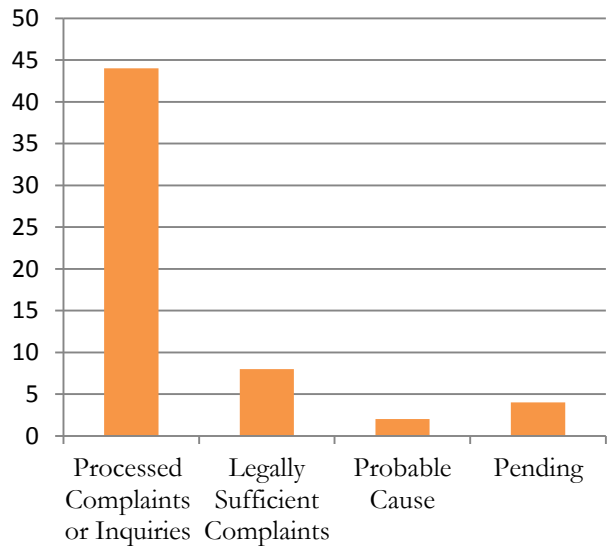
Subject Matter of Complaints



Complaint and Inquiry Origination



Complaint and Inquiry Disposition



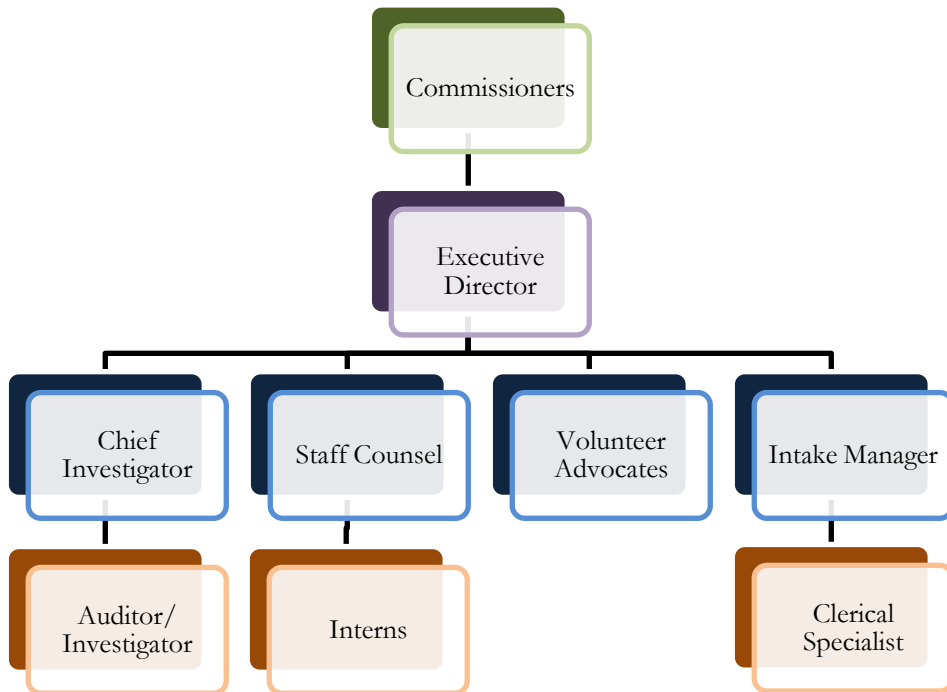
LEGISLATIVE ACTIVITIES AND INITIATIVES

The Commission on Ethics is charged with reviewing statutes and ordinances relating to ethics in government and making policy recommendations to the Board of County Commissioners. After the 2010 referendum, a drafting committee was established to review and revise the Commission on Ethics and Code of Ethics Ordinances. The Commission, through the Executive Director, was actively involved in developing and revising the Code of Ethics to include municipal governments. The revised code of ethics contains a number of substantive changes and took effect on June 1, 2011. For example, and perhaps most notably, the revised code includes vendors in those sections dealing with prohibited gifts.

Public employees and officials may not accept a gift over \$100 annually in the aggregate from a vendor, lobbyist, principal or employer of a lobbyist. Similarly, vendors and lobbyists have a duty under the revised code not to offer a prohibited gift to someone they know is a public employee or official who is employed by or serves a government the vendor or lobbyist vends, leases or lobbies. Holding vendors responsible for knowing violations of the gift law sends a strong message to the business community that the giving of prohibited gifts is actionable under the law. Provisions such as these make the Palm Beach County Code of Ethics among the most proactive in the United States.

Also, the Commission worked with the Palm Beach County League of Cities and Palm Beach County Administration to establish a county-wide lobbyist registration ordinance regulating certain lobbying activities and creating a central registration database. Effective April 2, 2012, lobbyists in 35 municipalities and the county will need to register, provide yearly expenditure reports and sign contact logs maintained by the public entity they lobby. In addition, vendors and lobbyists are subject to a “cone of silence” contact prohibition when bids and proposals are pending.

