

Agenda

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

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

Palm Beach County

Commission on Ethics

300 North Dixie Highway
West Palm Beach, FL 33401

561.355.1915

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Commissioners

Michael S. Kridel, Chair

Clevis Headley, Vice Chair

Michael F. Loffredo

Judy M. Pierman

(Vacant)

Executive Director

Steven P. Cullen

Intake Manager

Gina A. Levesque

Staff Counsel

Christie E. Kelley

Senior Investigator

Mark E. Bannon

Investigator

Anthony C. Bennett

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from July 9, 2015
- V. Executive Session
 - a. C15-016
 - b. C15-017
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 15-031
 - b. RQO 15-032
 - c. RQO 15-033
 - d. RQO 15-034
 - e. RQO 15-035
 - f. RQO 15-036
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Proposed Advisory Opinions
 - a. RQO 15-011
- IX. 2015 Code of Ethics Draft Amendment
- X. 2015 Commission on Ethics Draft Amendments
- XI. Executive Director Comments
- XII. Commission Comments
- XIII. Public Comments
- XIV. 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**

JULY 9, 2015

**THURSDAY
1:34 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

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

MEMBERS:

Michael S. Kridel, Vice Chair
Clevis Headley
Michael F. Loffredo
Judy M. Pierman

STAFF:

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

ADMINISTRATIVE STAFF:

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

- III. INTRODUCTORY REMARKS**

Vice Chair Michael Kridel said that today's meeting would be one of transitions.

- IV. AWARD PRESENTATIONS**

Vice Chair Kridel commended former Chair Salesia Smith-Gordon and former Commissioner Carmine Priore for their service.

IV. – CONTINUED

(CLERK'S NOTE: Ms. Smith-Gordon and Mr. Priore were presented with awards at this time.)

V. NOMINATION AND ELECTION OF CHAIR

Vice Chair Kridel asked for nominations for the chair seat.

Commissioner Michael Loffredo nominated Vice Chair Kridel.

MOTION to elect Michael Kridel as chair. Motion by Michael Loffredo, seconded by Clevis Headley, and carried 4-0.

VI. NOMINATION AND ELECTION OF VICE CHAIR

Chair Kridel stated that the floor was open for vice chair nominations.

Commissioner Loffredo nominated Commissioner Clevis Headley.

MOTION to elect Clevis Headley as vice chair. Motion by Michael Loffredo, seconded by Judy Pierman, and carried 4-0.

VII. APPROVAL OF MINUTES FROM JUNE 4, 2015

MOTION to approve the June 4, 2015 minutes. Motion by Judy Pierman, seconded by Clevis Headley, and carried 4-0.

VIII. Page 4

IX. Pages 5-8

X. PROCESSED ADVISORY OPINIONS (CONSENT)

X.a. Request for Opinion (RQO 15-021)

X.b. RQO 15-022

X.c. RQO 15-023

X.d. RQO 15-024

X. – CONTINUED

X.e. RQO 15-025

X.f. RQO 15-026

X.g. RQO 15-027

X.h. RQO 15-028

X.i. RQO 15-030

MOTION to approve the consent agenda. Motion by Judy Pierman, seconded by Clevis Headley, and carried 4-0.

XI. ITEMS PULLED FROM CONSENT AGENDA – None

XII. PROPOSED ADVISORY OPINIONS

XII.a RQO 15-029

Christie E. Kelley, Esq., COE staff counsel, said that:

- The attorney for the City of Riviera Beach asked if participation in a matter by an elected official, who had a voting conflict concerning that matter, would violate the County’s Code of Ethics (Code) if the elected official abstained from voting.
- Staff submitted that the elected official’s participation would violate the Code’s Section 2-443(c), the disclosure of voting conflicts provision (provision).
- The provision required elected officials to abstain from voting and not participate in any matter which would result in a special financial benefit to persons or entities specified in the Code’s Section 2-443(a)(1-7).
- To comply with the Code, elected officials were also required to disclose the conflict before discussion of the matter and file a State voting conflict form with the Clerk and Comptroller’s Office and with the COE.

XII.a – CONTINUED

MOTION to approve proposed advisory opinion letter RQO 15-029. Motion by Clevis Headley, seconded by Judy Pierman, and carried 4-0.

RECESS

At 1:48 p.m., the chair declared the meeting recessed for an executive session.

VIII. PROBABLE CAUSE HEARING (EXECUTIVE SESSION)

RECONVENE

At 2:20 p.m., the meeting reconvened with Chair Kridel, Vice Chair Headley, and Commissioners Loffredo and Pierman present.

VIII.a. C15-015

Vice Chair Headley read the following Public Report Finding No Probable Cause and Order of Dismissal as discussed during the executive session:

Complainant, Michael P. McCloskey, filed the above referenced complaint on May 11, 2015, alleging that Respondent Geraldine Muoio, Mayor of the City of West Palm Beach, violated §4-443(a)(b)(c) of the Palm Beach County Code of Ethics.

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On July 9, 2015, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, Legal Sufficiency Determination and Report of Investigation. After oral statements by the Advocate and Respondent, the Commission concluded no probable cause exists to believe any violation occurred.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Geraldine Muoio, is hereby DISMISSED.

VIII.a. – CONTINUED

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on July 9, 2015.

By: Michael S. Kridel, Chair

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

IX. PROBABLE CAUSE HEARING (PUBLIC)

IX.a. C15-018

Gina A. Levesque, COE Intake Manager, said that the respondent, COE Senior Investigator Mark E. Bannon, waived his right to an executive session.

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

- Bart Novack filed a formal complaint against Mr. Bannon on June 16, 2015.
- Legal sufficiency of the complaint was found. If true, the facts alleged would constitute a violation of the Code.
- After the investigation, staff recommended dismissal for lack of probable cause.
- The COE would determine whether probable cause existed by examining documentary evidence and considering legal argument.
- Probable cause could be found if there were reasonably trustworthy facts and circumstances for the COE to believe that Mr. Bannon violated the Code.

Ms. Kelly said that:

- The complaint stated that Mr. Bannon filed a gift form with the COE on July 17, 2013 for a gift with a monetary value of \$750 from the Palm Beach County Police Benevolent Association (PBA).

IX.a. – CONTINUED

- The complaint alleged that the PBA lobbied in front of government municipalities; therefore, the Code's Sec 2-444(a)(1) prohibited Mr. Bannon from accepting a gift greater than \$100.
- In order for the reported gift to violate the Code's Sec 2-444(a)(1), the evidence needed to show that the \$750 scholarship was paid by a person or business entity that the recipient knew, or should have known with the exercise of reasonable care, was a vendor, lobbyist, or any principal or employer of a lobbyist who lobbied, sold, or leased to the County or municipality as applicable.
- The evidence gathered revealed that none of the PBA entities associated with the reported gift were lobbyists, principals, or employers of lobbyists who lobbied the County.
- The parent organization, the Palm Beach County Police Benevolent Association, Inc. (PBA, Inc.), was a not-for-profit corporation.
- The scholarship was paid by the Police Benevolent Association Charity Fund, Inc. (PBA Charity Fund), which was also a not-for-profit corporation and 501(c)(3) charitable organization registered with the Internal Revenue Service.
- The PBA office manager stated that neither PBA, Inc., nor PBA Charity Fund were principals or employers of lobbyists who lobbied the County.
- The names of the PBA representatives listed on the document provided by Mr. Novack did not appear in the County's lobbyist registration database.
- The names of 15 PBA employees listed on the PBA Web site were cross referenced with the names of County lobbyists and principals and did not appear in the County's lobbyist registration database.
- The seven names used by PBA as a charitable organization listed on the Florida Department of Agriculture's Website did not appear in the County's lobbyist registration database.

