

Agenda

February 5, 2015 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Palm Beach County
Commission on Ethics
300 North Dixie Highway
West Palm Beach, FL 33401
561.355.1915
FAX: 561.355.1904
Hotline: 877.766.5920

E-mail:

ethics@palmbeachcountyethics.com

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
 - a. December 11, 2014
 - b. January 7, 2015
- V. Processed Advisory Opinion (Consent Agenda)
 - a. RQO 15-001
 - b. RQO 15-003
 - c. RQO 15-004
- VI. Items Pulled from Consent Agenda
 - a.
- VII. Proposed Advisory Opinion
 - a. RQO 15-002
 - b. RQO 15-005
- VIII. Annual Report
- IX. Discussion Re: Amendment to Ordinance
- 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**

DECEMBER 11, 2014

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

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Salesia V. Smith-Gordon, Chair
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:

Solibel Rose, Minutes Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Chair Salesia Smith-Gordon said that all mobile telephones should be silenced.

IV. APPROVAL OF MINUTES FROM OCTOBER 24, 2014 (Workshop)

MOTION to approve the October 24, 2014, minutes. Motion by Clevis Headley, seconded by Carmine Priore, and carried 5-0.

(CLERK'S NOTE: Items V. and VI. were discussed in tandem.)

V. BY-LAWS – UPDATE AND APPROVAL

Intake Manager Gina Levesque said that the proposed changes to the by-laws were as follows:

- The COE's address needed to be changed from the Vista Center at 2633 Vista Parkway in West Palm Beach (WPB) to the Historic Palm Beach County Courthouse at 300 North Dixie Highway, Suite 450 in WPB.
- Public comment was added to article eight under section 10 on July 7, 2011.
- A table of contents would be added at the beginning of the document.

VI. RULES OF PROCEDURE – UPDATE AND APPROVAL

Ms. Levesque stated that the historical changes to the rules and procedures were as follows:

- On November 7, 2013, disclosures of conflicts were added to section one, under subsection 1.6.
- On September 2, 2010, there was an addition to subsection 2.4(f), indicating that an advisory opinion submission could not be withdrawn by the submitting party.
- On July 7, 2011, subsection 2.4(f) was expanded to state that an advisory opinion may be withdrawn by submitting a written request no later than 10 days before the meeting.
- On April 5, 2012, subsections 2.5(b) and 2.5(d) were amended to require that the executive director write or review draft opinions.
- Advisory opinions submitted to the COE were mandatory, not discretionary.

VI. – CONTINUED

- Section 2.5(c) was stricken because it made submissions discretionary.
- On April 5, 2012, the opinion processing portion of subsection 2.5(f) that referenced sections 2.7 and 2.5(c) was deleted.
- On April 5, 2012, subsection 2.5(d) was created to establish protocols for regular and consent agenda opinions.
 - Review and approval of the consent agenda opinions was required by the chair or vice chair.
 - If not approved, the opinion would be removed from the consent agenda and placed on the regular agenda for discussion.
- The advisory opinion letter form was amended to remove the signature requirements from the executive director and the chair or vice chair and add one signature from staff counsel.
- Due to the executive director's lack of independent authority for issuing opinions under section 2-260.9., subsection 2.7 was deleted on April 5, 2012.
- On October 4, 2012, subsection 2.9 was amended to remove the reference to redacting the requestor's name.
- The following changes were made to subsection 3.2(b)2. on September 1, 2011:
 - Municipality jurisdiction would commence on June 1, 2011.
 - County government jurisdiction remained the same as it was on May 1, 2010.
 - In anticipation of additional entities contracting for the services of the COE, the effective date would be the entity's contract date.
- On September 1, 2011, subsection 4.1(b) was revised to require notification to the respondent within 20 days of finding legal sufficiency.

VI. – CONTINUED

- On March 3, 2011, self-initiated complaints were added to subsections 4.1.1, 4.1.2 and 4.1.3.
- After a November 7, 2013 amendment, the executive director was now allowed to dismiss legally insufficient complaints without presentation to the COE.
- On September 1, 2011, the rules governing preliminary investigations and the settings of a final hearing were revised to require an automatic setting within 120 days of a probable cause determination.
- Language regarding referrals was added to subsection 4.6 on November 1 2012.
- Subsection 5.4 was amended on December 2, 2010 to replace the words “alleged violator” with “respondent”.
- The procedure for releasing public records upon probable cause determination was added to subsection 5.4.1. on December 2, 2010.
- On November 3, 2011, subsection 5.8’s request for public hearing was deleted. The language was inapplicable since cases were automatically set within 120 days of finding a probable cause.
- On September 1, 2011, subsection 6.4(a) was amended to change the word “may” in the first line to the word “shall”.
- Subsection 6.4(b) was amended on November 7, 2013 to clarify the commissioner disqualification terms and procedures.
- On September 1, 2011, subsection 8.1 was amended to reflect that public hearings were not discretionary and automatically scheduled upon a finding of probable cause.
- Subsection 8.2(a) was amended on September 1, 2011 to reflect the June 1, 2011 Code of Ethics (Code) revision.