COMMISSION ON ETHICS ORGANIZATIONAL CHART



On March 26, 2013 the Commission was notified that the Florida Legislature directed a Florida Legislature's Office of Program Policy Analysis & Government Accountability (OPPAGA) review of the agency. In April, the OPPAGA team visited the offices, interviewed many persons, and obtained documents from staff. On September 6, a Draft Report was issued. The Commission met in two public sessions on September 12 and October 13 to discuss the report and a response. A formal response was filed on October 11. OPPAGA subsequently issued its Final Report No. 13-10. All of the documents, e-mails, reports and response may be found at <http://www.palmbeachcountyethics.com/OPPAGA.htm>.

CHART OF CHANGES IN THE PROCEDURES, RULES AND PRACTICES

Procedures, Rules and Practice Changes

Several significant events have brought about a number of changes in the procedures, rules and practices of the Palm Beach County Commission on Ethics in calendar year 2013. A new Executive Director took office in April. A review by OPPAGA was completed in October. The composition of the Commission has also changed with the appointment of two new commissioners. It is anticipated that two more new commissioners will be seated in the first quarter of 2014. A new Chair and Vice-Chair have been elected. Commission staff changes include a new investigator and soon to be new staff counsel.

The following changes have been implemented:

OPPAGA Finding 1: *“Commission practices sometimes blur the roles of investigators and the staff counsel”*

The roles of investigators and staff counsel have been administratively clarified. Investigators are responsible for the field and professional work involved in the investigation of inquiries triggered by anonymous information and sworn complaints. Investigators gather information and write reports but do not make recommendations as to probable cause findings. Staff counsel serves as a general legal advisor to the commission. As long as there is no overlap of roles in a particular case, staff counsel may serve as advocate. The volunteer advocate program has been expanded with the addition of new pro bono attorneys. A comprehensive training program for these attorneys will be delivered in December. If necessary, a full or part-time advocate position may be added.

OPPAGA Finding 3: *“Conflict of interest provisions continue to be a source of concern for commissioners and others”*

Commissioners are obligated by Fla. Stat. §286.012 and Palm Beach County Code of Ethics §2-443 to vote on business before the Commission unless grounds for recusal based upon a special financial benefit exist. At the November 7, 2013 meeting, the Commission passed new Rule of Procedure 1.6 regarding disclosure of other conflicts which do not require recusal. Under this new rule, Commissioners shall disclose such other past, present and current relationships and affiliations of a personal, professional or financial nature. This new rule clarifies when these other disclosures are necessary.

OPPAGA Finding 4: *“The Commission could benefit from clarifying commissioner disqualification terms and procedures”*

A party seeking disqualification of a Commissioner at a probable cause hearing or a final public hearing for alleged bias, prejudice or interest may utilize the process in Rule of Procedure 6.4. At the November 7 meeting, the Commission passed an amendment to that rule removing a requirement that any such motion be brought at least 5 days prior to the hearing. Parties may now file such a motion “as soon as practicable.”

OPPAGA Finding 6: *“Vendors and lobbyists are now subject to the county ethics Ordinance but are not required to receive training”*

Live training is offered by staff upon request to vendors and lobbyists under the jurisdiction of the code. Training materials are also available prominently on the new COE website. Staff is available, in the event that the code is amended to require training for lobbyists and vendors, to provide the same.

OPPAGA Finding 7: *“The commission could benefit from enhanced commissioner training”*

Commissioners have been provided with a 4 DVD set containing approximately 7 hours of training completed by staff. Topics include all applicable codes, ordinances, rules, policy and procedure manual, Sunshine Law, advisory opinions, quasi-judicial hearing practices and best practices when serving as a “judge.” Commissioners will review these independently and discuss the material at the next three successive meetings. Commissioners have also been provided a comprehensive manual of the current codes, ordinances, rules and procedures as well as the Florida Sunshine Manual.

OPPAGA Finding 8: *“The commission could improve its performance accountability system”*

Before the OPPAGA report issued, additional performance measures designed to improve accountability were established. Website analytics are used to track patterns of usage in order to enhance online content. Stakeholder surveys are utilized at trainings to evaluate the effectiveness of presentation and gauge the effects of ethics reforms. These data will be analyzed over the next year with the goal of making evidence-based enhancements.

Rule Change: Rule of Procedure 4.2 has been amended to provide for dismissal of legally insufficient complaints by the executive director. Upon notice of such a finding, any Commissioner may direct that the matter instead be brought for review in executive session. Absent such direction, the Executive Director will issue a final finding of no legal sufficiency. This process will expedite complaint processing and conserve commission resources.

