



Agenda

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

Palm Beach County
Commission on Ethics
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West Palm Beach, FL 33401
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Commissioners
Salesia V. Smith-Gordon

Vacant

Vacant

Vacant

Vacant

Executive Director
Steven P. Cullen

Intake Manager
Gina A. Levesque

Staff Counsel
Christie E. Kelley

Senior Investigator
Mark E. Bannon

Investigator
Anthony C. Bennett

- I. Call to Order
- II. Swearing In Ceremony – Chief Judge Jeffrey Colbath
 - a. Dr. Michael F. Loffredo, County Association of Chiefs of Police (Term ends 02/28/2016)
 - b. Dr. Carmine A. Priore, League of Cities (Term ends 02/28/2018)
 - c. Michael S. Kridel, CPA, Palm Beach Chapter of the Florida Institute of CPAs (Term ends 02/28/2018)
 - d. Dr. Clevis Headley, Florida Atlantic University (Term ends 02/28/2018)
- III. Roll Call
- IV. Election of Chair and Vice Chair
- V. Introductory Remarks
- VI. Approval of Minutes from February 6, 2014
- VII. Processed Advisory Opinions (Consent Agenda)
 - a.
- VIII. Items Pulled from Consent Agenda
 - a.
- IX. Proposed Advisory Opinions
 - a. RQO 14-004
- X. Executive Director Comments
- XI. Commission Comments
- XII. Public Comments
- XIII. 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.

NEWLY APPOINTED COMMISSIONERS

Dr. Michael F. Loffredo, appointed by the president of the County Association of Chiefs of Police to fill the position vacated by Daniel Galo.

Term ends on February 28, 2016.

Dr. Carmine A. Priore, appointed by the board of directors of the League of Cities.

Term ends on February 28, 2018.

Dr. Clevis Headley, appointed by the president of Florida Atlantic University.

Term ends on February 28, 2018.

Michael S. Kridel, CPA/CFF/CITP, CFC appointed by the president of the Palm Beach Chapter of the Florida Institute of CPAs.

Term ends on February 28, 2018.

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

FEBRUARY 6, 2014

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

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Robin N. Fiore, Ph.D., Chair
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
Gina A. Levesque, COE Intake Manager

ADMINISTRATIVE STAFF:

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

III. INTRODUCTORY REMARKS

Commission on Ethics (COE) Executive Director Steven Cullen stated that a quorum was present.

Chair Robin Fiore said that:

- Electronic devices should be muted.
- Anyone wishing to address the COE should submit a comment card.

III. – CONTINUED

- Commissioner Daniel Galo resigned due to his pressing workload. He was an excellent commissioner and would be missed.
- Commissioner Patricia Archer passed away and she would be missed.
- Today was her last meeting as chair and that a new vice chair should be elected.

Mr. Cullen said that:

- The chair and vice chair positions operated on a two-year basis. Reelection would occur at the March meeting.
- At least two new commissioners would be sworn in during the March 6, 2014, meeting. The COE would then elect a chair and vice chair.
- He could open the meeting until the chair was elected.

IV. APPROVAL OF MINUTES FROM DECEMBER 9, 2013

MOTION to approve the December 9, 2013, minutes. Motion by Salesia Smith-Gordon, seconded by Michael Kridel, and carried 3-0.

Chair Fiore recognized former COE staff counsel Megan Rogers for her service.

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

V.a. RQO 13-021

V.b. RQO 13-023

V.c. RQO 14-001

V.d. RQO 14-002

Chair Fiore requested that RQO 14-002 be removed from the consent agenda.

MOTION to approve the consent agenda as amended. Motion by Michael Kridel, seconded by Salesia Smith-Gordon, and carried 3-0.

VI. ITEMS PULLED FROM CONSENT AGENDA

VI.a. Request for Opinion (RQO) 14-002

Mr. Cullen said that:

- The Town of Palm Beach's (Town) Attorney requested the opinion.
- Approximately three other opinions dealt with a similar matter.
- In RQO 12-083, Councilman Robert Wildrick was advised that he could not vote on a (Planned Unit Development) PUD-5.
- The ordinance in question affected the PUD on which Councilman Wildrick could not vote, and would potentially affect the whole Town.
- Staff said that the matter still affected a small group and that a special benefit existed; therefore, Councilman Wildrick should be prohibited from voting on the matter.
- Councilman Wildrick received similar advice from the Town's attorney and did not vote on the adoption. The matter before the COE was whether Councilman Wildrick could vote on a similar, future issue.

PUBLIC COMMENT: William Cooley, Nancy Stroud, John Randolph, and Paul Castro.

Commissioner Smith-Gordon inquired if Councilman Wildrick owned property and Mr. Cooley said that Councilman Wildrick only owned his home and did not own any other commercial or residential property.

Town Zoning Administrator Paul Castro said that the amendments in the Comprehensive Plan (Comp Plan) and zoning code only addressed the specified five acres of land.

Town Attorney John Randolph said that if Councilman Wildrick could have voted to rescind the Comp Plan with a majority vote, then the zoning ordinance also would have been rescinded. He added that zoning ordinances should be in concert with the Comp Plan.