VI. – CONTINUED

- On October 6, 2011, subsection 8.2(a) was amended to remove the appearance of two separate standards of proofs.
- Section one and two needed updated ordinance numbers.

MOTION to approve the administrative changes that were recited and made in the by-laws and in the procedure rules. Motion by Carmine Priore and seconded by Clevis Headley, and carried 5-0.

SECOND MOTION to approve the acceptance of both documents, the by-laws and the procedure rules, as presented and finalized. Motion by Carmine Priore and seconded by Clevis Headley, and carried 5-0.

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VII.a RQO 14-035

VII.b RQO 14-036

Steven Cullen, COE Executive Director, said that there was additional language added to item RQO 14-036.

Chair Smith-Gordon pulled item RQO 14-036 from the consent agenda.

MOTION to approve the consent agenda as amended. Motion by Carmine Priore, seconded by Clevis Headley, and carried 5-0.

VIII. ITEMS PULLED FROM CONSENT AGENDA

VIII.a Request for Opinion (RQO) 14-036

Mr. Cullen stated that:

- Village of Wellington Councilman Howard Coates explained to staff that he was not presented with details concerning the precise amount of land within a Planned Unit Development and that he was concerned about the requests' broad language.
- Staff added more details and clarified the opinion.

VIII.a. – CONTINUED

MOTION to approve processed advisory opinion letter RQO 14-036. Motion by Michael Kridel, seconded by Clevis Headley, and carried 5-0.

IX. PROPOSED ADVISORY OPINIONS

IX.a RQO 14-037

Staff Counsel Christie Kelley said that:

- A county employee asked if his outside business or employer could compete for county contracts.
- Staff submitted that:
 - The Code prohibited an employee from entering into any contract between his public employer and his outside employer or business.
 - A business of which a member of his household had at least five percent ownership was prohibited from contracting with his public employer.
 - The Code provided exceptions to the contractual relations prohibition which could apply to his situation. The exceptions were:
 - The sealed and low bid system which may be utilized if the employee did not participate in the determination of bid specifications or did not use his official position to influence his public employer. A statement must be filed with the Supervisor of Elections and the COE disclosing the individual's interest in the business prior to submitting the bid.
 - If the outside employer or business was the sole source of the services within the County, a sole source exception may be used.
 - The Code provided an exception for contract or transactions totaling less than \$500 per calendar year.

IX.a – CONTINUED

- Unless one of the exceptions to the contractual relation prohibition applied, the employee's outside business or employer may not enter into a contract for services with the County.

MOTION to approve processed advisory opinion letter RQO 14-037. Motion by Michael Kridel, seconded by Clevis Headley, and carried 5-0.

IX.b. RQO 14-038

Mr. Cullen stated that:

- The director of Human Resources for the City of Belle Glade asked if city employees may participate as a team in the American Cancer Society's Relay for Life of the Glades Walk for Cancer.
- The Code did not prohibit the participation of city employees in a charitable event providing that there was no quid pro quo or other special considerations, including any direct or indirect special financial benefit to the official or employee being solicited.
- Should the employees desire to solicit from vendors, lobbyists, bidders, principals or employers of lobbyists, they would need to disclose those solicitations in a solicitation log.

MOTION to approve processed advisory opinion letter RQO 14-038. Motion by Carmine Priore, seconded by Michael Loffredo, and carried 5-0.

X. CONTINUED DISCUSSION OF AMENDMENT TO ORDINANCE

Chair Smith-Gordon said that:

- The ordinance that was voted on at the previous meeting gave citizens the choice of having an independent hearing officer at a trial function.
- There were discussions with the Board of County Commissioners (BCC) concerning the pool from which lawyers or judges would be selected.
- She recommended tabling the advancement to the BCC until after the meeting between staff and Patience Burns, the Executive Director of the Palm Beach County Bar Association (Bar).

X. – CONTINUED

Chief Assistant County Attorney Leonard Berger stated that the criteria for individuals to qualify for the pool were:

- Florida Bar Association (Bar) membership;
- expertise and experience with various aspects of administrative law; and,
- no conflict of interest with the governing body that hired them.

Chair Smith-Gordon suggested that the COE allow staff and Ms. Burns to determine the qualified lawyers or retired judges.

Commissioner Carmine Priore said that the County offered the use of magistrates, who were currently employed, as hearing officers.

Chair Smith-Gordon said that:

- There was no charge to the taxpayers for having the pool of hearing officers.
- The trier of fact should have significant training and background in ethics.

Commissioner Priore stated that the trier of fact should be able to determine whether or not an individual violated the Code and had probable cause.

Mr. Cullen said that there had not been a final trial in the County since the COE began.

Commissioner Priore stated that the COE's responsibility was to determine whether or not an individual had probable cause and anything beyond that fell outside the commission's purview.

Vice Chair Michael Kridel said that he believed that there was no formal ethics training for attorneys who were in the pool.

Mr. Berger stated that there were between seven to 12 individuals in the pool who were paid by the County.

Commissioner Michael Loffredo suggested conducting a training session for the current pool.