Policy and Procedure Manual Change: Recording of executive sessions: PPM §4.3.4 has been amended to establish a procedure to record beginning and ending announcements.

The following changes may be studied further by the Commission or other entities:

The following changes, suggested by OPPAGA, would require legal amendments to the Code of Ethics, Commission on Ethics or the Palm Beach County Lobbyist Registration Ordinance:

OPPAGA Finding 2: *“Commissioners determine both probable cause and the outcome of a final hearing”*

OPPAGA Finding 5: *“The commission’s expanded jurisdiction changes the nature of appointments and could diminish its independence”*

OPPAGA Finding 6: *“Vendors and lobbyists are now subject to the county ethics Ordinance but are not required to receive training”*

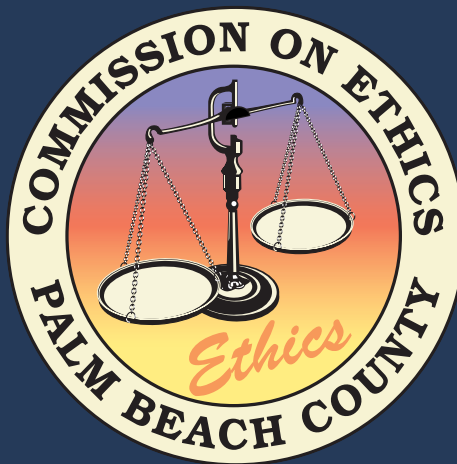
Under Article VIII, Sec. 8.2 of the Palm Beach County Charter, the Commission on Ethics is established. Charter Sections 8.4(a), (b) & (c) establish the process for creation of the empowering ordinances. Section 8.4(d) governs the amendment of the ordinances. Under that section, various entities and persons may propose amendments to the county commission. A drafting (review) committee is then convened to make a recommendation. Any change recommended by the review committee may be adopted by the county commission upon a 4 vote majority. The county commission may make amendments not recommended by a review committee upon an affirmative vote of 5 commissioners.

While the Commission on Ethics may propose amendments, it is without power to change the ordinances. The commission, or other entities, may in the future propose such changes for consideration by the county commission. Absent any changes to the ordinance(s), the Commission is obligated to follow existing law.

COE STAFF MAJOR PROJECTS FOR CALENDAR YEAR 2014

| Anticipated | | Description | Expected Results |
|-------------------------|-------------------------|--|--|
| Start | Finish | | |
| 1 st Quarter | 2 nd Quarter | Staff visit with all municipalities to complete Customer Service Survey | Provide personal contact and service, gather survey data, improve operations |
| 1 st Quarter | 1 st Quarter | Complete review of existing Advisory Opinions and create a "Head Note Summary" | Increase search and catalog capabilities of advisory opinions |
| 1 st Quarter | 3 rd Quarter | Develop a 3 year long range strategic plan | Establish a formal plan and improvement goals |
| 1 st Quarter | 3 rd Quarter | Continue to evaluate training effectiveness and consider improvements | Deliver the most effective training |
| 1 st Quarter | 4 th Quarter | Gather and analyze data from existing performance metrics | Use results to improve operations |
| 1 st Quarter | 4 th Quarter | Continue to update and improve COE Website | Maintain best possible information portal for public use |

The Historic 1916
Palm Beach County Court House
300 North Dixie Highway, Suite 450
West Palm Beach, Florida 33401



Main: (561) 355-1915
Fax: (561) 355-1904
Hotline: (877) 766-5920

Email:
Ethics@PalmBeachCountyEthics.com

X – Discussion Re: Notification of employer of complaint disposition

Commissioners have discussed notification of a Respondents county or municipal employer when a public hearing on a complaint has been ordered or a public report (order of disposition) has been entered. Since this information is public, there are no due process considerations. The purported purpose of such notification is remedial as it may promote the employer to recommend training, review policies, or take other action designed to increase compliance with the Code of Ethics.

Proposed revision to Rule of Procedure 5.7:

Current Rule:

Upon the Commission's ordering a public hearing of a complaint or a public report, the Executive Director shall notify the Complainant and the Respondent in writing.

Revised Rule:

Upon the Commission's ordering a public hearing of a complaint or a public report, the Executive Director shall notify the Complainant, ~~and~~ the Respondent and the contact person for the Respondent's county or municipal employer in writing.

