



Agenda

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

Meeting will begin at 1:30 pm
Executive Session from 2:00 pm to 2:45 pm
Regular Agenda will resume at 3:00 pm

Palm Beach County

Commission on Ethics

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West Palm Beach, FL 33401
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Commissioners

Salesia V. Smith-Gordon, Chair

Michael S. Kridel, Vice Chair

Michael F. Loffredo

Carmine A. Priore

Clevis Headley

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. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from October 2, 2014
- V. Probable Cause Hearing (Executive Session)
 - a. C14-010
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 14-029
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Proposed Advisory Opinions
 - a. RQO 14-030
 - b. RQO 14-031
 - c. RQO 14-032
 - d. RQO 14-033
 - e. RQO 14-034
- IX. Ordinance Change Recommendation
- 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.

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

OCTOBER 2, 2014

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

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Salesia V. Smith-Gordon, Chair – Absent
Michael S. Kridel, Vice Chair
Clevis Headley
Michael F. Loffredo
Carmine A. Priore

STAFF:

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

ADMINISTRATIVE STAFF:

Andrea Javier, Minutes Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Vice Chair Kridel said that Commissioner Loffredo would act as chair if the meeting did not adjourn by 2:30 p.m.

IV. APPROVAL OF MINUTES FROM SEPTEMBER 4, 2014

MOTION to approve the September 4, 2014, minutes. Motion by Carmine Priore, seconded by Michael Loffredo, and carried 4-0. Salesia Smith-Gordon absent.

V. PROBABLE CAUSE HEARING (TO BE HEARD IN PUBLIC SESSION)

V.a. C14-009

Steven Cullen, Commission on Ethics (COE) Executive Director, said that:

- The respondent waived applicable time requirements and his right to a private hearing.
- J. Alex Augustin filed a sworn complaint against Keith James, a City of West Palm Beach commissioner, on September 14, 2014.
- He determined there was legal sufficiency since the complaint alleged facts that, if true, indicated a violation of the Code of Ethics (Code).
- Staff recommended dismissal for lack of probable cause.
- After examining the documentary evidence and considering legal argument, the COE should determine whether probable cause existed.
- Probable cause could be found if reasonable, trustworthy facts and circumstances led the COE to believe the respondent violated the Code.
- Pursuant to the COE's bylaws, Article VIII Section 10, the commissioners, not the public, could ask questions during the hearing.

Staff Counsel Christie Kelley said that:

- The complaint alleged that:
 - At the September 2, 2014, City of West Palm Beach (City) Commission meeting, the respondent, Commissioner James, voted on a matter pertaining to a proposed settlement between the City and the United States Department of Housing and Urban Development (HUD).

V.a. – CONTINUED

- The vote regarded work involving the City and Redemptive Life Fellowship, Inc. (RLF), and that as its registered agent, Commissioner James should have disclosed the relationship or abstained from voting.
- Based on the facts, Commissioner James' vote did not violate the Code's sections on misuse of public office, corrupt misuse of official position, or disclosure of voting conflicts since the matter did not directly or indirectly involve a customer or client of his outside employer or business.
- The investigation revealed that :
 - Redemptive Life Fellowship Urban Initiative Corporation (RLFUIC), not RLF, contracted with the City for HUD funding.
 - The respondent was never RLFUIC's registered agent.
 - Neither RLF nor RLFUIC were mentioned at the September 2, 2014, City Commission meeting.
 - The relationship between respondent and RLFUIC did not meet the Code's definition of customer or client.
 - The respondent was paid \$2,500 for providing legal services to RLFUIC between 2006 and 2007.

Mr. Cullen said that a proposed order stating that no probable cause was found and that the matter was dismissed was prepared for the COE's consideration.

MOTION to accept the Public Report Finding No Probable Cause and Final Order of Dismissal as presented. Motion by Carmine Priore, seconded by Michael Loffredo, and carried 4-0. Salesia Smith-Gordon absent.

Mr. Cullen suggested the COE review the public report, which was not included in the agenda packet.

Gina Levesque, the COE Intake Manager, clarified that staff-generated orders were not generally included in the agenda or published until the COE voted.

V.a. – CONTINUED

Vice Chair Kridel read the following public report and final order:

Complainant, Alex Augustin, filed the above referenced complaint on September 15, 2014, alleging that Respondent, Keith James, a Commissioner of the City of West Palm Beach, violated §2-443(a), *Misuse of public office or employment*, §2-443(b), *Corrupt misuse of official position*, and §2-443(c), *Disclosure of voting conflicts*, of the Palm Beach County Code of Ethics.

Pursuant to §2-258(a)1 of the Palm Beach County Commission on Ethics Ordinance, the Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. On October 2, 2014, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, Legal Sufficiency Determination, Investigative Report and Probable Cause Recommendation. After an oral statement by the Advocate, the Commission concluded no probable cause exists to believe any violation occurred.

Therefore it is:

Ordered and Adjudged that the complaint against respondent, Keith James, is hereby dismissed.

Done and Ordered by the Palm Beach County Commission on Ethics in public session on October 2, 2014.

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

VI. PROPOSED ADVISORY OPINIONS

VI.a. Request for Opinion (RQO) 14-026

Ms. Kelley said that:

- Lake Worth Community Redevelopment Agency (LWCRA) Chair Cary Sabol asked whether he was prohibited from legally representing Adopt-a-Family in a real estate transaction on a paid or unpaid basis.

VI.a. – CONTINUED

- The LWCRA partnered with local nonprofit organizations, such as Adopt-a-Family, to provide funds from its recently awarded grant.
- Chair Sabol anticipated receiving \$2,500 from the transaction.
- Neither Chair Sabol nor his spouse served as an officer or director of Adopt-a-Family.
- Staff submitted that:
 - Chair Sabol was not prohibited from representing Adopt-a-Family in a real estate transaction in his personal capacity as an attorney.
 - Adopt-a-Family was not considered a customer or client since the anticipated income on a paid or unpaid basis was less than the Code's \$10,000 threshold.
 - Chair Sabol would not be prohibited from participating in or voting on matters regarding Adopt-a-Family.

MOTION to approve proposed advisory opinion letter RQO 14-026. Motion by Michael Loffredo, seconded Clevis Headley, and carried 4-0. Salesia Smith-Gordon absent.