X. – CONTINUED

Chair Smith-Gordon directed staff to determine trial options with the Bar and report back on how the selection of the trier of fact would be handled.

Mr. Cullen said that staff would work with County Administration to address the proposal to the BCC.

Commissioner Priore stated that whether an individual charged with a violation should be able to elect to have a public hearing conducted by the COE, a three-person panel designated by the COE chair, or a hearing officer.

MOTION to direct staff to determine the criteria and the qualifications for the hearing officers. Motion by Clevis Headley, seconded by Vice Chair Michael Kridel and carried 5-0.

XI. EXECUTIVE DIRECTOR COMMENTS

XI.1.

DISCUSSED: Annual Commission On Ethics Report.

Mr. Cullen said that the annual report would be available at the January 7, 2015 meeting.

XI.2.

DISCUSSED: Conference on Government Ethics Laws.

Mr. Cullen stated that he attended the Conference on Government Ethics Laws with COE Investigator Anthony Bennett. He said that they learned more about problems the COE encountered and ways to resolve them.

XI.3.

DISCUSSED: Letters.

Mr. Cullen said that letters were sent to constituents about specific laws concerning charitable solicitation and housing rent.

(CLERK'S NOTE: Item XIII. was taken up at this time.)

XIII. PUBLIC COMMENTS

XIII.1.

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

Senator Joseph Abruzzo said that he submitted a request for an OPPAGA review rather than a local audit. He expressed concerns with the existing due process and believed that the COE would provide an option to move forward with a trial if needed.

Chair Smith-Gordon stated that she believed that staff's efforts to educate the public on ethics and ethics reform would result in a citizen not needing a first, second or third choice for a hearing officer.

XIII.2.

DISCUSSED: Proposed Drafting Committee, the OPPAGA review and the Hearing Officers Pool.

League of Cities Executive Director Richard Radcliffe requested a timeline on when the recommendation for a drafting committee would be submitted to the BCC.

Chair Smith-Gordon stated that the drafting committee idea had to be considered by the COE and could possibly be scheduled for February 2015.

Mr. Radcliffe said that the League of Cities supported the OPPAGA review. He added that the individuals selected for the pool should be familiar with the 370 advisory opinions that were processed.

XIII.3.

DISCUSSED: Public's Trust Concern.

Bart Novack stated that a member of the COE was found guilty of nepotism. He said that it was a breach of the public's trust and that the individual should resign or be removed from the commission.

Chair Smith-Gordon stated that COE commissioners were vetted before their appointments and she thanked all the commissioners for the service they provided to the community.

(CLERK'S NOTE: The agenda's numerical order was restored.)

XII. COMMISSION COMMENTS – None

XIII. Page 10

XIV. ADJOURNMENT

At 2:43 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

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

JANUARY 7, 2015

**WEDNESDAY
1:30 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

- I. CALL TO ORDER**
- II. ROLL CALL**

MEMBERS:

Salesia V. Smith-Gordon, Chair
Michael S. Kridel, Vice Chair – Absent
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:

Barbara Strickland, Deputy Clerk, Clerk & Comptroller's Office

- III. INTRODUCTORY REMARKS**

Chair Salesia Smith-Gordon requested that all mobile telephones be silenced.

IV. APPROVAL OF MINUTES FROM NOVEMBER 6, 2014

MOTION to approve the November 6, 2014, minutes. Motion by Clevis Headley, seconded by Michael Loffredo, and carried 4-0. Michael Kridel absent.

RECESS

At 1:35 p.m., the chair declared the meeting recessed for executive session.

V. PROBABLE CAUSE HEARING (EXECUTIVE SESSION)

V.A. C14-007

RECONVENE

At 2:20 p.m., the meeting reconvened with Commissioners Headley, Loffredo, Priore, and Smith-Gordon present. Michael Kridel absent.

Commissioner Clevis Headley read the Public Report Finding No Probable Cause and Final Order of Dismissal:

Complainant, Amy Bock, filed the above-referenced Complaint on August 21, 2014, alleging that Respondent, Wade Byrd, a Florida attorney with offices in Palm Beach County, violated §2-353(a), *Registration and Expenditures: Registration Report* of the Palm Beach County Lobbyist Registration Ordinance.

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the Commission on Ethics is empowered to enforce the Palm Beach County Lobbyist Registration Ordinance. On January 7, 2015, 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 and discussion by the members, the Commission concluded no probable cause exists to believe any violation occurred.

V.A. – CONTINUED

Therefore it is:

Ordered and Adjudged that the Complaint against Respondent, Wade Byrd, is hereby Dismissed.

Done and Ordered by the Palm Beach County Commission on Ethics in public session on January 7, 2015. By: Salesia V. Smith-Gordon, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the Public Report Finding No Probable Cause and Final Order of Dismissal.)

Chair Smith-Gordon stated that since the lobbyist registration process was discussed in the Executive Session, she wished to invite the executive director to describe for all present the recent advances made to the COE's Web site.