DON GAETZ
President of the Senate



Senator Rob Bradley
Senator Alan Hays
Senator Jeremy Ring
Senator Wilton Simpson

THE FLORIDA LEGISLATURE
JOINT LEGISLATIVE AUDITING COMMITTEE

Representative Lake Ray, Chair
Senator Joseph Abruzzo, Vice Chair

WILL WEATHERFORD
Speaker of the House



Representative Daphne D. Campbell
Representative Gayle B. Harrell
Representative Daniel D. Raulerson
Representative Ray Rodrigues
Representative Cynthia A. Stafford

December 2, 2013

Honorable Priscilla A. Taylor, Mayor
301 North Olive Ave.
Suite 1201
West Palm Beach, FL 33401

Dear Mayor Taylor:

The Joint Legislative Auditing Committee's (Committee) meeting on November 4, 2013, included a presentation of the Legislature's Office of Program Policy Analysis and Government Accountability's (OPPAGA) report on the Palm Beach County Commission on Ethics (Commission). OPPAGA's report included recommendations related to the roles of the commissioners and staff, conflicts of interest, commissioner training, and accountability. Following the presentation, Roma W. Theus, II and Mark Herron provided testimony based on their experiences with the Commission on behalf of their clients. Their concerns centered on two primary issues: (1) the alleged tampering of an audio recording of a Commission proceeding, and (2) the processes and structure of the Commission (i.e., the probable cause panel is comprised of the same individuals who determine whether a violation has occurred).

We commend the Palm Beach County Board of County Commissioners (BCC) for its role in the creation of the Commission. However, we believe that the issues that have been brought to our attention warrant discussion, and possible action. The citizens of Palm Beach County expect and deserve a commission that is comprised of members and staff who are qualified and who serve to address potential ethics violations in a reasonable, transparent, and law abiding manner.

Honorable Priscilla A. Taylor, Mayor
December 2, 2013
Page 2

We respectfully request that the BCC review the findings and recommendations in the OPPAGA report and the comments made by Mr. Theus and Mr. Herron, as a starting point. Both the OPPAGA report and the transcript of Mr. Theus' and Mr. Herron's testimony are enclosed. A video of the Committee's meeting is accessible from the Florida Channel's website by selecting the "Video Library" tab and scrolling to the appropriate date. Mr. Theus provided numerous documents to the Committee; however, due to their large volume, they are not enclosed. Please contact either the Committee's staff or Mr. Theus if you wish to obtain these documents. We suggest that your review be thorough and consider all options that may potentially address the concerns that have been raised. You may wish to consult with staff and officials of other ethics commissions, both local and state. We understand that some changes may require revisions to the ordinance that created the Commission or even to state law. Please let us know if we can assist you.

We intend to send a packet of information regarding the alleged violation of law to the Office of the State Attorney for Palm Beach County. At the appropriate time, we suggest that you review the processes and personnel involved with meeting recordings to help ensure corrective action is taken, if necessary.

Please provide us with a written response regarding any discussion and action taken by the BCC or by the Commission on Ethics, in response to our request. We thank you in advance for your cooperation in addressing not only these concerns, but also other issues being faced by Palm Beach County.

Best regards,



Lake Ray
Chair



Joseph Abruzzo
Vice Chair

cc: Members of the Palm Beach County Board of County Commissioners
Robert Weisman, County Administrator
Robin N. Fiore, Chair, Palm Beach County Commission on Ethics ✓
Steven P. Cullen, Esq., Executive Director, Palm Beach County Commission on Ethics
R. Philip Twogood, Coordinator, OPPAGA

Enclosures: OPPAGA Report No. 13-10
Partial Transcript of the Committee's Meeting on November 4, 2013



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**Palm Beach County
Board of County
Commissioners**

Priscilla A. Taylor, Mayor
Paulette Burdick, Vice Mayor
Hal R. Valeche
Shelley Vana
Steven L. Abrams
Mary Lou Berger
Jess R. Santamaria

County Administrator

Robert Weisman

January 16, 2014

Representative Lake Ray, Chair
Senator Joseph Abruzzo, Vice Chair
The Florida Legislature
Joint Legislative Auditing Committee
111 West Madison Street
Tallahassee, FL 32399-1400

Dear Representative Ray and Senator Abruzzo:

This is in response to your letter requesting the Board of County Commissioners (BCC) review the OPPAGA report issued regarding Palm Beach County's Commission on Ethics (COE) and further, to inform you in writing of any discussion or action taken regarding same.

Be advised that the COE indicated in its response to the OPPAGA report that it had either addressed or was in the process of studying the recommendations. At the urging of the Grand Jury, the COE was established as a functionally independent entity. As such, the BCC will await the outcome of the COE's study before deciding what action to take, if any. As for the allegations of Messrs. Theus and Herron, we will await a response from the State Attorney's Office.

Should you have any questions, please let me know.

Best regards,

A handwritten signature in black ink, appearing to read "Denise Nieman".

Denise Marie Nieman
Palm Beach County Attorney

cc: Board of County Commissioners
Leonard W. Berger, Chief Assistant County Attorney
Steven P. Cullen, Executive Director, Commission on Ethics
Todd Bonlarron, Director, Legislative Affairs

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Affirmative Action Employer"