VI.a. – CONTINUED

Mr. Randolph said that:

- Councilman Wildrick was the chairman of a board in which another board member co-owned property within the PUD-5 area.
- The COE had first determined that Councilman Wildrick should recuse himself on the zoning ordinance because he or the co-board member could draw some benefit that was not remote or speculative.
- Councilman Wildrick continued to serve as the chair and was compensated for his board position.

Chair Fiore said that when making decisions, the COE had to be cognizant of the precedent it set for future decisions.

Mr. Cullen said that the COE had an interest in maintaining the clarity and continuity of its decisions.

Chair Fiore said that the COE noted that the zoning ordinance was incorporated into the Comp Plan and that both addressed similar core interests.

MOTION to approve processed advisory opinion letter RQO 14-002. Motion by Salesia Smith-Gordon, seconded by Michael Kridel, and carried 3-0.

VII. PROPOSED ADVISORY OPINIONS

VII.a. RQO 14-003

Mr. Cullen said that:

- A firefighter who worked for Palm Beach County Fire Rescue asked if he could sell a training prop he designed using his own time and materials to other federal, regional, local, or municipal government entities but not to the County.
- Staff prepared the proposed advisory opinion letter to indicate that the firefighter would not be prohibited by the Code of Ethics (Code) from selling the prop.

VII.a. – CONTINUED

- Staff did not address selling the prop to the County.

MOTION to approve proposed advisory opinion letter RQO 14-003. Motion by Salesia Smith-Gordon, seconded by Michael Kridel, and carried 3-0.

VIII. 2013 ANNUAL REPORT

Mr. Cullen said that:

- The 2013 annual report followed the same format as the past report.
- The report included:
 - The number of opinions, complaints, phone calls, and training sessions.
 - Materials relating to the Office of Program Policy Analysis and Government Accountability matter.
 - The chart that described the changes the COE did to streamline and improve procedures and practices.
 - A chart of 2014 quarterly major projects that would be undertaken by COE staff.

Chair Fiore read the following excerpt from the annual report:

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 government agencies. We are currently staffed with four full-time employees.

VIII. – CONTINUED

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. Over 100 training DVDs have been distributed.

Commissioner Kridel said that the annual report demonstrated the extraordinary commitment to the Florida statute's intent that created the COE.

Commissioner Salesia Smith-Gordon said that the annual report gave background and a summary of information for herself and for future commissioners.

Chair Fiore thanked Mr. Cullen for his leadership this year.

IX. DISCUSSION OF COMMISSIONER TRAINING DISCS 3 & 4

Commissioner Kridel said that the quantity of information and the quality presentation was very good. He added that the initial four discs provided a foundation; however, additional training should be considered in 2015.

Mr. Cullen said that the new commissioners would receive the four training discs and that the COE could revisit the topic to see if any particular area needed improvement. He added that the training discs were not posted to the Web site due to the file size; however, the discs were available to the public.

Chair Fiore said that she wanted the public to know what training the commissioners had received.

Commission on Ethics Intake Manager Gina A. Levesque said that most of the training sections only applied to the five COE commissioners, but she could post them as different links on the Web site.

Commissioner Smith-Gordon said that examples were already posted.

Mr. Cullen said that staff could post the index of topics covered on the discs.

X. DISCUSSION RE: RULE OF PROCEDURE ABOUT NOTIFICATION OF EMPLOYER OF DISPOSITION OF COMPLAINT

Mr. Cullen said that:

- The COE had previously discussed whether Rule of Procedure 5.7 should be changed to notify the Respondent's employer of a public hearing on a complaint or a public report.
- The information was public so there would be no due process considerations or privacy concerns.
- The purported purpose of such notification was remedial since it could prompt the employer to recommend training, review policies, or take other action to increase Code compliance.
- The revised language would read "Upon the Commission's ordering a public hearing of a complaint or a public report, the Executive Director shall notify the Complainant, the Respondent and the contact person for the Respondent's county or municipal employer in writing."
- Notifying the employer could raise confidentiality concerns until the matter was disposed.

Commission on Ethics Senior Investigator Mark Bannon said that Respondents were entitled to confidentiality.

Chair Fiore said that she did not favor notifying a person's employer. She said that it had serious potential for punitive activity and that it was the COE's job to handle remediation.

MOTION to not revise Rule of Procedure 5.7 as proposed. Motion by Salesia Smith-Gordon, seconded by Michael Kridel, and carried 3-0.

Chair Fiore said that in the future, Mr. Cullen could ask the COE for its consensus on whether staff should contact employers or municipalities and offer training.

XI. DISCUSSION RE: RESPONSE TO JOINT LEGISLATIVE AUDITING COMMITTEE LETTER OF DECEMBER 2, 2013

Mr. Cullen said that the Joint Legislative Auditing Committee had issued a letter to Mayor Priscilla Taylor on December 2, 2013, and that County Attorney Denise Nieman's letter responding to Representative Lake Ray and Senator Joseph Abruzzo was included in the agenda.