IX.a. – CONTINUED

Mr. Bannon said that:

- The scholarship was competitive; however, a portion of the scholarship, which had a minimum grade point average requirement, was awarded to all applicants.
- He was a member of the PBA and that he listed his name on the gift form because he attended the award ceremony with his son, who received the scholarship in question.

(CLERK'S NOTE: Commissioner Loffredo inadvertently made a motion. Chair Kridel inadvertently called the vote without a second.)

Vice Chair Headley read the following Public Report Finding No Probable Cause and Order of Dismissal:

Complainant, Bart Novack, filed the above referenced complaint on June 16, 2015, alleging that Respondent, Mark Bannon, Senior Investigator for the Palm Beach County Commission on Ethics, violated §4-444(a)(1) of the Palm Beach County Code of Ethics.

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On July 9, 2015, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, Legal Sufficiency Determination and Report of Investigation. After oral statements by the Advocate and Respondent, the Commission concluded no probable cause exists to believe any violation occurred.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Mark Bannon, is hereby **DISMISSED**.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on July 9, 2015.

IX.a. – CONTINUED

By: Michael S. Kridel, Chair

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

MOTION to accept the Public Report Finding No Probable Cause and Order of Dismissal as presented. Motion by Judy Pierman, seconded by Clevis Headley, and carried 4-0.

Mr. Bannon said that he appreciated staff's extensive investigation.

(CLERK'S NOTE: The numeric order of the agenda was restored.)

XIII. EXECUTIVE DIRECTOR COMMENTS

XIII.a.

DISCUSSED: Live Training Requests.

Mr. Cullen said that there was an increase in live training requests, which he believed led to an increase in requests for opinion.

XIII.b.

DISCUSSED: Ordinance Drafting Committee.

Mr. Cullen said that the COE Ordinance Drafting Committee meeting was scheduled for July 27, 2015, during which the hearing officer amendment, the vendor definition, and the gift report filing date would be discussed

XIV. COMMISSION COMMENTS

XIV.a.

DISCUSSED: Congratulations.

Commissioners Loffredo and Pierman congratulated Chair Kridel and Vice Chair Headley on their new positions.

XIV.b.

DISCUSSED: Staff Commendations.

Chair Kridel said that the two probable cause hearings represented the highest level of transparency, professionalism, and ethics. He added that there was a vast difference between legal sufficiency and probable cause and that he was impressed by staff's investigative approaches.

XV. PUBLIC COMMENTS – None

XVI. ADJOURNMENT

At 2:37 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

VI. Processed Advisory Opinions

a. RQO 15-031 Christy Goddeau

The attorney for the City of Lake Worth asked:

- 1) May City of Lake Worth Commissioner Andy Amoroso sell newspapers to the City's library for an amount not to exceed \$500 per year without violating the Palm Beach County Code of Ethics (Code)?
- 2) Does the Code allow Commissioner Amoroso to accept travel expenses from the National League of Cities without any requirement to report the expenses on the gift reporting form?

Staff submits the following for COE review:

- 1) Commissioner Amoroso may sell newspapers to the City of Lake Worth without violating the contractual prohibition provision of the Code as long as the amount of the transaction with the City does not exceed \$500 per year.
- 2) Commissioner Amoroso is not prohibited from accepting the National League of Cities' payment or reimbursement of the travel expenses as long as his travel is related to the City's membership in the National League of Cities. However, although the Code permits Commissioner Amoroso to accept the travel expenses, state law controls the gift reporting requirements for state reporting individuals. Since Commissioner Amoroso, as a local elected official, is a state reporting individual, he needs to determine whether the travel expenses must be reported under state law. Under the Code, if a state reporting individual is required to file a State of Florida Quarterly Gift Disclosure Form (Form 9) with the state, he or she must also file a copy of the Form 9 with the COE at the same time.

b. RQO 15-032 James Schmitz

A City of Delray Beach employee asked if a conflict of interest would arise for him if the City of Delray Beach purchases light fixtures from his cousin's employer, SESCO Lighting.

Staff submits the following for COE review: A prohibited conflict of interest would not arise for him if the City of Delray Beach purchases light fixtures from his cousin's employer (SESCO Lighting). The Code prohibits him from using his position in any way to give a special financial benefit to specified persons or entities. A cousin and a cousin's outside business or employer are not among the persons or entities specified in Sec. 2-443(a)(1-7). Furthermore, he was not involved in selecting SESCO Lighting for the project; the contractor who built the pavilion selected that company.

However, while there may be no per se prohibited conflict of interest under the Code, an appearance of impropriety may be created if SESCO Lighting is used in any future projects in the City of Delray Beach where he oversees the selection of the lighting vendor. If he are concerned about this appearance of impropriety, he may choose to select a different lighting vendor for such projects.

c. RQO 15-033 Daniel Aaronson

A member of a consulting and lobbying firm, the Aaronson Group LLC., asked if his firm's fee arrangement for performing consulting work and lobbying before the Palm Beach County Board of County Commissioners and other governmental entities in Palm Beach County would violate the Code.

Staff submits the following for COE review: A contingency fee would not be involved in the fee arrangement here. Since the percentage of ownership in the LLC and the monthly retainer will not change regardless of the success or failure of the firm's efforts, the firm's fee arrangement will not violate the Code's contingency fee prohibition. The Code defines a contingency fee as a fee, bonus, commission, or non-monetary benefit as compensation which is dependent on the passage or defeat or other decision by an elected or appointed body or an employee authorized to act on its behalf.

d. RQO 15-034 Greg Tindal

The Vice Chair of the Town of Loxahatchee Groves' Financial Advisory and Audit Committee (FAAC), which advises the Town Council on issues related to the Town's budget, financial activities and performance, and annual audit, asked if a prohibited conflict of interest would arise for him if he volunteers to learn about the town's new accounting system.

Staff submits the following for COE review: A prohibited conflict of interest would not arise for him if he familiarizes himself with the new accounting system since taking such an action will not result in a special financial benefit to him. The new accounting system is related to his duties and responsibilities as a FAAC member and the FAAC members use the information processed by the accounting software to give financial and audit advice.

e. RQO 15-035 Craig Prusansky

A Palm Beach County employee asked if the outside employment waiver provision would allow him to accept part-time employment as an independent contractor for a County vendor.

Staff submits the following for COE review: Under these facts, he would be working as an independent contractor, not as an employee, of the County vendor. Since an independent contractor is not considered an employee under the Code, the County vendor would not be considered his outside employer. Thus, the part-time outside employment waiver provision cannot be used in this situation, and the contractual relationship prohibition precludes him from working as an independent contractor for this County vendor.

f. RQO 15-036 Pedro Herrera

The attorney for the Board of Trustees of the City of Boca Raton Pension Plan for Police and Firefighters (BRPFERS) asked if the cone of silence section of the Lobbyist Registration Ordinance applies to the BRPFERS while they are soliciting and evaluating bids for an investment consultant.