VI.b. RQO 14-027

Mr. Cullen said that:

- County Planning, Zoning, and Building Executive Director Rebecca Caldwell asked whether attending an award ceremony dinner valued over \$100 and sponsored by an organization was considered a gift given her participation in judging a contest for the organization, which was also a registered lobbyist.
- Ms. Caldwell's participation served a public purpose since it enhanced the relationship between the "industry" and the "enforcers."
- Ms. Caldwell spent four to eight hours evaluating the applications before judging the contest.

VI.b. – CONTINUED

- Staff submitted that:
 - Under the Code, an exception to the gift definition applied since it was accepted while performing official County duties for a public purpose and since County time was expended in preparation.
 - A precedent was set in RQO 11-011 where time invested was considered a gift-law exception.
 - Attending the dinner was not considered a gift and reporting it was unnecessary.

MOTION to approve proposed advisory opinion letter RQO 14-027. Motion by Carmine Priore, seconded by Clevis Headley, and carried 4-0. Salesia Smith-Gordon absent.

VI.c. RQO 14-028

Mr. Cullen said that:

- City of Boynton Beach Commissioner Michael Fitzpatrick asked about the cone-of-silence requirement under the County Lobbyist Registration Ordinance, Section 2-355, which restricted communication between parties involved in a competitive bid.
- Commissioner Fitzpatrick was authorized to negotiate with the County outside of the existing bid process to transfer a 4.85-acre property for use as a public park.
- Staff submitted that the ordinance did not apply to Commissioner Fitzpatrick's communication with the County since he was operating outside the bid process, and it did not meet the cone-of-silence legal definition.

MOTION to approve proposed advisory opinion letter RQO 14-028. Motion by Clevis Headley, seconded by Michael Loffredo, and carried 4-0. Salesia Smith-Gordon absent.

VII. DISCUSSION RE: WORKSHOP

Mr. Cullen said that:

- Staff's proposed agenda for the October 24, 2014, workshop encompassed most of the suggested discussion topics.
- Staff would provide a packet of proposed changes to COE rules and ordinances in strikethrough format with the final agenda.
- Staff focused on changes to COE rules and bylaws, since ordinance changes required the Board of County Commissioners' approval.
- Staff could not confirm which special guests would attend.

VIII. EXECUTIVE DIRECTOR COMMENTS

DISCUSSED: Workshop.

Mr. Cullen said that:

- Staff anticipated that Senator Abruzzo or his staff would attend to brief the COE on the "Ethics Summit."
- Staff incorporated proposed changes to COE rules into the bylaws.

IX. COMMISSION COMMENTS

IX.1.

DISCUSSED: Expression of Commendation.

Commissioner Clevis Headley commended staff and the COE on their hard work.

Vice Chair Kridel said that writing reports was challenging and that he was impressed with the quality of staff's work.

X. PUBLIC COMMENTS

X.1.

DISCUSSED: Workshop.

Richard Radcliffe, Palm Beach County League of Cities (LOC) Executive Director, said that while the LOC supported changing COE rules, it was reluctant to support changing the Code. He suggested that the COE address the issue of COE meetings being used for political purposes at the upcoming workshop.

XI. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Clevis Headley, seconded by Carmine Priore, and carried 4-0. Salesia Smith-Gordon absent.

At 2:03 p.m., the vice chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

VI Processed Advisory Opinions

RQO 14-029 Myra Goldick

A prospective advisory board member of the Palm Tran Service Board (PTSB), who works as a speaker and workshop facilitator in her personal capacity and who receives travel reimbursements from companies who hire her services, ask how she can avoid violating the travel expense reimbursement and the contractual relationship prohibitions of the Code?

Staff submits the following for COE review: To avoid violating the travel expense reimbursement prohibition, she would need to either incorporate her “travel expenses” into the negotiated speaking fee that she charges companies, rather than being reimbursed separately for travel afterwards, or have the Palm Beach County Board of County Commissioners (BOCC) waive the prohibition of those fees for each entity that pays them if they are a PTSB vendor. Additionally, to avoid violating the contractual relationship prohibition, she must obtain an additional waiver from the BOCC to enter into a contractual relationship for every entity that has a contract with the PTSB and wishes to engage her services.



Palm Beach County Commission on Ethics

Commissioners

Salesia V. Smith-Gordon, *Chair*

Michael S. Kridel, *Vice Chair*

Michael F. Loffredo

Carmine A. Priore

Clevis Headley

Executive Director

Steven P. Cullen

October 17, 2014

Ms. Myra Goldick
3201 Electronics Way
West Palm Beach, FL 33407-4618

Re: RQO 14-029
Travel Expenses

Dear Ms. Goldick,

Your request for an expedited advisory opinion pursuant to Commission on Ethics (COE) Rule of Procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

QUESTION:

How can you, a prospective advisory board member of the Palm Tran Service Board (PTSB), who works as a speaker and workshop facilitator in your personal capacity and who receives travel reimbursements from companies who hire your services, avoid violating the travel expense reimbursement and the contractual relationship prohibitions of the Palm Beach County Code of Ethics (Code of Ethics)?

ANSWER:

In general, you would not be entitled to an advisory opinion because you are not currently under the jurisdiction of the Code of Ethics. COE Rule of Procedure 2.2 states, in relevant part, that only persons who are under the jurisdiction of the Code of Ethics may request an advisory opinion regarding the interpretation or application of the Code of Ethics.¹ However, since your appointment to the PTSB would bring you under the Code of Ethics, and you are seeking an opinion proactively to avoid any potential issues, the COE will make an exception and provide an opinion.

Based on the facts submitted, to avoid violating the travel expense reimbursement prohibition, you would need to either incorporate your "travel expenses" into the negotiated speaking fee that you charge companies or have the Palm Beach County Board of County Commissioners (BOCC) waive the prohibition of those fees for each entity that pays them if they are a PTSB vendor. Additionally, to avoid violating the contractual relationship prohibition, you must obtain an additional waiver from the BOCC to enter into a contractual relationship for every entity that has a contract with the PTSB and wishes to engage your services.