Steven P. Cullen, COE Executive Director, said that:

- The Web site address was www.palmbeachcountyethics.com.
- All COE ordinances, including the lobbyist registration ordinance, could be viewed online.
- Those engaged in lobbying needed to be aware of the definition of lobbying and lobbyist, found in §2-352 of the Lobbyist Registration Ordinance.
 - Online registration as a lobbyist cost \$25.00.
 - A County-maintained database was easy to use, and officials were available to answer questions.
 - The online training for lobbyists would be updated soon.

VI. PROCESSED ADVISORY OPINION (CONSENT AGENDA)

VI.A. Request for Opinion (RQO) 14-039

MOTION to approve the processed advisory opinion letter RQO 14-039. Motion by Carmine Priore, seconded by Michael Loffredo, and carried 4-0. Michael Kridel absent.

VII. ITEMS PULLED FROM THE CONSENT AGENDA – None

VIII. EXECUTIVE DIRECTOR COMMENTS

VIII.A.

DISCUSSED: Advisory Board Update.

Mr. Cullen stated that:

- The RQO 14-039 just approved involved advisory board (board) waivers and disclosures.
- An informational table that was pertinent to board members was recently posted on the COE Web site under the Publications tab. It showed when waivers and disclosures were needed, and when prohibited conflicts of interest may exist.
- Assistant County Attorney Leonard Berger was instrumental in creating the informational table about waivers and disclosures.

Chair Smith-Gordon asked Mr. Cullen to produce and bring back a precise definition of vendor and the time period for which a person was classified as a vendor for Palm Beach County. She said that the current definition was open-ended, and that additional details would provide more definitive direction.

VIII.A. – CONTINUED

DISCUSSED: Ordinance Amendment.

Mr. Cullen reported the following most recent actions on the proposed ordinance amendment for the provision of hearing officers:

- Resumes of the current County-appointed hearings officers were forwarded to COE members in December 2014.
- The County Bar Association (Bar) president advised that its board of directors could discuss the options of either maintaining a pool of officers or appointing them.
- The annual report in production would be available for discussion at the next COE meeting. An ethics bulletin covering gift reporting, charitable solicitations, and recent advisory opinions would be distributed countywide by the staff counsel.
- Comprehensive rules updates would be handed out at the next COE meeting.

IX. COMMISSION COMMENTS

DISCUSSED: Hearings Judges.

Commissioner Priore asked for details surrounding any decision to employ attorneys versus County magistrates to conduct ethics hearings. He said that staff's case preview would determine whether a particular hearing officer faced a conflict of interest in hearing a case, and affect staff's choice of a judge.

Chair Smith-Gordon stated that a decision would arise from discussions between Mr. Cullen and the Bar's president.

Mr. Cullen suggested that the topic become an agenda item for February's meeting to generate discussion and refine the language used in a recommendation to the Board of County Commissioners.

X. PUBLIC COMMENTS – None

XI. ADJOURNMENT

At 2:34 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

V Processed Advisory Opinions

RQO 15-001 Susan Guinan

An employee of the Vinceremos Therapeutic Riding Center (Center) whose role includes soliciting donations for the Center asked what charitable solicitation reporting requirements she must comply with if she accepts an appointment to the Palm Beach County Sports Commission (Sports Commission).

Staff submits the following for COE review: If the Center employee accepts an appointment to the Sports Commission, she would not be prohibited from soliciting donations on behalf of the Center in her non-official capacity. However, if the Center solicits or accepts a donation in excess of \$100 from a vendor, lobbyist, or principal or employer of a lobbyist of the Sports Commission, she must maintain a record of the solicitation and submit a log to the COE within 30 days of the event, or if there is not an event involved, within 30 days of the solicitation.

Additionally, as an appointed official, she is prohibited from using her official position as a member of the Sports Commission to give a special financial benefit, not shared with similarly situated entities in the community, to herself or her outside employer. Lending her name and official public title to the Center's fundraising effort would per se constitute using her appointed position to provide a special financial benefit to the Center. Therefore, her participation in fundraising for the Center would need to be in her personal name without any reference to her official public title or connection to her official position as a member of the Sports Commission.

RQO 15-003 Ilan Kaufer

An elected official asked if he is allowed to accept complimentary admission to a non-profit organization's event, when invited by the non-profit organization and attending in his official capacity as Town Councilman, or if he must purchase a ticket to attend the event.

Staff submits the following for COE review: The official is not prohibited from accepting complimentary admission to the event if the non-profit organization does not employ a lobbyist and the ticket is given to him by a representative of the non-profit organization who is not a lobbyist, vendor, or principal or employer of a lobbyist. In general, under the Code, a ticket to an event would be considered a gift. However, the Code provides an exception for a ticket to a public event that is related to official municipal business from a non-profit sponsor. Notwithstanding this exception, if the value of the ticket to the event exceeds \$100, the official, as a state reporting individual, must report the value in accordance with state law and send a copy of any required submission to the COE.

RQO 15-004 Leonard Berger

The Chief Assistant County Attorney asked if a prohibited conflict of interest would be created if the son of Shelley Vana, the Palm Beach County Board of County Commissioners (BOCC) Mayor, entered into a contract for services with the Palm Beach County Sheriff's Office (PBSO).