Staff submits the following for COE review: The trustees of the BRPFERS are not subject to the cone of silence section of the Lobbyist Registration Ordinance when they are soliciting and evaluating bids for an investment consultant because the BRPFERS trustees are not county or municipal elected officials. Sec. 2-355 prohibits all oral communication between any person seeking the award of a competitive solicitation and county or municipal elected officials or their staff or any employee authorized to act on behalf of the county or the municipal governing body. In addition, the cone of silence section does not apply to oral communication that occurs on the record at a public meeting. Therefore, even if the trustees were subject to the cone of silence section, under these facts, since the due diligence interviews will be broadcasted with live audio and visual feed during a publicly noticed BRPFERS workshop, the cone of silence requirement would not apply.



Palm Beach County Commission on Ethics

Commissioners

Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman
(Vacant)

Executive Director

Steven P. Cullen

July 9, 2015

Ms. Christy Goddeau, City Attorney
City of Lake Worth
701 Northpoint Parkway, Suite 209
West Palm Beach, FL 33407

Re: RQO 15-031
Contractual Relationships/Travel Expenses

Dear Ms. Goddeau,

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

QUESTIONS:

- 1) May City of Lake Worth (City) Commissioner Andy Amoroso sell newspapers to the City's library for an amount not to exceed \$500 per year without violating the Palm Beach County Code of Ethics (Code)?
- 2) Does the Code allow Commissioner Amoroso to accept travel expenses from the National League of Cities without any requirement to report the expenses on the gift reporting form?

ANSWERS:

Question 1:

Based on the facts submitted, Commissioner Amoroso may sell newspapers to the City of Lake Worth without violating the contractual prohibition provision of the Code as long as the amount of the transaction with the City does not exceed \$500 per year.

The Code prohibits Commissioner Amoroso or his outside business from entering into any contract or other transaction with the City unless at least one of the seven exceptions to the contractual relationships provision applies.¹ Section 2-443(e)(4) provides an exception when the total amount of the contracts or transactions in the aggregate between an official's outside business and his public employer does not exceed five hundred dollars (\$500) per calendar year. Therefore, if the total amount of the contracts or transactions between the City and Commissioner Amoroso of his outside business does not exceed \$500, in the aggregate, then he is not prohibited from selling newspapers to the City.

Question 2:

The Code prohibits Commissioner Amoroso from accepting payment or reimbursement of any travel expenses from any vendor, contractor, service provider, bidder, or proposer doing business with the City.² However, this prohibition does not extend to expenses reimbursed or paid by an organization of which the City is a member, if

¹ §2-443(d)

² §2-443(f)

the travel is related to that membership.³ Therefore, based on the facts submitted, Commissioner Amoroso is not prohibited from accepting the National League of Cities' payment or reimbursement of the travel expenses as long as his travel is related to the City's membership in the National League of Cities.

However, although the Code permits Commissioner Amoroso to accept the travel expenses, state law controls the gift reporting requirements for state reporting individuals. Since Commissioner Amoroso, as a local elected official, is a state reporting individual, he needs to determine whether the travel expenses must be reported under state law. He may contact the Florida Commission on Ethics for assistance regarding this question. Under the Code, if a state reporting individual is required to file a State of Florida Quarterly Gift Disclosure Form (Form 9) with the state, he or she must also file a copy of the Form 9 with the COE at the same time.⁴

FACTS:

Your law firm represents the City of Lake Worth as the City Attorney. You are requesting an advisory opinion on behalf of City of Lake Worth City Commissioner Andy Amoroso.

Facts pertaining to Question 1:

Commissioner Amoroso owns a local store in the City which sells newspapers to the public. He also sells and delivers newspapers to the City's library at a discounted rate. The City pays Commissioner Amoroso \$500 a year for the newspapers. The actual cost of the newspapers is approximately \$800, but Commissioner Amoroso sells the newspapers to the City at a discounted rate. If the City were to use another supplier of the newspapers, the City would most likely pay more for the same newspapers.

Facts pertaining to Question 2:

The City of Lake Worth is a member of the National League of Cities, a national organization of municipalities. Commissioner Amoroso travels to the National League of Cities' conferences on behalf of the City of Lake Worth and also in his role as the First Vice President for the National League of Cities Lesbian, Gay, Bisexual, Transgender Local Officials Board of Directors. When he travels to these conferences, the National League of Cities pays for his transportation.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-443(d), §2-443(e)(4), §2-443(f), and §2-444(f)(1) of the Code:

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 employee, directly or indirectly, or the official or employee's outside employer or business.
- (e) Exceptions and waiver.
 - (4) The total amount of the contracts or transactions in the aggregate between the outside employer or business and the county or municipality as applicable does not exceed five hundred dollars (\$500) per calendar year.
- (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

³ Id.

⁴ §112.3148, Florida Statutes; §2-444(f)(1)

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.


Sec. 2-444. Gift law.

- (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.

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. This opinion 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

Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman
(Vacant)

Executive Director

Steven P. Cullen

July 24, 2015

Mr. James Schmitz, Deputy Director of Public Works
City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

Re: RQO 15-032
Conflict of Interest

Dear Mr. Schmitz,

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 conflict of interest arise for you if the City of Delray Beach purchases light fixtures from your cousin's employer, SESCO Lighting?

ANSWER:

The Palm Beach County Code of Ethics (Code) prohibits you from using your position in any way to give a special financial benefit to specified persons or entities, including certain relatives or their outside business or employer.¹ Neither a cousin nor his or her outside business or employer is among the persons or entities specified in Sec. 2-443(a)(1-7).² Based on the facts submitted, a prohibited conflict of interest would not arise for you if the City of Delray Beach purchases light fixtures from your cousin's employer (SESCO Lighting). Furthermore, you were not involved in selecting SESCO Lighting for the project; the contractor who built the pavilion selected that company.

However, while there may be no per se prohibited conflict of interest under the Code, an appearance of impropriety may be created if SESCO Lighting is used in any projects in the City of Delray Beach where you oversee the selection of the lighting vendor. If you are concerned about this appearance of impropriety, you may choose to select a different lighting vendor for such projects.

FACTS:

You are the Deputy Director of Public Works for the City of Delray Beach. In your role, you manage and direct all operations of the Public Works Division of the City's Environmental Services Department, including Building Maintenance, Streets Maintenance, Traffic Operations, Parking, Fleet Maintenance, Storm Water Maintenance, Street Lighting, and Special Events support. The City's beach pavilion is currently undergoing repairs. The contractor that was hired by the City to build the pavilion used SESCO

¹ §2-443(a)

² Id.

Lighting for the pavilion's lighting fixtures. Your cousin is the lighting consultant representative for SESCO Lighting. The light fixtures originally selected were stainless steel and intended for interior use only. The lights are now rusting, but they are still under warranty. The City may have to purchase light fixtures in the polished variety since those are intended for exterior use.

LEGAL BASIS:

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

Sec. 2-443. Prohibited conduct.

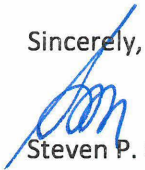
(a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care 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



Palm Beach County Commission on Ethics

Commissioners

Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman
(Vacant)

Executive Director

Steven P. Cullen

July 24, 2015

Mr. Daniel Aaronson
1 Financial Plaza, Ste 1615
Fort Lauderdale, FL 33394-0026

Re: RQO 15-033
Contingency Fee Prohibition

Dear Mr. Aaronson,

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 your firm's fee arrangement for performing consulting work and lobbying before the Palm Beach County Board of County Commissioners and other governmental entities in Palm Beach County violate the Palm Beach County Code of Ethics (Code)?