First, all advisory board members are prohibited from accepting, directly or indirectly, travel expenses from a vendor, service provider, bidder, or proposer of their board, unless the prohibition is specifically

¹ COE Rule of Procedure 2.2

waived by a majority of the Board of County Commissioners.² If you are hired by a vendor, service provider, bidder, or proposer of the PTSB, then the travel reimbursement prohibition would apply. As an alternative, to overcome this prohibition, you would need to incorporate your "travel expenses" into your speaking fee contract rather than being reimbursed separately for travel afterwards. That is, under this alternative, you would not charge or be reimbursed for actual travel expenses. Any cost associated with travel that is incorporated into your speaking fee contract, which is then paid to you by a vendor, service provider, bidder, or proposer of your board, would be acceptable.³

Additionally, the Code of Ethics regulates the outside contractual relationships of officials with entities having contracts or other transactions with the official's board, or the governmental entity they oversee (PalmTran).⁴ The burden is on the board member seeking an outside contractual relationship or other transaction with an outside entity to accurately ascertain whether the outside entity has contracts or transactions with the board or governmental entity they oversee.⁵ As such, when an entity solicits your services to speak at a function, you must ascertain whether the entity has contracts or transactions with the PTSB or Palm Tran. Whenever a company has a contract with your board, then you must obtain a waiver from the BOCC prior to entering into a contract with the company.⁶

FACTS:

You are under consideration to become a member of the PTSB in mid-October, and your appointment will be determined at the BCC meeting on October 21, 2014. The PTSB is not a purely advisory board of Palm Tran and consists of 13 members. The BOCC delegated its authority to approve Palm Tran fixed route transportation service adjustments to the PTSB. Additionally, the PTSB serves in an advisory function regarding matters concerning or impacting public transportation.

In your personal capacity, you are a paid motivational speaker, author, disability advocate, and workshop facilitator. As a small independent business owner, you use your own personal transportation and are reimbursed for travel by the companies that hire your services.

LEGAL BASIS:

The legal basis for this opinion is found in Rule of Procedure 2.2 and in §2-443(d) and §2-443(f) of the Code:

Rule 2.2 Persons Eligible to Receive an Advisory Opinion

A person who is subject to any of the laws listed in paragraph 2.1(a) of this section may request an opinion regarding the interpretation or application of any of the ordinances under the Commission's jurisdiction to himself or herself.

Sec. 2-443 Prohibited conduct.

(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

² §2-443(f)

³ RQO 12-016

⁴ §2-443(d)

⁵ RQO 11-003

⁶ §2-443(e)

employee, directly or indirectly, or the official or employee's outside employer or business. This prohibition shall also not apply to advisory board members provided the subject contract or transaction is disclosed at a duly noticed public meeting of the governing body and the advisory board member's board provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.

- (e) **Exceptions and waiver.** The requirements of subsection (d) above may be waived as it pertains to advisory board members where the advisory board member's board is purely advisory and provides regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction. No waiver shall be allowed where the advisory board member's board is not purely advisory and provides regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction. Waiver may be effected by the board of county commissioners or by the local municipal governing body as applicable upon full disclosure of the contract or transaction prior to the waiver and an affirmative vote of a majority plus one (1) of the total membership of the board of county commissioners or the local municipal governing body as applicable. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after full disclosure of the contract or transaction at a public hearing, by the appointing person.
- (f) **Accepting travel expenses.** No official or employee shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees and incidentals from any county or municipal contractor, vendor, service provider, bidder or proposer as applicable. The board of county commissioners or local municipal governing body as applicable may waive the requirements of this subsection by a majority vote of the board or local municipal governing body. The provisions of this subsection shall not apply to travel expenses paid by other governmental entities or by organizations of which the county or municipality as applicable is a member if the travel is related to that membership.

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

Sincerely,



Steven P. Cullen,
Executive Director

CEK/gal

VIII Proposed Advisory Opinions

RQO 14-030 Laurie Cohen

The Village Attorney Village of Wellington asked if Councilwoman Anne Gerwig may participate in the selection process for the sale and development of a parcel of land known as K-Park, which is owned by the Acme Improvement District and the Village of Wellington, when HSQ, a customer or client of the Councilwoman's outside business, Alan Gerwig and Associates, Inc., has been listed as a subcontractor on a proposal.

Staff submits the following for COE review: Councilwoman Gerwig may not participate in the selection process for the sale and development of K-Park because a customer or client of her outside business is listed as a vendor or subcontractor on one of the proposals. In order to comply with the Code, she will need to publicly disclose the nature of the conflict before the Village Council discusses the matter, abstain from participating and voting on the matter, file a state voting conflict form (8B).

Because Alan Gerwig and Associates, Inc. have supplied services in excess of \$10,000 over the previous 24 months to HSQ, HSQ is a customer or client of Councilwoman Gerwig's outside business. Here, the possibility of a financial benefit to HSQ would be direct and immediate if the proposal that includes work by HSQ is selected. Based upon the facts submitted, the relationship between the Councilwoman's outside business and HSQ is that of a typical contractor/sub-contractor. As such, since HSQ is listed in one of the proposals, participation by Councilwoman Gerwig in the selection of the proposal for the sale and development of the K-Park would constitute a violation of the Code.

RQO 14-031 Diane Colonna

The Executive Director of the Delray Beach Community Redevelopment Agency (CRA) asked if a conflict of interest would exist if her husband serves on the board of the Delray Center for the Arts while she is the Executive Director of the CRA.

Staff submits the following for COE review: A conflict of interest would exist if her husband serves on the board of the Delray Center for the Arts while she is the Executive Director of the CRA since the Delray Center for the Arts applies for funding from the CRA each year. As Executive Director of the CRA, she provides direction to CRA staff and supervises their actions. Based on the submitted information, even if she was not a member of the funding selection committee, she would still be involved in the selection process for the funding recommendations. A part of her responsibility as Executive Director is to review the written summaries that are presented to the CRA Board and to approve them. Additionally, when questions arise about how to handle a particular issue or recommendation, she is involved in those discussions as well.

RQO 14-032 Leonard Rubin

The attorney for the Town of Highland Beach's Board of Adjustment and Appeals (Board) asked:

1. Are three members of the Board prohibited by the Code from voting on a variance application, submitted by a property owner to increase the maximum height from 35 feet to 209 feet in order to

construct a sixteen story high rise building, when they all reside in a condominium development immediately adjacent to the proposed project?

2. Would it violate the Code or be an appearance of impropriety for a member of the Board who has made statements at a public meeting about the pending variance application to the effect that concerned citizens should appear before the Board to voice any concerns, that the zoning will not be changed and that the Board will uphold the statute so that nothing over 35 feet will be built, to vote on the variance application?