Staff submits the following for COE review: A prohibited conflict of interest would not be created by the contract between Mayor Vana's son and the PBSO because the PBSO has sole discretion regarding its contracts for services with outside entities. The sheriff of Palm Beach County, as a constitutional officer, establishes and controls his own budget for his office, independent of the operating budget set by the BOCC. The sheriff's authority to purchase supplies and equipment, select personnel, and hire, fire, and set the salaries of such personnel is independent of the BOCC. Thus, the PBSO has sole discretion in determining whether to enter into a contract with the firm which employs the Mayor's son. As such, as long as Mayor Vana does not use her official position to influence anyone to give her son's firm the contract with the PBSO, a prohibited conflict of interest would not exist.



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

January 23, 2015

Ms. Susan Guinan, Director of Development
Vinceremos Therapeutic Riding Center
13300 6th Court North
Loxahatchee, FL 33470

Re: RQO 15-001
Charitable Solicitation/Advisory Board

Dear Ms. Guinan,

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

QUESTION:

As an employee of the Vinceremos Therapeutic Riding Center (Center) whose role includes soliciting donations for the Center, what charitable solicitation reporting requirements must you comply with if you accept an appointment to the Palm Beach County Sports Commission (Sports Commission)?

ANSWER:

Based upon the facts you have submitted, you would be within the jurisdiction of the Palm Beach County Code of Ethics (Code) if you accept appointment to the Sports Commission. You are not prohibited under the Code from soliciting donations on behalf of the Center in your non-official capacity. However, if the Center solicits or accepts a donation in excess of \$100 from a vendor, lobbyist, or principal or employer of a lobbyist of the Sports Commission, you must maintain a record of the solicitation and submit a log to the COE within 30 days of the event, or if there is not an event involved, within 30 days of the solicitation.¹

Additionally, under the Code, as an appointed official, you are prohibited from using your official position as a member of the Sports Commission to give a special financial benefit, not shared with similarly situated entities in the community, to you or your outside employer.² Lending your name and official public title to the Center's fundraising effort would per se constitute using your appointed position to provide a special financial benefit to the Center.³ The prohibition against using your official public title applies to you, as well as anyone indirectly soliciting on your behalf. Therefore, your participation in fundraising for the Center would need to be in your personal name without any reference to your official public title or connection to your official position as a member of the Sports Commission.

FACTS:

You are the Director of Development for the Center, a 501(c)(3) non-profit organization that serves children and adults with physical, cognitive and emotional disabilities in Palm Beach County through unique equine partnerships. As the Director of Development, you are involved in soliciting donations from individuals, local businesses, and corporate and private foundations.

¹ §2-444(h)

² §2-443(a)

³ RQO 12-081

You are being considered for an appointment to the Palm Beach County Sports Commission on February 3, 2015. The Palm Beach County Sports Commission is a private, not-for-profit organization contracted by Palm Beach County to promote and market the County as a sports and sports tourism destination. The Commission brings sporting events and activities to the County, enhances economic impact, stimulates bed tax revenues, and maximizes utilization of County facilities.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-443(a) and §2-444(h) 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:

- (1) Himself or herself;
- (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;

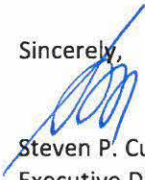
Sec. 2-444. (h) Solicitation of contributions on behalf of a non-profit charitable organization.

- (1) Notwithstanding the prohibition on gifts as outlined in subsections (a) and (b), the solicitation of funds by a county or municipal official or employee for a non-profit charitable organization, as defined under the Internal Revenue Code, is permissible so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited. The solicitation by an official or employee as contemplated herein, is expressly prohibited if made to any person or entity with a pending application for approval or award of any nature before the county or municipality as applicable.
- (2) To promote the full and complete transparency of any such solicitation, officials and employees shall disclose, on a form provided by the commission on ethics, the name of the charitable organization, the event for which the funds were solicited, the name of any person or entity that was contacted regarding a solicitation or pledge by the official or employee, and the amount of the funds solicited or pledged if known. The form shall be completed legibly and shall be filed with the commission on ethics. The form shall be filed within thirty (30) days from the occurrence of the event for which the solicitation was made, or if no event, within thirty (30) days from the occurrence of the solicitation.
- (3) Officials and employees may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions described in this subsection.

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



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

January 29, 2015

Mr. Ilan Kaufer, Vice Mayor
Town of Jupiter
210 Military Trail
Jupiter, FL 33458

Re: RQO 15-003
Gift law

Dear Mr. Kaufer,

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

QUESTION:

If a non-profit organization invites you to attend its event, are you allowed to accept the complimentary admission and attend in your official capacity as Town Councilman, or do you need to purchase a ticket to attend the event?