ANSWER:

The Code prohibits any person from offering, giving or accepting a contingency fee which is dependent on the passage or defeat or other decision by an elected or appointed body or an employee authorized to act on its behalf.¹ The Code defines a contingency fee as a fee, bonus, commission, or non-monetary benefit as compensation which is dependent on an action or decision taken.² Based on the facts submitted, a contingency fee would not be involved in the fee arrangement here. Since the percentage of ownership in the LLC and the monthly retainer will not change regardless of the success or failure of the firm's efforts, the firm's fee arrangement will not violate the Code's contingency fee prohibition.

FACTS:

You are a member of The Aaronson Group LLC., a consulting and lobbying firm. Your firm has entered into an agreement with another entity for consulting work where your firm and the entity have formed a new limited liability corporation (LLC). Your firm, Aaronson Group, owns less than 10 percent interest in the new LLC. In addition to the consulting work, you will be lobbying before the Palm Beach County Board of County Commissioners and other governmental entities in the Palm Beach County. For the lobbying work, the new LLC will pay Aaronson Group a monthly retainer for a definite period of time. Neither the percentage of ownership in the LLC nor the monthly retainer will change regardless of the success or failure of the firm's efforts.

LEGAL BASIS:

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

Sec. 2-443. Prohibited conduct.

(g) Contingent fee prohibition. No person shall, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person shall, in whole or in part, receive or agree to receive a contingency fee. As

¹ §2-443(g)

² Id.

used herein, "contingency fee" means a fee, bonus, commission, or nonmonetary benefit as compensation which is dependent on or in any way contingent on the passage, defeat, or modification of: an ordinance, resolution, action or decision of the board of county commissioners or local municipal governing body as applicable, any employee authorized to act on behalf of the board of county commissioners or local municipal governing body as applicable, the county administrator or municipal administrator as applicable, or any action or decision of an advisory board or committee. This prohibition does not apply to real estate brokers when acting in the course of their profession as regulated by Florida Statutes, §§475.001—475.5018, as may be amended. Nothing in this section may be construed to prohibit any salesperson from engaging in legitimate government business on behalf of a company from receiving compensation or commission as part of a bona fide contractual arrangement with that company provided such compensation or commission is ordinary and customary in the industry. Nothing in this section may be construed to prohibit an attorney from representing a client in a judicial proceeding or formal administrative hearing pursuant to a contingent fee arrangement.

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

Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman
(Vacant)

Executive Director

Steven P. Cullen

July 24, 2015

Mr. Greg Tindall
Financial Advisory and Audit Committee
14579 Southern Blvd., Suite 2
Loxahatchee Groves, FL 33470

Re: RQO 15-034
Conflict of Interest

Dear Mr. Tindall,

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:

Under the Palm Beach County Code of Ethics (Code), would a prohibited conflict of interest arise for you, as the Vice Chair of the Town of Loxahatchee Groves' Financial Advisory and Audit Committee (FAAC), if you volunteer to learn about the town's new accounting system?

ANSWER:

The Code prohibits you from using your position in any way to give a special financial benefit to specified persons or entities, including yourself.¹ Additionally, the Code prohibits you from using your official position, property, or resource within your trust to corruptly secure a special benefit for anyone, including yourself.² Corruptly is defined as an official action taken with wrongful intent and for the purpose of receiving any benefit, which is inconsistent with the proper performance of your public duties.³

Based on the facts submitted, a prohibited conflict of interest would not arise for you if you familiarize yourself with the new accounting system since taking such an action will not result in a special financial benefit to you. The new accounting system is related to your duties and responsibilities as a FAAC member and the FAAC members use the information processed by the accounting software to give financial and audit advice.

FACTS:

You are the Vice Chair of the Town of Loxahatchee Groves' Financial Advisory and Audit Committee, which advises the Town Council on issues related to the Town's budget, financial activities and performance, and annual audit. You are also a Florida Certified Public Accountant, and you have spent the majority of your career in litigation support, which required that you become very familiar with a wide variety of accounting systems in a relatively short period of time.

¹ 2-433(a)

² 2-433(b)

³ Id.

The Town is transitioning to a new accounting system and to a new town manager. You volunteered to be a liaison during this transition to become more familiar with the accounting system and to see how information is processed by the accounting system. You thought your experience, professional standards, and formal education meant that you could be entrusted to gain a better understanding of the accounting software which processes the information upon which FAAC members are asked to review for financial and audit advice.

You do not have any relationship or association with the accounting software maker, Blackbaud. You stated that you had never heard of Blackbaud before its purchase by the town. You were not involved in recommending the purchase of the software. The purchase was signed by Mayor Browning on January 29, 2015, months before you were appointed to FAAC.

After expressing your interest in serving as liaison, you were advised by the town's management services provider, Underwood Management Services Group, that it would be an ethical violation for you to serve in this capacity. You attempted to clarify that you would not be entering any information and that you simply wanted to see how information flowed through the accounting system. Underwood Management Services Group repeated that it would be an ethical violation to do so. You do not believe that an ethical violation exists.

LEGAL BASIS:

The legal basis for this opinion is found in the §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:

- (1) Himself or herself;
- (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
- (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;
- (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;
- (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner—"substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
- (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. 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

Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman
(Vacant)

Executive Director

Steven P. Cullen

July 31, 2015

Captain Craig Prusansky
Palm Beach County Fire Rescue
405 Pike Road
West Palm Beach, FL 33411

Re: RQO 15-035
Outside Employment

Dear Captain Prusansky,

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:

As a Palm Beach County (County) employee, would the outside employment waiver provision allow you to accept part-time employment as an independent contractor for a County vendor?

ANSWER:

Based on the facts submitted, you cannot work as an independent contractor for the County vendor because the part-time outside employment waiver provision would not apply since you would not be an "employee" of the vendor.

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 County, unless an exception applies.¹ This prohibition includes any contract or transaction between the County and you, your outside employer, or any business you may own.² Sec. 2-443(e)(5) provides a process by which the contractual relationship prohibition may be waived for employees. This outside employment waiver process applies when a public employee's outside employer has a contract for goods or services with his or her public employer.³ The Code defines an "outside employer" as any entity of which the public employee is an employee.⁴ However, persons employed on a contractual basis are classified as independent contractors and are not considered "employees" as defined by the Code.⁵

Under these facts, you would be working as an independent contractor, not as an employee, of the County vendor. Since an independent contractor is not considered an employee, the County vendor would not be considered your outside employer. Thus, the part-time outside employment waiver

¹ §2-443(d)

² Id.

³ §2-443(3)(5)

⁴ §2-442

⁵ RQO 11-020

provision cannot be used in this situation, and the contractual relationship prohibition precludes you from working as an independent contractor for this County vendor.

FACTS:

You are a District Captain for Palm Beach County Fire Rescue and work as the EMS Continuous Quality Improvement Coordinator. You also serve as the Electronic Patient Care Record (ePCR) Program Manager. You were part of the committee that determined the general specifications for the ePCR program that Fire Rescue currently uses, and you obtained the quotes from different vendors for their ePCR programs and sent these quotes to the fiscal analyst and the purchasing department to develop the bid and award the contract. You did not determine the requirements of the contract and did not participate in the awarding of the contract. The County's Purchasing Department handled the bid posting, award, and contract. You do not have any power or authorization to approve purchases for the Fire Rescue department.