Staff submits the following for COE review:

1. Although two of the Board members live immediately adjacent to the proposed variance site and one member lives approximately 500 feet away, the facts submitted do not establish a basis to differentiate among their interests. Rather, the facts establish that the three Board members live in proximity to the site. The fact that Toscana has filed a motion to intervene in the proceedings establishes only that the group of homeowners, by virtue of their individual ownership of units and the association's ownership of common property, is seemingly opposed to the variance. This is distinguished from a situation where a single homeowner lives immediately adjacent to a proposed development site and has voiced personal opposition to the project because it would cause personal financial loss. Based upon the size of the class affected and the other facts submitted, the economic benefit or loss affects a class large enough so as to remove any prohibited financial benefit. Therefore, the Board members may participate in and vote on the matter.
2. Based upon the facts submitted, the Board member's comments would not violate the Code or prohibit him from voting on the matter. Comments made by a Board member at a public meeting about how he, or the Board, may view the pending application do not give him or her a special financial benefit. The Code does not regulate speech or comments which a board member may make under these circumstances. Similarly, while "the appearance of impropriety" is a guiding principle underlying the Code and should be avoided, it is not a stated offense under the Code. However, other laws, rules or regulations outside of COE jurisdiction may be involved.

RQO 14-033 Leonard Berger

The Chief Assistant County Attorney asked if LRP, a company listed on the County's vendor registry as an "active vendor," meets the definition of a "vendor" for purposes of the Gift law of the Code, where the company does not have a pending bid proposal, does not have an offer to sell goods or services, is not currently selling goods or services and where the last sale of goods was for \$169.50 over four years ago.

Staff submits the following for COE review: Based upon the facts submitted, LRP is not a vendor of the County and the gift in question is not prohibited by Sec. 2-444(a)(1). LRP does not have a pending bid proposal, does not have an offer to sell goods or services and is not currently selling goods to the County. The fact that the County maintains a vendor database gives the Commissioner an additional source of information in making this determination. That source, however, is not infallible and has limitations based upon the facts submitted. The fact that the County maintains a vendor registry, to facilitate the procurement process, does not automatically mean that a listed company is a vendor under the Gift law. Rather, where the only nexus between the company and the County is a prior sale of goods over four years ago, this is not a sufficient enough relationship to establish it as a vendor within the meaning of Sec. 2-442.

RQO 14-034 Leonard Berger

The Chief Assistant County Attorney asked if the Emergency Medical Services Advisory Council (the Council) members who are also hospital employees are allowed to participate in the Certificates of Public Convenience and Necessity (COPCN) selection process when their hospital-employers have ongoing and prospective relationships with the COPCN applicants.

Staff submits the following for COE review: The Council members, who are also hospital employees, may participate in the COPCN selection process because it would not result in a special financial benefit to their outside employer or to a customer or client of their outside employer. Under the facts provided, a vote to recommend any or all of the COPCN applicants would not provide a special financial benefit to a Council member's hospital-employer. The COPCN only provides a license to the ambulance service provider, which then allows the provider to contract with hospitals for use of its services. As such, the Council's recommendation vote would not result in a special financial benefit to any Council member's hospital-employer.

Likewise, voting to recommend any or all of the COPCN applicants would not provide a special financial benefit to a customer or client of a Council member's hospital-employer. Although each ambulance service provider who receives a COPCN would receive a financial benefit (the license), the ambulance service providers are not customers or clients of the hospitals. The hospitals are the recipients of the services provided. Thus, the hospitals are the customers or clients of the ambulance service provider. As a result, a voting conflict would not exist for the Council members who are also hospital employees because the vote would not result in a special financial benefit to a customer or client of their outside employers.

November 6, 2014

Ms. Laurie Cohen, Village Attorney
Village of Wellington
12300 Forest Hill Blvd.
Wellington, FL 33414

Re: RQO 14-030
Conflict of Interest

Dear Ms. Cohen,

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

QUESTION:

May Councilwoman Anne Gerwig participate in the selection process for the sale and development of a parcel of land known as K-Park, which is owned by the Acme Improvement District and the Village of Wellington, when HSQ, a customer or client of the Councilwoman's outside business, Alan Gerwig and Associates, Inc., has been listed as a subcontractor or vendor on a proposal?

ANSWER:

Based on the facts submitted, Councilwoman Gerwig may not participate in the selection process for the sale and development of K-Park because a customer or client of her outside business is listed as a vendor or subcontractor on one of the proposals. In order to comply with the Palm Beach County Code of Ethics (Code), she will need to publicly disclose the nature of the conflict before the Village Council discusses the matter, abstain from participating and voting on the matter, file a state voting conflict form (8B).¹

As an elected official, Councilwoman Gerwig is prohibited from using her official position to give a special financial benefit, not shared with similarly situated members of the general public, to a customer or client of her outside business or employer or to corruptly secure a special benefit for any person.² A customer or client is any entity to which an official's outside employer or business has supplied services in excess of \$10,000 during the previous 24 months.³ Financial benefit, in the context of the Code,

¹ §2-443(c)

² §2-443(a); §2-443(b)

³ §2-442

constitutes economic gain or loss.⁴ In addition, the possibility of a financial benefit must be direct and immediate, rather than remote and speculative.⁵

Because Alan Gerwig and Associates, Inc. has supplied services in excess of \$10,000 over the previous 24 months to HSQ, HSQ is a customer or client of Councilwoman Gerwig's outside business. Here, the possibility of a financial benefit to HSQ would be direct and immediate if the proposal that includes work by HSQ is selected. Based upon the facts submitted, the relationship between the Councilwoman's outside business and HSQ is that of a typical contractor/sub-contractor. As such, since HSQ is listed in one of the proposals, participation by Councilwoman Gerwig in the selection of the proposal for the sale and development of the K-Park would constitute a violation of the Code.

FACTS:

You are the Attorney for the Village of Wellington, and you are requesting this advisory opinion on behalf of Councilwoman Anne Gerwig. Wellington recently released a Request for Proposals for the sale and development of a parcel of land known as K-Park, which is owned by the Acme Improvement District and Wellington. Interested developers have submitted proposals for Village Council consideration. The Village Council will be serving as the selection committee for the proposal.