ANSWER:

Under the Palm Beach County Code of Ethics (Code), a gift is considered a transfer of anything of value without adequate and lawful consideration.¹ In general, a ticket to an event would be considered a gift. However, the Code provides an exception for a ticket to a public event that is related to official municipal business from a non-profit sponsor.² Notwithstanding this exception, if the value of the ticket to the event exceeds \$100, the gift must be reported.³ Lastly, a public official may never accept anything of value in exchange for the past, present or future performance of an official act or legal duty performed.⁴

Based on the facts submitted, you are not prohibited from accepting complimentary admission to the event if the non-profit organization does not employ a lobbyist and the ticket is given to you by a representative of the non-profit organization who is not a lobbyist, vendor, or principal or employer of a lobbyist. Additionally, as an elected official, you are a state reporting individual and must comply with

¹ §2-444(g)

² §2-444(i)

³ §2-444(f)(1)

⁴ §2-444(e)

the requirements of state law. As such, if the value of the ticket to the event exceeds \$100, you must report the value in accordance with state law and send a copy of any required submission to the COE.⁵

FACTS:

You are a member of the Town of Jupiter Town Council, and you currently serve as the Vice Mayor. As an elected official, you are identified by state law as a reporting individual for purposes of gift law reporting. You have been invited by a non-profit organization to attend its upcoming event. You are not involved with fundraising for the event, and you are not on the board or affiliated with the non-profit organization in any capacity.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-444(d) and §2-443(e) of the Code:

Sec. 2-444. Gift law.

- (e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of: (1) An official public action taken or to be taken, or which could be taken; (2) A legal duty performed or to be performed or which could be performed; or (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
 - (1) Gift reports for officials and employees identified by state law as reporting individuals. Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, § 112.3148, as may be amended. A copy of each report shall be filed with the county commission on ethics.

- (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.
 - (1) Exceptions. The provisions of subsection (g) shall not apply to:
 - i. 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);

⁵ §2-444; §112.3148, Florida Statutes, Chapter 34-13, Florida Administrative Code.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. 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



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

January 29, 2015

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: Conflict of Interest/Misuse of Office
RQO 15-004

Dear Mr. Berger,

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

QUESTION:

Would a prohibited conflict of interest be created if Palm Beach County Board of County Commissioners (BOCC) Mayor, Shelley Vana's son entered into a contract for services with the Palm Beach County Sheriff's Office (PBSO)?

ANSWER:

Based on the facts you have submitted, no prohibited conflict of interest would be created by the contract between Mayor Vana's son and the PBSO because the PBSO has sole discretion regarding its contracts for services with outside entities.

Under the Palm Beach County Code of Ethics, an elected official is prohibited from using his or her official position to give their child a special financial benefit not shared with similarly situated members of the general public.¹ The sheriff of Palm Beach County, as a constitutional officer, establishes and controls his own budget for his office, independent of the operating budget set by the BOCC. The sheriff's authority to purchase supplies and equipment, select personnel, and hire, fire, and set the salaries of such personnel is independent of the BOCC.² Thus, the PBSO has sole discretion in determining whether to enter into a contract with the firm which employs the Mayor's son.³ As such, as long as Mayor Vana does not use her official position to influence anyone to give her son's firm the contract with the PBSO, a prohibited conflict of interest would not exist.

¹ §2-443(a)

² §30.53, Fla. Stat. (2014)

³ CEO 02-6

FACTS:

You are the Chief Assistant County Attorney, and you are requesting an advisory opinion on behalf of Mayor Vana. The Mayor's son works for a technical services firm that provides staffing for corporations in need of various computer-related operations. He is one of several employees who recruit potential clients for the firm and is paid a salary plus commission based on the clients he successfully recruits. The PBSO is considering entering into a contract for such services with the firm, and Mayor Vana's son would earn a commission should the contract be awarded. The sheriff of Palm Beach County is an independently elected constitutional officer in the County, pursuant to Article VIII, Section 1(d), Florida Constitution. Constitutional officers establish the budgets for their offices, independent of the operating budget set by the BOCC. The BOCC, as a whole and as individual members, have no involvement in the sheriff's decision to provide for this or any other agreement for services with the PBSO. The BOCC's involvement is limited to approving the yearly budget for the PBSO.

LEGAL BASIS:

The legal basis for this opinion is found in §2-443(a) 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:
- (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. 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

VII Proposed Advisory Opinions

RQO 15-002 Len Rodriguez

An employee of Palm Beach County, who works in the Aquatics Division of the Parks and Recreation Department, asked if he could accept part-time outside employment as a Masters Swim coach for LB2 Enterprises, Inc. (LB2), a company which contracts with the Aquatics Division.

Staff submits the following for COE review: This part-time employment with LB2 would violate the prohibited contractual relationships section of the Code of Ethics because the employee would be unable to comply with all of the requirements of the waiver and exceptions provisions as set forth in section 2-443(e)(5). In general, the Code prohibits public employees from entering into any contract or other transaction to provide services to the public entity they serve, including any contract or transaction between their public employer and their outside employer. However, there are exceptions and a process by which this prohibition can be waived for employees. One of the requirements of the waiver and exceptions provision is that the employee or relative of the employee may not work in the department which will enforce, oversee, or administer the contract. Here, both the employee and his spouse work in the Aquatics Division of the County's Parks and Recreation Department, and the Aquatics Division oversees the contracts with LB2. As such, he would not be able to comply with all of the requirements of the exceptions and waiver provisions, and he will need to decline this offer for part-time outside employment.