You have been offered employment to perform contract work for the vendor of the ePCR product. You stated that you would work as an independent contractor. You would be performing computer programming only and would not be involved in the transactions or contracts between the ePCR product vendor and the County. The work would occur on your own time and would not interfere or otherwise impair your job functions.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-442, §2-443(d), and §2-443(e)(5) of the Code:

Sec. 2-442. Definitions.

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; (emphasis added)

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 employee, directly or indirectly, or the official or employee's outside employer or business.

(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. The request for the waiver shall be signed by the employee under oath or affirmation on an approved form provided by the commission on ethics. The document shall contain written acknowledgment of compliance with the provisions of subsection (5)a. through (5)e. of this subsection, together with such pertinent facts and relevant documents that support such waiver. A waiver under this subsection must be approved by both the employee's supervisor and chief administrative officer of the county or municipality. The county or municipality shall record such waiver in the employee's personnel file and shall submit a copy of the waiver and all related documents to the commission on ethics. The commission on ethics in its discretion may elect to review, comment on, or investigate any waiver. The commission on ethics review or investigation shall not delay an employee's ability to take the part time employment. (emphasis added)

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

Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman
(Vacant)

Executive Director

Steven P. Cullen

July 31, 2015

Pedro Herrera, Esquire
Sugarman & Susskind
100 Miracle Mile, Suite 300
Coral Gables, FL 33134

Re: RQO 15-036
Cone of Silence

Dear Mr. Herrera,

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:

Does the cone of silence section of the Lobbyist Registration Ordinance apply to the Board of Trustees of the City of Boca Raton Pension Plan for Police and Firefighters (BRPFRS) while they are soliciting and evaluating bids for an investment consultant?

ANSWER:

Based on the facts submitted, the trustees of the BRPFRS are not subject to the cone of silence section of the Lobbyist Registration Ordinance when they are soliciting and evaluating bids for an investment consultant because the BRPFRS trustees are not county or municipal elected officials. Sec. 2-355 prohibits all oral communication between any person seeking the award of a competitive solicitation and county or municipal elected officials or their staff or any employee authorized to act on behalf of the county or the municipal governing body. In addition, the cone of silence section does not apply to oral communication that occurs on the record at a public meeting.¹ Therefore, even if the trustees were subject to the cone of silence section, under these facts, since the due diligence interviews will be broadcasted with live audio and visual feed during a publicly noticed BRPFRS workshop, the cone of silence requirement would not apply.

FACTS:

Your law firm represents the Board of Trustees of the City of Boca Raton Pension Plan for Police and Firefighters (BRPFRS). The BRPFRS was established by Chapter 12, Article IV of the Boca Raton Code and Chapters 175 and 185 of the Florida statutes, to provide retirement benefits to the police officers and firefighters employed by and retired from the City of Boca Raton. Eight trustees serve the BRPFRS; four are city residents appointed by the city council and four are city employees (two police officers and two firefighters) who are elected by their coworkers. The COE has previously opined that the trustees appointed by the Boca Raton City Council are considered "officials" as defined by the Palm Beach County Code of Ethics and that the City of Boca Raton employees who are trustees are subject to the jurisdiction of the COE as employees of the city.²

¹ §2-355(d)

² RQO 11-060

The BRPFRS is required to “retain a professionally qualified independent consultant who shall evaluate the performance of any existing professional money manager and shall make recommendations to the board of trustees regarding the selection of money managers for the next investment term.”³ On February 2, 2015, the BRPFRS issued a Request for Proposal inviting all firms interested in providing financial investment evaluation and consulting services to submit written proposals. The BRPFRS wishes to send four BRPFRS trustees to the New England area to perform due diligence interviews at the offices of two consulting firms who submitted proposals. The BRPFRS intends to broadcast these interviews live at their usual meeting location. The due diligence interviews will be publicly noticed as workshops in the same manner as other BBRPFRS Board of Trustees meetings.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-355 of the Lobbyist Registration Ordinance:

Sec. 2-355. Cone of silence.

- (a) ***Cone of silence*** means a prohibition on any communication, except for written correspondence, regarding a particular request for proposal, request for qualification, bid, or any other competitive solicitation between:
- (1) Any person or person's representative seeking an award from such competitive solicitation; and
 - (2) Any county commissioner or commissioner's staff, any member of a local governing body or the member's staff, a mayor or chief executive officer that is not a member of a local governing body or the mayor or chief executive officer's staff, or any employee authorized to act on behalf of the commission or local governing body to award a particular contract.
- (b) For the purposes of this section, a person's representative shall include but not be limited to the person's employee, partner, officer, director, consultant, lobbyist, or any actual or potential subcontractor or consultant of the person.
- (c) The cone of silence shall be in effect as of the deadline to submit the proposal, bid, or other response to a competitive solicitation. The cone of silence applies to any person or person's representative who responds to a particular request for proposal, request for qualification, bid, or any other competitive solicitation, and shall remain in effect until such response is either rejected by the county or municipality as applicable or withdrawn by the person or person's representative. Each request for proposal, request for qualification, bid or any other competitive solicitation shall provide notice of cone of silence requirements and refer to this article.
- (d) The provisions of this article shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before selection committees, contract negotiations during any public meeting, presentations made to the board or local municipal governing body as applicable, and protest hearings. Further, the cone of silence shall not apply to contract negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence at any time with any employee, county commissioner, member of a local municipal governing body, mayor or chief executive officer that is not a member of the local municipal governing body, or advisory board member or selection committee member, unless specifically prohibited by the applicable competitive solicitation process.

³ §175.071(6), Fla. Stat.; §185.06(5), Fla. Stat.

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

August 7, 2015

Captain David Bernhardt
West Palm Beach Police Department
600 Banyan Blvd.
West Palm Beach, FL 33401

Re: RQO 15-011
Misuse of Office

Dear Captain Bernhardt,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion and rendered its opinion at a public meeting on August 7, 2015.

QUESTION:

Does the Palm Beach County Code of Ethics (Code) prohibit the Chief of Police of the West Palm Beach Police Department (Police Department) from writing a letter on official letterhead, stating that the West Palm Beach Police Foundation (Foundation) is the only charitable organization with a partnership with the Police Department?

ANSWER:

Based on the facts submitted, as long as there is no quid pro quo in exchange for the letter or a special financial benefit to any of the prohibited persons or entities listed in Sec. 2-443(a) of the Code, the Chief of Police is not prohibited from writing a letter on official letterhead, which states that the Foundation is the only charitable organization with a partnership with the Police Department.

Under the Code, an elected official is prohibited from using his official position to give a special financial benefit, not shared with similarly situated members of the public, to certain persons or entities, including himself, relatives, and charities and other non-profit organization of which he or his spouse is an officer or director.¹ The official must also not use his position to corruptly secure a special benefit for himself or another.² However, the Florida Commission on Ethics has previously determined that an elected official is not prohibited from writing a letter of recommendation using official letterhead as long as there is no quid pro quo to the elected official in exchange for the recommendation.³

Based on the facts provided, the Chief of Police intends to write a generic letter that would be provided to any member of the public asking for information concerning the Foundation. Writing such a letter is similar

¹ §2-443(a)

² §2-443(b)

³ CEO 99-8

to writing a recommendation letter. As such, the misuse of office provisions of the Code would not be violated if the Chief of Police writes a letter on official letterhead stating that the Police Department has a partnership with the Foundation as long as the Chief of Police or any of the above-mentioned prohibited persons or entities would not receive an improper benefit in exchange for the writing of the letter.