Councilwoman Gerwig is an employee and has an ownership interest in the engineering firm of Alan Gerwig and Associates, Inc. Several of the proposals submitted include detailed plans for development, including the use of specific vendors and subcontractors that the developers intend to use. After reviewing the submitted proposals, Councilwoman Gerwig discovered that HSQ, an engineering company with whom Alan Gerwig and Associates, Inc. does business, submitted a quote and design plan for a portion of the work proposed by one of the developers. Alan Gerwig and Associates, Inc. and HSQ often contract with each other for specialized services. Over the past 24 months, Alan Gerwig and Associates, Inc. have received over \$40,000 from HSQ.

Councilwoman Gerwig has provided additional information concerning the typical contractual relationship between Alan Gerwig and Associates, subcontractors, and the municipal entity in a development project. These documents demonstrate how prior projects of the firm have been structured.

LEGAL BASIS:

The legal basis for this opinion is found in §2-443(a), §2-443(b), and §2-443(c) of the Code:

Sec. 2-442. Definitions.

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).

⁴ RQO 10-013

⁵ RQO 12-082

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:
- (5) A customer or client of the official or employee's outside employer or business;
- (b) **Corrupt misuse of official position.** An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.
- (c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7). The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other 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, as set forth in subsections (a)(1) through (7).

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

Sincerely,

Steven P. Cullen,
Executive Director

CEK/gal

November 6, 2014

Ms. Diane Colonna, Executive Director
Delray Beach Community Redevelopment Agency
20 North Swinton Avenue
Delray Beach, FL 33444

Re: RQO 14-031
Conflict of Interest

Dear Ms. Colonna,

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

QUESTION:

Would a conflict of interest exist if your husband serves on the board of the Delray Center for the Arts when you are the Executive Director of the Delray Beach Community Redevelopment Agency (CRA)?

ANSWER:

Based on the facts submitted, a conflict of interest would exist if your husband serves on the board of the Delray Center for the Arts while you are the Executive Director of the CRA since the Delray Center for the Arts applies for funding from the CRA each year.

The Code prohibits an employee from using her official position to give a special financial benefit, not shared with similarly situated members of the general public, to a not-for-profit organization of which her spouse is an officer or director or to corruptly secure a special benefit for any person.¹ Here, as Executive Director of the CRA, you provide direction to CRA staff and supervise their actions. Based on the submitted information, even if you are not a member of the funding selection committee, you would still be involved in the selection process for the funding recommendations. A part of your responsibility as Executive Director is to review the written summaries that are presented to the CRA Board and to approve them. Additionally, when questions arise about how to handle a particular issue or recommendation, you are involved in those discussions as well. As such, a conflict of interest would exist for you in your role as Executive Director of the CRA if your husband serves on the board of the Delray Center for the Arts.

FACTS:

You are the Executive Director of the CRA. The CRA is under the jurisdiction of the COE as a result of a Memorandum of Understanding between our agencies. Your husband, Jeff Perlman, asked COE staff for an advisory opinion; however, since he is not under the jurisdiction of the COE we could not provide an opinion to him. Therefore, COE staff contacted you and you asked for the opinion as the question directly relates to you as well.

Your husband has been invited to serve on the board of the Delray Center for the Arts, a non-profit organization that he has supported financially and with volunteer service for many years. The CRA is a

¹ §2-443(a); §2-443(b)

major contributor to the Delray Center for the Arts, but not the sole funder. You do not vote on funding requests from non-profit organizations, but your staff evaluates the funding requests from the organizations and makes recommendations to the CRA Board.

For the past several years, the CRA has provided funding on an annual basis to at least four non-profit organizations that help fulfill the CRA's mission for revitalizing the CRA district. The CRA utilizes a funding application and review process called the A-GUIDE (Achieving Goals through Impact Driven Evaluation). The process employs a Logic Model to determine if the programs being funded are consistent with specific objectives and goals of the CRA, and it establishes a matrix for evaluating measurable outcomes. Funding recommendations are then made by a committee and are based upon an evaluation of the program application. The selection committee typically includes the Executive Director or Assistant Director of the CRA; the Finance and Operations Director of the CRA; and two City of Delray Beach representatives, usually the Assistant City Manager and a representative from the Community Improvement Department. The Finance and Operations Director of the CRA submits a memorandum with the recommending action for your review and approval. Then the Finance and Operations Director for the CRA and the directors of the applicant non-profit organization give a presentation to the CRA Board. All applications are presented to the CRA board for consideration and a decision.

In past years, you have been part of the selection committee, but in this most recent round, you were not on the committee and did not participate in the evaluation process. However, when questions arose as to how to handle a particular issue or recommendation, you became involved.

LEGAL BASIS:

The legal basis for this opinion is found in §2-443(a) and §2-443(b) of the Code:

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:
 - (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.

- (b) ***Corrupt misuse of official position.*** An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

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

Sincerely,

Steven P. Cullen,
Executive Director

CEK/gal

PROPOSED

October 15, 2014

Leonard G. Rubin, P.A.
Northpoint Corporate Center
701 Northpoint Parkway, Suite 209
West Palm Beach, FL 33407-1950

Re: RQO 14-032
Town of Highland Beach – Voting Conflicts

Dear Mr. Rubin,

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

QUESTIONS:

1. Are three members of the Town of Highland Beach’s Board of Adjustment and Appeals (Board) prohibited by the Code of Ethics (Code) from voting on a variance application, submitted by a property owner to increase the maximum height from 35 feet to 209 feet in order to construct a sixteen story high rise building, when they all reside in a condominium development immediately adjacent to the proposed project?
2. Would it violate the Code, or be an appearance of impropriety, for a member of the Board who has made statements at a public meeting about the pending variance application to the effect that concerned citizens should appear before the Board to voice any concerns, that the zoning will not be changed and that the Board will uphold the statute so that nothing over 35 feet will be built, to vote on the variance application?

ANSWERS:

1. A member of the Board is prohibited by Sec. 2-443(a) from using his or her official position to give himself or herself a special financial benefit not shared with similarly situated members of the general public. Additionally, Sec. 2-443(c) requires the Board member to abstain and not participate in any matter coming before the board, which would result in a special financial benefit, not shared with similarly situated members of the general public, to himself or herself. Financial benefit is defined by Sec. 2-442 and the COE had opined that this means economic gain or loss.¹ In the context of this question, for the benefit to be “special,” it must inure uniquely to the person, rather than benefiting the town, a specific group of homeowners or a neighborhood.²

There is no bright line test or “magic number” of individuals who would need to be similarly affected to transform a personal gain into a gain shared with similarly situated members of the general public. When the size of the class affected is large, a prohibited financial gain only arises if there are unique circumstances which

¹ RQO 10-013

² RQO 12-071

would enable a property owner to benefit more than the other property owners within the class.³ The COE, therefore, looks at the size of the class and the facts and circumstances submitted when making this determination.