RQO 15-005 Fred Angelo

A Palm Beach County Fire Rescue (PBCFR) employee asked if he could register and work as a lobbyist, during non-work hours, for a principal firm that lobbies Palm Beach County (County) and municipal councils on matters unrelated to goods and services provided to or used by PBCFR.

Staff submits the following for COE review: The PBCFR employee is prohibited from lobbying the County as his public employer. He is not prohibited from lobbying municipalities within the County. As a lobbyist working for a principal firm that lobbies the County and the municipal councils, the firm would be his outside employer as contemplated by the Code. Lobbying his public employer on behalf of his outside employer would violate the contractual prohibition provision. The Code provides several exceptions to the contractual relations prohibition, but none of those exceptions apply to his situation. Thus, as a County employee, he is prohibited from working as a lobbyist who lobbies the County. However, he is not prohibited from lobbying municipalities within the County. When lobbying, he must take great care to not use his official public position or title as a County firefighter, directly or indirectly, in any of his dealings with these municipalities. Using his official public position or title as a firefighter would per se constitute using his public job to influence others to give a special financial benefit to himself, his outside employer, or a customer or client of his outside employer.

February 6, 2015

Mr. Len Rodriguez
Palm Beach County Ocean Rescue
14775 US Highway 1
Juno Beach, FL 33408

Re: RQO 15-002
Outside Employment

Dear Mr. Rodriguez,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion and rendered its opinion at a public meeting on February 5, 2015.

QUESTION:

Whether you, as an employee of Palm Beach County (County), may accept part-time outside employment as a Masters Swim coach for LB2 Enterprises, Inc.(LB2), a company which contracts with the County.

ANSWER:

Based on the facts you have submitted, your part-time employment with LB2 would violate the prohibited contractual relationships section of the Palm Beach County Code of Ethics (Code) because you would be unable to comply with all of the requirements of the waiver and exceptions provisions as set forth in section 2-443(e)(5).

The Code prohibits you from using your official position with the County to benefit yourself or your outside employer, in a manner not shared with similarly situated members of the general public.¹ Additionally, in general, the Code prohibits you from entering into any contract or other transaction to provide goods or services to the public entity you serve, including any contract or transaction between your public employer and your outside employer.² However, there are exceptions and a process by which this prohibition can be waived for employees.³ One of the requirements of the waiver and exceptions provision is that the employee or relative of the employee may not work in the department which will enforce, oversee, or administer the contract. Here, the pertinent facts submitted demonstrate that both you and your wife work in the Aquatics Division of the County's Parks and Recreation Department, and the Aquatics Division oversees the contracts with LB2. As such, you would not be able to comply with all of the requirements of the exceptions and waiver provisions, and you will need to decline this offer for part-time outside employment.

FACTS:

You are an Ocean Lifeguard EMT for the Aquatics Division of the County's Parks and Recreation Department. Your wife also works for the Aquatics Division as the facility manager at the Calypso Bay Water Park. You work 10-hour shifts on Tuesday, Wednesday, Thursday, and Saturday. You have the opportunity to become a Masters Swim coach at Lake Lytal Aquatic Center four nights a week after work. In performing this work, LB2 would become your "outside employer."

¹ §2-443(a)

² §2-443(d)

³ §2-443(e)

LB2 contracts with the County's Park and Recreation Department for pool space at the North County Aquatics Complex, the Aqua Crest Pool, and the Lake Lytal Aquatic Center. The Aquatics Division oversees the contract with LB2. Neither you nor your wife will be participating in awarding or determining the requirements of the contract between the County and LB2. Your responsibilities as a Masters Swim coach will not require you to be involved in the contract between LB2 and the County in any way. This part-time outside employment would not interfere with your public employment. You spoke with your supervisor, Captain Julia Leo, on January 20, 2014, to obtain permission to work part-time as a Masters Swim coach. Your supervisor is currently checking with her supervisors before she can give you an answer.

LEGAL BASIS: The legal basis for this opinion is found in the §2-443(a), §2-443(d), and §2-443(e)(5) 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:
- (1) Himself or herself;
 - (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;
- (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. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable.
- (e) **Exceptions and waiver.**
- (5) Notwithstanding any provision to the contrary, subsection (d) shall not be construed to prevent an employee from seeking part-time employment with an outside employer who has entered into a contract for goods or services with the county or municipality as applicable provided that:
 - a. The employee or relative of the employee does not work in the county or municipal department as applicable which will enforce, oversee or administer the subject contract; and
 - b. The outside employment would not interfere with or otherwise impair his or her independence of judgment or otherwise interfere with the full and faithful performance of his or her public duties to the county or municipality as applicable; and
 - c. The employee or relative of the employee has not participated in determining the subject contract requirements or awarding the contract; and
 - d. The employee's job responsibilities and job description will not require him or her to be involved in the outside employer's contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance; and
 - e. The employee demonstrates compliance with applicable merit rules regarding outside employment and obtains written permission from his or her supervisor; and

- f. The employee has obtained a conflict of interest waiver from the chief administrative officer and the employee's department head of the county or municipality based on a finding that no conflict exists. The employee shall submit the request for waiver in writing and under oath.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. 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

Attachment

CEK/gal

PROPOSED

February 6, 2015

Mr. Alfred Angelo
Palm Beach County Fire Rescue
231 S. Benoist Farms Rd.
West Palm Beach, FL 33411

Re: RQO 15-005
Outside Employment

Dear Mr. Angelo,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion and rendered its opinion at a public meeting on February 5, 2015.