FACTS:

You are a captain with the Police Department. The Foundation's Board of Directors has asked the Chief of Police to write a letter stating that the Foundation is the only charitable foundation with a partnership with the West Palm Beach Police Department. The letter would be a generic cover letter for any member of the public asking for information concerning the Foundation. The Foundation is a registered 501(c)(3) organization. No certified law enforcement officers from the Police Department serve on the Foundation's board, and none of the officers have an active role in the board's business operations. Additionally, none of the Chief of Police's relatives are employed by the Foundation or serves as a member of the Foundation's Board of Directors.

LEGAL BASIS:

The legal basis for this opinion is found in §2-442 and §2-443 of the Code:

Section 2-442. Definitions.

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.

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;
 - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
 - (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;
 - (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;
 - (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 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

PROPOSED

IX - 2015 Code of Ethics Draft Amendments

1 **AN ORDINANCE OF THE BOARD OF COUNTY**
2 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA,**
3 **AMENDING THE PALM BEACH COUNTY CODE OF ETHICS,**
4 **ORDINANCE 2011-11, AMENDING SECTION 2-444(f) TO**
5 **PROVIDE THE REQUIREMENT TO CONTEMPORANEOUSLY**
6 **FILE A COPY OF THE STATE GIFT LAW REPORT WITH THE**
7 **PALM BEACH COUNTY COMMISSION ON ETHICS;**
8 **PROVIDING FOR SAVINGS CLAUSE; PROVIDING FOR**
9 **REPEAL OF LAWS IN CONFLICT; PROVIDING FOR**
10 **SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE**
11 **OF LAWS AND ORDINANCES; AND PROVIDING FOR AN**
12 **EFFECTIVE DATE.**
13

14 **WHEREAS,** based on a referendum on November 2, 2010, concerning proposed
15 amendments to the Palm Beach County Charter, a majority of voters in the County and in every
16 municipality in Palm Beach County elected to require the Board of County Commissioners to
17 adopt an ordinance to establish a countywide Commission on Ethics with the authority to review,
18 interpret, render advisory opinions and to enforce the countywide Palm Beach County Code of
19 Ethics and to provide ethics training for the benefit of local governments, citizens groups and the
20 general public; and

21 **WHEREAS,** the Palm Beach County Board of County Commissioners adopted the Palm
22 Beach County Code of Ethics Ordinance, Ordinance 2011-11 on May 17, 2011; and

23 **WHEREAS,** the Board of County Commissioners finds that amending the Code of
24 Ethics Ordinance as set forth herein will clarify certain gift reporting requirements; and

25 **WHEREAS,** the Board of County Commissioners further finds that this amendment
26 advances the purposes and intent of the Palm Beach County Charter amendments approved by
27 the electorate on November 2, 2010; and

28 **WHEREAS,** the Board of County Commissioners of Palm Beach County, pursuant to its
29 authority under Florida Constitution, Article VIII, Section 1(g), Section 125.01, Florida Statutes,
30 and the Palm Beach County Charter, hereby adopts this amendment to Palm Beach County Code
31 of Ethics Ordinance; and

32 **WHEREAS,** the Board of County Commissioners has conducted a duly noticed public
33 hearing to consider these amendments as required by law.

34 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
35 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

36 **Part 1.** Section 2-444(f) is amended as follows:

37 (f) Gift Reports. Any official or employee who receives a gift in excess of one hundred dollars
38 (\$100) shall report that gift in accordance with this section.

39 (1) *Gift reports for officials and employees indentified by state law as reporting*
40 *individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in
41 the manner provided by Florida Statutes, §112.3148, as may be amended. When a state
42 reporting individual files a gift report with the state, a copy of each report shall also be filed
43 contemporaneously with the county commission on ethics.

44 **Part 2. Savings Clause.**

45 All complaints, investigations, advisory opinions, recommended orders, final orders,
46 requests for advisory opinions, hearing processes, and all other functions of the Palm Beach
47 County Commission on Ethics, initiated or completed pursuant to Ordinances 2011-10, 2011-11,
48 or 2011-39, as may be amended, shall remain in full force and effect.

49 **Part 3. Repeal of Laws in Conflict.**

50 All local laws and ordinances in conflict with any provisions of this Ordinance are hereby
51 repealed to the extent of such conflict.

52 **Part 4. Severability.**

53 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any
54 reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect
55 the remainder of this Ordinance.

56 **Part 5. Inclusion in the Code of Laws and Ordinances.**

57 The provisions of this Ordinance shall become and be made a part of the Code of Laws
58 and Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be
59 renumbered or re-lettered to accomplish such, and the word “ordinance” may be changed to
60 “section,” “article,” or other appropriate word.

61 **Part 6. Effective Date.**

62 The provisions of this Ordinance shall become effective upon filing with the State of
63 Florida Department of State.

64 [the remainder of this page left intentionally blank]

65

66 APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach

67 County, Florida, on this the ____ day of _____, 2015.

68 SHARON R. BOCK
69 CLERK & COMPTROLLER

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

70
71

72

73 By: _____
74 Deputy Clerk

By: _____
Shelley Vana, Mayor

75

76

77

78 (SEAL)

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81 APPROVED AS TO FORM AND
82 LEGAL SUFFICIENCY

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86 By: _____
87 County Attorney

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90 Filed with the Department of State on the ____ day of _____,

X - 2015 Commission on Ethics Draft Amendments

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AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING THE PALM BEACH COUNTY COMMISSION ON ETHICS ORDINANCE, ORDINANCE 2011- 10, CREATING AND PROVIDING QUALIFICATIONS FOR COMMISSION ON ETHICS HEARING OFFICERS; PROVIDING FOR PROCEDURE ON COMPLAINTS FILED; PROVIDING FOR PUBLIC HEARING PROCEDURES; PROVIDING FOR NOTIFICATION AND REFERRAL TO OTHER AUTHORITIES; PROVIDING FOR DISMISSAL OF COMPLAINTS; PROVIDING FOR FRIVOLOUS OR GROUNDLESS COMPLAINTS; PROVIDING FOR APPEALS; PROVIDING FOR SAVINGS CLAUSE; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, based on a referendum on November 2, 2010, concerning proposed amendments to the Palm Beach County Charter, a majority of voters in the County and in every municipality in Palm Beach County elected to require the Board of County Commissioners to adopt an ordinance to establish a countywide Commission on Ethics with the authority to review, interpret, render advisory opinions and to enforce the countywide Palm Beach County Code of Ethics and to provide ethics training for the benefit of local governments, citizens groups and the general public; and

WHEREAS, the Palm Beach County Board of County Commissioners adopted the Palm Beach County Commission on Ethics Ordinance, Ordinance 2011-10 on May 17, 2011; and

WHEREAS, the Board of County Commissioners finds that amending the Commission on Ethics Ordinance to allow hearing officers to conduct public hearings concerning alleged violations of the Code of Ethics will enhance the integrity of the Commission on Ethics enforcement procedures; and

WHEREAS, the Board of County Commissioners further finds that the amendments set forth herein advances the purposes and intent of the Palm Beach County Charter amendments approved by the electorate on November 2, 2010; and

WHEREAS, the Board of County Commissioners of Palm Beach County, pursuant to its authority under Florida Constitution, Article VIII, Section 1(g), Section 125.01, Florida Statutes, the Palm Beach County Charter, hereby adopts the Palm Beach County Commission on Ethics Ordinance; and

40 **WHEREAS**, the Board of County Commissioners has conducted a duly noticed public
41 hearing to consider these amendments as required by law.