There are a total of 435 residences in the Toscana Condominium. The COE has previously considered the “one-percent rule” when evaluating special financial gain or loss.⁴ The general line drawn is where the interest of the official involves 1% or less of the class. In other words, 100 or more affected persons is a sufficiently large class to transform the benefit or loss into one shared by similarly situated members of the public.

Although two of the Board members live immediately adjacent to the proposed variance site and one member lives approximately 500 feet away, the facts submitted do not establish a basis to differentiate among their interests. Rather, the facts establish that the three Board members live in proximity to the site. The fact that Toscana has filed a motion to intervene in the proceedings establishes only that the group of homeowners, by virtue of their individual ownership of units and the association’s ownership of common property, is seemingly opposed to the variance. This is distinguished from a situation where a single homeowner lives immediately adjacent to a proposed development site and has voiced personal opposition to the project because it would cause personal financial loss.⁵

Based upon the size of the class affected and the other facts submitted, the economic benefit or loss affects a class large enough so as to remove any prohibited financial benefit. Therefore, the Board members may participate in and vote on the matter.

2. A member of the Board is prohibited by Sec. 2-443(a) from using his official position to give himself or herself a special financial benefit not shared with similarly situated members of the general public. Additionally, Sec. 2-443(c) requires the Board member to abstain and not participate in any matter coming before the board, which would result in a special financial benefit, not shared with similarly situated members of the general public, to himself or herself.

Comments made by a Board member at a public meeting about how he, or the Board, may view the pending application do not give him or her a special financial benefit. The Code does not regulate speech or comments which a board member may make under these circumstances. Similarly, while “the appearance of impropriety” is a guiding principle underlying the Code and should be avoided, it is not a stated offense under the Code. However, other laws, rules or regulations outside of COE jurisdiction may be involved.

Based upon the facts submitted, the Board member’s comments would not violate the Code or prohibit him from voting on the matter.

FACTS:

GENERAL:

You represent the Town of Highland Beach. As such, you act as legal counsel to the Town’s Board of Adjustment and Appeals (Board). The board has received an application for a variance relating to a 7.35 acre parcel of land located in the residential (low density) district. The applicant seeks to increase the maximum height from 35 to 209 feet in order to construct a sixteen story high rise building.

³ *Id.*

⁴ RQO 14-006

⁵ RQO 12-058

FACTS RELEVANT TO QUESTION 1:

Three of the seven Board members own units and reside in a condominium adjacent to the property. The condominium (Toscana) consists of three residential towers, two sixteen-story and one seventeen-story buildings. Each tower consists of approximately 145 units. Therefore, the Toscana complex contains approximately 435 residences. Two Board members live in a tower immediately adjacent to the proposed project while the other lives in a building approximately 500 feet away.

The Toscana Homeowners Association (Association) has filed a motion to intervene in the proceeding and is seeking “full-party rights, including cross-examination”. The association, by virtue of a condominium declaration, owns all of the common property within the complex. Each Board member is a member of the Association by virtue of their unit ownership.

FACTS RELEVANT TO QUESTION 2:

One of the Board members attended a public meeting of the Town Commission. At the meeting, a member of the public expressed her concern that granting the variance would destroy the “tranquility of Highland Beach”. The Board member responded indicating that he serves as a member and that all concerned citizens should attend the meetings. He further indicated that Board members are “very strict” in these matters and that the height requirement won’t be changed. He expounded further that “nobody has that right again” to build a sixteen story building. In conclusion he offered that “... we will uphold the statute and the zoning and nothing beyond 35 feet will be built.”

LEGAL BASIS:

The legal basis for this opinion is found in §2-442 and §2-443 (a) & (c) of the Palm Beach County Code of Ethics:

Section 2-442. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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.

Section 2-443. Prohibited conduct.

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

- (c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take

any action, in any other 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, as set forth in subsections (a)(1) through (7).

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

Sincerely,

Steven P. Cullen,
Executive Director

SPC/gal

PROPOSED

November 6, 2014

Mr. Leonard Berger, Chief Assistant County Attorney
Palm Beach County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401

Re: RQO 14-033
Gift Law

Dear Mr. Berger,

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

QUESTION:

Where County Commissioner Mary Lou Berger receives a ticket to a Business Development Board Gala, paid for by a "vendor" of the County, under the Gift law, does a company listed on the County's vendor registry as an "active vendor" meet the definition of a "vendor" under Code of Ethics (Code) Sec. 2-442 and Sec. 2-444(a)(1), making it a prohibited gift, where the company does not have a pending bid proposal, does not have an offer to sell goods or services, is not currently selling goods or services and where the last sale of goods was for \$169.50 in March, 2010?

ANSWER:

Commissioner Berger may not, pursuant to Sec. 2-444 (a)(1) of the Code, accept a gift in excess of \$100 from a person or business entity that she knows, or should know with the exercise of reasonable care, is a vendor. Reporting such a gift does not "cure" its illegality. Section 2-444(g)(1)j of the Code provides, by exception, that the Commissioner may accept a ticket to a public event, appearance or ceremony related to official county or municipal business, if furnished by a nonprofit sponsor organization of such public event, provided the sponsor organization does not employ a lobbyist, and further provided the ticket, pass or admission is given by a representative of the sponsor organization who is not otherwise a vendor. Commissioner Berger would be obligated under this section to report this non-prohibited gift. The key in determining whether the ticket received by the Commissioner is prohibited by Sec. 2-444(a)(1), or a specifically allowed gift under Sec. 2-444(g)(1)j turns on the definition of a vendor under the facts and circumstances submitted.

The COE has previously opined, in the context of charitable solicitation, that knowledge of whether one is a vendor or lobbyist is made on a case by case basis.¹ The fact that the County maintains a vendor database gives the Commissioner an additional source of information in making this determination. That source, however, is not infallible and has limitations based upon the facts submitted. Many of the municipalities under COE jurisdiction do not maintain such accessible databases.