QUESTION:

Can a Palm Beach County Fire Rescue (PBCFR) employee register and work as a lobbyist, during non-work hours, for a principal firm that lobbies Palm Beach County (County) and municipal councils on matters unrelated to goods and services provided to or used by PBCFR?

ANSWER:

Based upon the facts you have submitted, you are prohibited from lobbying the County as your public employer. You are not prohibited from lobbying municipalities within the County.

The Palm Beach County Code of Ethics (Code) prohibits you from entering into any contract or other transaction to provide goods or services to the public entity you serve, including any contract or transaction between your public employer and your outside employer or business.¹ An outside employer is defined as any non-governmental entity of which an employee is a member, official, director, proprietor, partner or employee and from which he receives compensation for services rendered.² A lobbyist is any person who is employed and receives payment, or who contracts for economic consideration for the purpose of lobbying on behalf of a principal.³ Lobbying is defined as seeking to influence a decision through oral or written communication, or an attempt to obtain the goodwill, of a public official or employee with respect to the passage, defeat or modification of any item which may foreseeably be presented for consideration to the county commission or municipal governing body.⁴ Additionally, the Code prohibits you from using your official position as a firefighter to influence others to take or fail to take any action which would give yourself, your outside employer, or a customer or client of your outside employer a special financial benefit not available to other similarly situated entities.⁵

Based on the facts provided, as a lobbyist working for a principal firm that lobbies the County and the municipal councils, the firm would be your outside employer as contemplated by the Code. Lobbying your public employer on behalf of your outside employer would violate the contractual prohibition provision. The Code provides several exceptions to the contractual relations prohibition, but none of those exceptions apply to your situation. Thus, as a County employee, you are prohibited from working as a lobbyist who lobbies the County. However, you are not prohibited from lobbying municipalities within the County. When lobbying, you must take great care to not use your official public position or title as a County firefighter, directly or indirectly, in any of your dealings with these municipalities. Using your official public position or title as a firefighter would per se constitute using your public

¹ §2-443(d)

² §2-442

³ Id.

⁴ Id.

⁵ §2-443(a)

job to influence others to give a special financial benefit to yourself, your outside employer, or a customer or client of your outside employer.

FACTS:

You are an employee of Palm Beach County and work as a firefighter and paramedic with PBCFR. Your responsibilities include responding to 911 emergency calls and fire alarms. You do not have any authority on budgetary decisions. You are interested in working as a lobbyist for a principal firm that lobbies the Palm Beach County Board of County Commissioners and the municipal councils on matters unrelated to goods and services provided to or used by PBCFR.

LEGAL BASIS:

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

Sec. 2-442. Definitions.

Lobbying shall mean seeking to influence a decision through oral or written communication or an attempt to obtain the goodwill of any county commissioner, any member of a local municipal governing body, any mayor or chief executive officer that is not a member of a local municipal governing body, any advisory board member, or any employee with respect to the passage, defeat or modification of any item which may foreseeably be presented for consideration to the advisory board, the board of county commissioners, or the local municipal governing body lobbied as applicable.

Lobbyist shall mean any person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying on behalf of a principal, and shall include an employee whose principal responsibility to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government.

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. For purposes of this definition, "compensation" does not include reimbursement for necessary expenses, including travel expenses;

Sec. 2-443. Prohibited conduct.

- (a) ***Misuse of public office or employment.*** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
 - (1) Himself or herself;
 - (4) An outside employer or business of his or hers, or of his 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;
- (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. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to section 2-448(c) or by the local municipal governing body pursuant to local

ordinance as applicable. This prohibition shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality. This prohibition also shall not apply to officials or employees who purchase goods from the county or municipality on the same terms available to all members of the public.

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

Item IX. Discussion Re: Amendment to Ordinance
Version passed at November COE Meeting:

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.

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(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.

(dc) *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.

(ed) *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.

Item IX Discussion Re: Amendment to Ordinance

Alternate language proposed by staff:

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 selected from a list established by the Palm Beach County Bar Association. For inclusion on the list of designated hearing officers, he/she shall have the following minimum qualifications:

- (1) Be a member, in good standing, of the Florida Bar for at least the preceding five years,
- (2) Be experienced in matters of governmental ethics and familiar with the Palm Beach County Code of Ethics, related ordinances, and the rules and practices of the Palm Beach County Commission on Ethics,
- (3) Attorneys with prior judicial experience or as a hearing officer, mediator or special master shall be deemed uniquely qualified.