Commissioner Kridel said that nothing further was needed from the COE. Chair Fiore said that the COE should move on.

XII. EXECUTIVE DIRECTOR COMMENTS

XII.1.

DISCUSSED: New Commissioners.

Mr. Cullen said that staff expected to have new commissioners seated and that he hoped Chair Fiore would return to receive recognition.

XII.2.

DISCUSSED: Staff Counsel Position.

The County's personnel office was working with the newly hired staff counsel to begin in mid-February.

XII.2.

DISCUSSED: Council on Government Ethics Laws Conference (Conference).

Mr. Cullen said that he attended the Conference in December and that the program contained a wealth of information. He said that there were few local COEs in operation and that the County's COE had excellent operational structure.

XIII. COMMISSION COMMENTS

XIII.1.

DISCUSSED: Expression of Commendation.

Commissioner Smith-Gordon said that she enjoyed serving on the dais with Chair Fiore, and she thanked her for the direction and guidance as chair.

XIII.2.

DISCUSSED: Farewell.

Chair Fiore said that she was proud of the COE and that she was leaving it in good hands. She said that the COE's "bumps in the road" were temporary. She said that she had learned a great deal, and she added that she wished the COE the best of luck.

XIV. PUBLIC COMMENTS

XIV.1.

DISCUSSED: Expression of Commendation.

Richard Radcliffe, Palm Beach County League of Cities Executive Director, said that the COE report was very good and that training, education, and awareness were increasing in the community. He thanked Chair Fiore for her long-time service without compensation.

XV. ADJOURNMENT

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

At 2:52 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

March 7, 2014

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

RE: RQO 14-004
Misuse of Office, Contractual Relationships

Dear Mr. Doney,

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

YOU ASKED, in your e-mail of February 18, 2014, supplemented by additional information provided to COE Staff, whether a Town Council Member in the Town of Cloud Lake would violate the Code of Ethics if his spouse sold a vacant lot, owned solely by her, to the Town.

IN SUM, under the Code of Ethics, the Council Member may not use his official position or office, or take or fail to take any action in a manner which he 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 himself or his spouse. While the proposed sale of property owned solely by his spouse to the Town is not prohibited by this section, he must proceed cautiously in this matter. Similarly, the Code of Ethics *Contractual relationships* section does not prohibit the proposed transaction.

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

You are the attorney for the Town of Cloud Lake. A Town Council Member's spouse owns a vacant lot in the Town. She is the sole owner of the lot in question. The lot is abutting other Town-owned real property and is located in the immediate vicinity of a Town-owned drainage pump. The Council Member's spouse would like to sell the property to the Town. There may be a legitimate public purpose for the Town acquiring the lot. If the proposed sale/purchase moves forward, the Council Member would abstain from participating in discussion or voting on the matter. The Town would also obtain an appraisal of the property. While not specifically indicated by you, these are indicia that the parties would proceed at "arms length" in this matter.

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

Sec. 2-443. Prohibited conduct.

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
 - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
- (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.

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.

Sec. 2-443 (a) (1) & (2), *Misuse of public office or employment* of the Code of Ethics, prohibits officials or employees of the Town from using their official position or office 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. In this instance, the Council Member may not use his official position or office to confer a special financial benefit upon himself (Sec. 2-443 (a) (1)) or his spouse (Sec. 2-443 (a) (2)). While he does not own the property which his spouse would like to sell to the Town, it is reasonable to infer that using his official position or title improperly in connection with this transaction could result in a special financial benefit to him as proceeds from the sale may impact the value of joint assets. Similarly, the Council Member clearly may not use his official position or office to give a special financial benefit to his spouse in connection with the proposed property transaction.

In order to not violate the Code of Ethics, the Council Member would need to carefully ensure that he does not use his official position or office to give a special financial benefit to himself or his spouse in this matter. Best practices including the use of a realtor, attorney or other third person to negotiate and close the proposed transaction, and thereby disassociate the Council Member, may be followed. He would not participate in discussion or vote on the matter. While Sec. 2-443 (a) does not ban the proposed transaction under these circumstances, the Council Member must proceed cautiously.

Sec. 2-443 (d), *Contractual relationships* prohibits an official or employee from entering into a contract or other transaction for goods or services, unless an enumerated exception applies. Sec. 2-442 defines "Official or employee" as the person serving the county or municipality. That is, a spouse is not covered within the definition. Because here the Council Member is not entering into a contractual relationship with the Town (only his spouse would do so in the proposed transaction), this section is inapplicable.

The proposed property sale by the Council Member's spouse would not violate the *Contractual relationships* provision of the Code of Ethics.

IN SUMMARY, under the facts you have submitted, assuming the Council Member does not use his official position or office to give a special financial benefit to himself or his spouse in this proposed property sale by his spouse to the Town, the Code of Ethics does not prohibit the transaction.

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 or violation under state law. Inquiries regarding possible conflicts or violations under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1904 if I can be of any further assistance in this matter.

Sincerely,

Steven P. Cullen,
Executive Director

SPC/gal

PROPOSED