¹ RQO 12-028

Based upon the facts submitted, LRP does not have a pending bid proposal, does not have an offer to sell goods or services and is not currently selling goods to the County. The last sale of goods by LRP to the County was more than four years ago, in March 2010. The question, then, is whether the prior sale of goods, four years ago, and the fact that LRP is maintained on the County's vendor registry as an "active vendor" makes the company a vendor for purposes of the Gift law.

The COE is empowered by law and vested with discretion in matters of statutory construction and interpretation.² The fact that the County maintains a vendor registry, to facilitate the procurement process, does not automatically mean that a listed company is a vendor under the Gift law. Rather, where the only nexus between the company and the County is a prior sale of goods over four years ago, this is not a sufficient enough relationship to establish it as a vendor within the meaning of Sec. 2-442. Based upon the facts submitted, therefore, LRP is not a vendor of the County and the gift in question is not prohibited by Sec. 2-444(a)(1).

FACTS:

You are the Chief Assistant County Attorney. On behalf of County Commissioner Mary Lou Berger, you are requesting an advisory opinion concerning the gift law and its implications regarding her acceptance of a ticket to the Business Development Board Annual Gala.

The Commissioner attended the Business Development Board (BDB) Annual Gala, September 6, 2014. The BDB is a non-profit organization which does not employ a lobbyist. She was invited to attend by the BDB directly, but correspondence from the organization indicated that the ticket to attend was made available from Ken Kahn, President of LRP Publications. The reported value of the gift was \$300. The Commissioner later filed her quarterly gift report identifying Mr. Kahn as the donor of this gift and using LRP's corporate office as his address. Shortly after filing the report, the Commissioner learned that LRP is listed as an "active vendor" in the County's vendor registry even though the company had not done business with the County in a number of years. Specifically, the last transaction between the County and LRP amounted to a County payment of \$169.50 on March 11, 2010. If the Commission determines that LRP is a vendor under the Gift law, the Commissioner will repay the donor in order to remain compliant with the law, Florida Statutes §112.3148(8)(a).

Palm Beach County maintains a vendor registry. The County's vendor registry is derived from data obtained from the County's Advantage Financial System. The Advantage Financial System serves as a database of pertinent vendor information in order to facilitate the County's procurement processes. That database includes information on vendors that have done business with the County in the past, those that currently do business with the County, and those that may do so in the future. Businesses are not required to be part of this database, however, unless and until that business actually contracts with the County for goods or services. As a result, a business with a pending bid proposal, and therefore a vendor under the Code, may not appear as a vendor in the database.³

Should the COE determine that the LRP is in fact a vendor, and therefore that LRP's gift is prohibited by Sec. 2-444 (a)(1), the Commissioner will repay the donor, within 90 days of receipt of the gift, in order to reduce the value of the gift to \$100 or less to remain compliant with the state gift law, as permitted by Florida Statutes §112.3148(8)(a).

LEGAL BASIS:

The legal basis for this opinion is found in §2-442 and §2-444(a)(1) of the Palm Beach County Code of Ethics:

² RQO 11-066, and cases cited therein.

³ The vendor registry itself makes this clear with the following caveat on its web page: "Vendors with pending bids, proposals, quotes or submittals may not appear on this list." The web page may be viewed at <http://pbcgov.com/registeredvendors/>.

Sec. 2-442. Definitions

Vendor means any person or entity who has a pending bid proposal, an offer or request to sell goods or services, sell or lease real or personal property, or who currently sells goods or services, or sells or leases real or personal property, to the county or municipality involved in the subject contract or transaction as applicable. For the purposes of this definition a vendor entity includes an owner, director, manager or employee.

Sec. 2-444. Gift law.

- (a)(1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.
- (g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single setting or a meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift may consult, among other sources, Florida Statutes, §112.3148, and the Florida Administrative Code as may be amended.
- (1) Exceptions. The provisions of subsection (g) shall not apply to:
 - j. A ticket, pass or admission in connection with public events, appearances or ceremonies related to official county or municipal business, if furnished by a nonprofit sponsor organization of such public event, or if furnished pursuant to a contract between the event's non-profit sponsor and the county or municipality as applicable, provided the sponsor organization does not employ a lobbyist, and further provided the ticket, pass or admission is given by a representative of the sponsor organization who is not otherwise a vendor, lobbyist, principal or employer of a lobbyist. Notwithstanding the exception as provided in this subsection, the ticket, pass or admission must be disclosed in accordance with the gift law reporting requirements of subsections (f)(1) and (f)(2);

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

Sincerely,

Steven P. Cullen,
Executive Director

SPC/gal

November 6, 2014

Mr. Leonard Berger, Chief Assistant County Attorney
Palm Beach County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401

Re: RQO 14-034
Conflict of Interest

Dear Mr. Berger,

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

QUESTION:

Are the Emergency Medical Services Advisory Council (the Council) members who are also hospital employees allowed to participate in the Certificates of Public Convenience and Necessity (COPCN) selection process when their hospital-employers have ongoing and prospective relationships with the COPCN applicants?

ANSWER:

Based on the facts submitted, the Council members, who are also hospital employees, may participate in the COPCN selection process because it would not result in a special financial benefit to their outside employer or to a customer or client of their outside employer.

The Palm Beach County Code of Ethics (the Code) prohibits advisory board members from participating in and voting on a matter that would result in a special financial benefit to their outside employer or a customer or client of their outside employer.¹ The Code defines, in relevant part, a "customer or client" as an entity to which an outside employer has supplied goods or services.² In addition, the Code's definition of "financial benefit" includes a license, such as a COPCN.³

Under the facts provided, a vote to recommend any or all of the COPCN applicants would not provide a special financial benefit to a Council member's hospital-employer. The COPCN only provides a license to the ambulance service provider, which then allows the provider to contract with hospitals for use of its services. The issuance of a COPCN has no bearing on the amount that the ambulance service providers will charge patients for their services. The COPCN recipients are only awarded a license, which allows

¹ §2-443(a); §2-443(c)

² §2-442

³ Id.

them to contract with hospitals. As such, the Council's recommendation vote would not result in a special financial benefit to any Council member's hospital-employer.

Likewise, voting to recommend any or all of the COPCN applicants would not provide a special financial benefit to a customer or client of a Council member's hospital-employer. Although each ambulance service provider who receives a COPCN would receive a financial benefit (the license), the ambulance service providers are not customers or clients of the hospitals. The hospitals are the recipients of the services provided. Thus, the hospitals are the customers or clients of the ambulance service provider. As a result, a voting conflict would not exist for the Council members who are also hospital employees because the vote would not result in a special financial benefit to a customer or client of their outside employers.