42 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
43 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

44 **Part 1.** Section 2-260 is amended as follows:

45 **Sec. 2-260. Procedure on Complaints filed.**

46 * * *

47 (d)*Preliminary investigation and public hearing.* A preliminary investigation shall be
48 undertaken by the commission on ethics of each legally sufficient complaint over which the
49 commission on ethics has jurisdiction to determine whether there is probable cause to believe
50 that a violation has occurred. If, upon completion of the preliminary investigation, the
51 commission on ethics finds no probable cause to believe that a violation has been committed, the
52 commission on ethics shall dismiss the complaint with the issuance of a report to the
53 complainant and the respondent. If the commission on ethics finds from the preliminary
54 investigation probable cause to believe that a violation has been committed, it shall set the matter
55 for a public hearing and notify complainant and respondent via certified mail, hand delivery, or
56 courier. The commission on ethics or the hearing officer conducting the public hearing may
57 conduct such further investigation as it deems necessary, and may enter into such stipulations
58 and settlements as it finds to be just and in the best interest of the citizens of the county. The
59 public hearing provided for in this section shall be held within one hundred twenty (120) days of
60 the probable cause determination unless extended by the commission on ethics or the hearing
61 officer conducting the public hearing for good cause based on the request of a party or on its own
62 initiative.

63 * * *

64 (f) *Counsel.*

65 (1) Counsel to commission on ethics. The commission on ethics shall select counsel to
66 advise the commission on ethics.

67 (2) Advocate. The commission on ethics shall retain legal counsel to serve as the
68 advocate. The advocate shall prosecute cases before the commission on ethics or hearing
69 officer. The executive director may serve as advocate provided the executive director is a
70 member of the Florida Bar in good standing.

71 (g) *Public records exemption.* The commission on ethics and its staff shall be considered "an
72 appropriate local official" for the purposes of whistleblower protection provided for in Florida
73 Statutes, § 112.3188(1). The complaint and all records held by the commission on ethics and its
74 staff related to an active preliminary investigation are confidential and exempt from disclosure in
75 a manner consistent with the provisions in Florida Statutes, §112.324(2)(a) and (3) and §
76 112.3188(2). In addition, any proceeding conducted by the commission on ethics pursuant to a
77 complaint or preliminary investigation is exempt from the provision § 286.011, Florida Statutes,
78 and Article 1, § 24(b), Florida Constitution, as set forth in § 112.324(2)(a) and (3), Florida
79 Statutes. Once a preliminary investigation is complete and a probable cause determination made,
80 all other proceedings conducted pursuant to this subsection shall be public meetings within the
81 meaning of Florida Statutes, ch. 286, and all other documents made or received by the
82 commission on ethics or hearing officer shall be public records within the meaning of Florida
83 Statutes, ch. 119, subject to whistleblower confidentiality as provided for in Florida Statutes §
84 112.3188(1).

85 ***

86 (i) *Subpoenas for discovery.* At any time after the commission on ethics orders a public hearing
87 of the matter, the commission on ethics or the hearing officer conducting the public hearing may
88 issue subpoenas, as provided in subsection (h), to effect discovery upon the written request of
89 respondent or advocate. The requesting person shall give the name and address of each witness
90 he or she wishes to have deposed and shall describe with particularity those documents or other
91 items that the person wishes to have the witness produce pursuant to a subpoena *duces tecum*.
92 The chairperson or a member of the commission on ethics designated by the chairperson, or the
93 hearing officer may issue appropriate orders to effectuate the purposes of discovery and to
94 prevent delay.

95 ***

96 (k) *Motions.*

97 (1) All motions shall be in writing unless made on the record during a hearing, and shall
98 fully state the actions requested and the grounds relied upon. The motion shall include a
99 statement that the movant has conferred with the advocate and all other parties of record
100 and shall state whether there is any objection to the motion.

101 (2) The original written motion shall be filed with the commission on ethics and a copy
102 served on all parties or their attorneys. The commission on ethics staff shall send a copy
103 of the motion to the chairperson or the hearing officer conducting the public hearing.

104 (3) The chairperson, or a member of the commission on ethics designated by the
105 chairperson, or the hearing officer conducting the public hearing shall conduct such
106 proceedings and make such orders as are deemed necessary to dispose of issues raised by
107 motions, but is not required to hold a hearing on the motion in order to rule upon it.

108 (4) Every written motion may be accompanied by, or included in, a written
109 memorandum stating the grounds upon which the motion is based. Other parties to a
110 proceeding may, within seven (7) days of service of a written motion, file written
111 memoranda in opposition.

112 (l) *Prehearing conferences*. The chairperson, ~~or~~ a member of the commission on ethics
113 designated by the chairperson, or the hearing officer conducting the public hearing may conduct
114 one (1) or more prehearing conferences for the purpose of hearing arguments on pending
115 motions, clarifying and simplifying issues, discussing the possibilities of settlement of the issues,
116 examining exhibits and documents, exchanging names and addresses of witnesses, and resolving
117 other procedural matters.

118 (m) *Exchange of witness lists*. Unless otherwise ordered by the chairperson, ~~or~~ a member of the
119 commission on ethics designated by the chairperson, or the hearing officer conducting the public
120 hearing as a result of a prehearing conference, the advocate and the respondent(s) or counsel for
121 respondent(s) shall exchange the names and addresses of witnesses at least ten (10) days prior to
122 the public hearing, with a copy being provided to the chairperson. Names and addresses of
123 witnesses discovered subsequently shall be disclosed to the other party or parties and to the
124 chairperson as soon as possible. Failure to disclose the name and address of a witness may result
125 in the exclusion of the witness's testimony, according to the rule applied in civil judicial
126 proceedings.