FACTS:

You are the Chief Assistant County Attorney, and you are requesting an advisory opinion on behalf of the Council. The Council advises the Board of County Commissioners (BOCC) on a variety of emergency medical services issues. Palm Beach County recently accepted applications for Secondary Service Advanced Life Support COPCN from ambulance service providers. At its November 13, 2014 meeting, the Council plans to review the applications for COPCN submitted by three ambulance service providers and to make recommendations to the BOCC based on their review. Chapter 13, Article II of the Palm Beach County Code lists the procedures for application review and recommendation. The Council can recommend one, two, or all three of the applicants. Under §13-22 (b), the Council considers the public's convenience and necessity, the applicant's ability to provide necessary services and the recommendations of affected municipalities. The Council is composed of a range of professionals in the medical and emergency service fields most able to evaluate the COPCN applications. Several of the Council's members are employed by hospitals that make use of the ambulance service providers' services, and two of the three COPCN applicants are currently providing such services.

The BOCC-issued COPCN is a license. Taken together, state and local law requires ambulance service providers to hold a COPCN in order to provide various ambulance services such as providing backup service to government agency EMS responders and providing non-emergency, inter-facility transport.

LEGAL BASIS:

The legal basis for this opinion is found in §2-442, §2-443(a), §2-443(b), and §2-443(c) of the Code:

Sec. 2-442. Definitions.

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).

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.

Outside employer or business includes:

- (1) 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:
- (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
 - (5) A customer or client of the official or employee's outside employer or business;
- (b) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7). The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other 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, as set forth in subsections (a)(1) through (7).

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

Sincerely,

Steven P. Cullen,
Executive Director

CEK/gal

Sec. 2-260.1. Public hearing procedures.

(a) Right to public hearing. After a finding of probable cause, a respondent is entitled to a public hearing on the complaint. The respondent may elect to have the hearing conducted by the full Commission, a panel of three Commissioners designated by the Commission Chair, or by a hearing officer as established in section 2.G.3.G, Palm Beach County Unified Land Development Code, who is not a member of the Commission.

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(ba) *Presentation of the case.* The advocate shall present his or her case first. Respondent may then present his or her case. Rebuttal evidence may be permitted in the discretion of the commission on ethics.

(cb) *Opening and closing statements.* Opening and closing statements may be presented by the advocate and the respondent. The advocate may make the first statement and the respondent may follow. Rebuttal by the advocate may be permitted or may be denied.

(de) *Evidence.*

(1) Stipulations may be received and are encouraged as to uncontested matters.

(2) Oral evidence shall be taken only on oath or affirmation.

(3) The respondent and the advocate shall have the right: to present evidence relevant to the issue; to cross-examine opposing witnesses on any matter relevant to the issue; and to impeach any witness regardless who first called him or her to testify.

(4) The hearing shall not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted. Hearsay evidence may be used to supplement or explain other evidence, but shall not be sufficient itself to support a finding. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. The commission on ethics shall not allow the introduction into evidence of an affidavit of a person when that person can be called to testify; this shall not preclude the admission of a deposition of such a person, however, for any reason permissible in a court of law under the Florida Rules of Civil Procedure.

(ee) *Transcript of proceedings.* The proceedings shall be recorded by recording instruments or by a court reporter. Respondent may, at his or her own expense, provide a court reporter or recording instruments. The commission on ethics may provide a court reporter. No transcript of the proceedings shall be prepared unless requested by the commission on ethics or by the respondent. If the respondent requests that a transcript be prepared by a court reporter, the respondent shall pay the expense of transcription. If the Respondent requests that the commission on ethics prepare a transcript from recording instruments and the commission on ethics grants such request, the respondent shall pay the commission on ethics the actual cost of transcription. If a court reporter records the proceedings, the court reporter's transcript shall be the official transcript.

(fe) *Proposed public report.* After the conclusion of the hearing, the respondent and the advocate may present written proposed public reports, within a time designated by the chairperson or a member of the commission on ethics designated by the chairperson. If a proposed public report is filed by the respondent or the advocate, each proposed finding in the proposal that is rejected shall be accompanied by a statement summarizing the reasons for rejection.

(gf) *Motions to dismiss filed by advocate.* After probable cause is found and a public hearing is ordered by the commission on ethics, and after further investigation or discovery is made by the advocate, the advocate may move to dismiss the proceeding if the advocate concludes that there is insufficient evidence to proceed to the public hearing in good faith. Such a motion shall

specifically state the grounds upon which it is made. The motion shall be heard by the commission on ethics in accordance with the procedure provided for in section 2-260(i).

(hg) *Public order imposing penalty.* Upon completion of any hearing initiated under this subsection, the commission on ethics shall make a finding and public report as to whether any provision within its jurisdiction has been violated. If the commission on ethics finds, by clear and convincing evidence, based upon competent substantial evidence in the record, that a violation has been committed, the commission on ethics shall issue an order imposing the appropriate penalty as provided in the ordinance being enforced. The public report and final order shall include a determination as to whether the violation was intentional or unintentional. The commission on ethics shall, within twelve (12) months of the filing of a complaint, render a final order disposing of said complaint unless extended by the commission for good cause. If a person fails to comply with an order issued by the commission on ethics, the commission on ethics may make application to any circuit court of this state which shall have jurisdiction to order the violator to comply with the order of the commission on ethics. Any violator who fails to obey the order may be punished by the court.

G. Hearing Officers

1. Creation and Appointment

The County Administrator may, from a pool selected by the BCC, appoint one or more hearing officers to hear and consider such matters as may be required under any provision of this Code or under any provision of any other Palm Beach County Ordinance as may be determined to be appropriate by the BCC from time to time. Such hearing officers shall serve at the pleasure of the BCC for such period as is determined by the Board. Code Enforcement Special Master, as established and appointed pursuant to Article 2.G.1.A, Powers and Duties, may serve ex officio as Hearing Officers as set forth in this Section. Whoever shall accept an appointment as a hearing officer shall, for a period of one year from the date of termination as holder of such office, not act as agent or attorney in any proceeding, application for other matter before any decision-making body of PBC in any matter involving land that was the subject of a proceeding which was considered. **[Ord. 2010-022]**

http://www.pbcgov.com/pzb/zoning/LDRAB/2014/10-22-14-LDRAB_Packet.pdf