127 **Part 2.** Section 2-260.1 is amended as follows:

128 **Sec. 2-260.1. Public hearing procedures.**

129 (a) Right to public hearing. After finding of probable cause, a respondent is entitled to a public
130 hearing on the complaint. The respondent may elect to have the hearing conducted by the
131 commission on ethics or by a hearing officer selected from a list established by the Palm Beach

132 County Bar Association, the F. Malcolm Cunningham, Sr. Bar Association, and the Hispanic Bar
133 Association of Palm Beach County. The associations will strive to reflect the racial, general and
134 ethnic make-up of the community in creating and maintaining the list. The list of hearing
135 officers shall contain no more than ten (10) names of individuals who shall serve on a rotating
136 basis. Hearing officers shall serve without compensation. Hearing officers shall be appointed
137 for a term of two (2) years. In order to be eligible for inclusion on the list, hearing officers shall
138 have the following minimum qualifications:

139 (1) Be a member, in good standing of the Florida Bar for at least the preceding five years;
140 and

141 (2) Be experienced in matters of governmental ethics, including the current version of
142 the Palm Beach County Code of Ethics, related ordinances, and rules, practices and
143 advisory opinions of the Palm Beach County Commission on Ethics; and

144 (3) Attorneys with prior judicial experience or experience as a hearing officer, mediator
145 or special master shall be deemed uniquely qualified; and

146 (4) Be of outstanding reputation for integrity, responsibility and commitment to serving
147 the community; and

148 (5) No individual, while a hearing officer for the commission on ethics, shall:

149 (a) Hold or campaign for any elective political office;

150 (b) Hold office in any political party or political committee;

151 (c) Actively participate in or contribute to any political action committee, or to
152 any campaign for state or local office or for any U.S. Congressional or Senate
153 office serving the State of Florida;

154 (d) Be employed by Palm Beach County, any municipality within the county, or
155 any other governmental entity subject to the authority of the commission on ethics
156 or the inspector general;

157 (e) Allow his name to be used by a campaign in support of or against any
158 candidate for political office or any referendum or other ballot question. Nothing

159 herein shall preclude a hearing officer from signing a petition in support of or
160 against any referendum or other ballot question.

161 (6) Hearing Officers shall be subject to the Palm Beach County Code of Ethics in the
162 same manner as an individual serving as a Palm Beach County advisory board member.

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

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

169 (de) Evidence.

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

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

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

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

184 (ef) Transcript of proceedings. The proceedings shall be recorded by recording instruments or
185 by a court reporter. Respondent may, at his or her own expense, provide a court reporter or
186 recording instruments. The commission on ethics may provide a court reporter to any proceeding
187 conducted by the commission or a hearing officer. No transcript of the proceedings shall be
188 prepared unless requested by the commission on ethics, the hearing officer conducting the public

189 hearing, or by the respondent. If the respondent requests that a transcript be prepared by a court
190 reporter, the respondent shall pay the expense of transcription. If the Respondent requests that
191 the commission on ethics prepare a transcript from recording instruments and the commission on
192 ethics grants such request, the respondent shall pay the commission on ethics the actual cost of
193 transcription. If a court reporter records the proceedings, the court reporter's transcript shall be
194 the official transcript.

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

201 ~~(g)~~ *Motions to dismiss filed by advocate.* After probable cause is found and a public hearing is
202 ordered by the commission on ethics, and after further investigation or discovery is made by the
203 advocate, the advocate may move to dismiss the proceeding if the advocate concludes that there
204 is insufficient evidence to proceed to the public hearing in good faith. Such a motion shall
205 specifically state the grounds upon which it is made. The motion shall be heard by the
206 commission on ethics in accordance with the procedure provided for in section 2-260(i).

207 ~~(h)~~ *Public order imposing penalty.* Upon completion of any hearing initiated under this
208 subsection, the commission on ethics or hearing officer shall make a finding and public report as
209 to whether any provision within its jurisdiction has been violated. If the commission on ethics or
210 hearing officer finds, by clear and convincing evidence, based upon competent substantial
211 evidence in the record, that a violation has been committed, the commission on ethics or hearing
212 officer shall issue an order imposing the appropriate penalty as provided in the ordinance being
213 enforced. The public report and final order shall include a determination as to whether the
214 violation was intentional or unintentional. The commission on ethics or hearing officer shall,
215 within twelve (12) months of the filing of a complaint, render a final order disposing of said
216 complaint unless extended by the commission or hearing officer for good cause. If a person fails
217 to comply with an order issued by the commission on ethics or hearing officer, the commission
218 on ethics on its own behalf or on behalf of the hearing officer may make application to any
219 circuit court of this state which shall have jurisdiction to order the violator to comply with the

220 order of the commission on ethics or hearing officer. Any violator who fails to obey the order
221 may be punished by the court.

222 **Part 3.** Section 2-260.2 is amended as follows:

223 **Sec. 2-260.2. Notification and referral to other authorities.**

224 As provided for by ordinance within its jurisdiction, the commission on ethics or hearing officer
225 conducting the public hearing shall refer a matter to the state attorney or any other appropriate
226 official or agency having authority to initiate prosecution when deemed appropriate. The state
227 attorney or other appropriate agency may decline prosecution or enforcement of any matter
228 referred under this division and refer the matter back to the commission on ethics or hearing
229 officer. The commission on ethics shall notify the State of Florida Commission on Ethics, the
230 state attorney, the U.S. Attorney for the Southern District of Florida, and other appropriate law
231 enforcement agencies within ten (10) days of a finding of no probable cause or of a final order
232 disposing of a complaint.

233 **Part 4.** Section 2-260.3 is amended as follows:

234 **Sec. 2-260.3. Dismissal of complaints.**

235 Notwithstanding any other provisions of this division, the commission on ethics or hearing
236 officer conducting the public hearing may, at its discretion: (a) dismiss any complaint at any
237 stage of disposition should it determine that the public interest would not be served by
238 proceeding further, or (b) dismiss any complaint at any stage of disposition and issue a letter of
239 instruction to the respondent when it appears that the alleged violation was inadvertent,
240 unintentional or insubstantial. In the event the commission on ethics or hearing officer dismisses
241 a complaint as provided in this subsection, the commission on ethics or hearing officer shall
242 issue a public report stating with particularity its reasons for the dismissal. The commission on
243 ethics or hearing officer conducting the public hearing may, at the request of the state attorney
244 or any other law enforcement agency, stay an ongoing proceeding. The commission on ethics or
245 hearing officer shall not interfere with any ongoing criminal investigation of the state attorney or
246 the U.S. Attorney for the Southern District of Florida.

247 **Part 5.** Section 2-260.4 is amended as follows:

248 **Sec. 2-260.4. Frivolous or groundless complaints.**

249 In any case in which the commission on ethics or hearing officer conducting the public hearing
250 determines that the complaining party filed a frivolous or groundless complaint as defined in

251 Florida Statutes, § 57.105, or a complaint with malicious intent and with the knowledge that the
252 complaint contains one or more false allegations, or with reckless disregard for whether the
253 complaint contains material false allegations, the commission on ethics or hearing officer shall
254 order the complaining party to pay any costs and attorney's fees incurred by the commission on
255 ethics and/or the alleged violator. The determination by the commission on ethics or hearing
256 officer regarding whether a complaint is frivolous or groundless shall be deemed conclusive.

257 **Part 6.** Section 2-260.10 is amended as follows:

258 **Sec. 2-260.10. Appeals.**

259 (a) Any final order of the commission on ethics or hearing officer may be appealed by filing a
260 petition for writ of certiorari in the Fifteenth Judicial Circuit Court in and for Palm Beach
261 County. The commission on ethics shall provide the index and record on appeal when required
262 by, and in accordance with, the Florida Rules of Appellate Procedure. A fee shall be charged by
263 the commission on ethics for the preparation and transmission of the record on appeal to the
264 court of appropriate jurisdiction. Such fee may be waived by the executive director if the party
265 requesting the record is indigent.

266 (b) Costs or fees may not be assessed against the commission on ethics or hearing officer in any
267 appeal from a final order or advisory opinion issued by the commission on ethics or hearing
268 officer pursuant to this division.

269 (c) Unless specifically ordered by the commission on ethics or by a court of competent
270 jurisdiction, the commencement of an appeal does not suspend or stay a final order or advisory
271 opinion of the commission on ethics or hearing officer.

272 **Part 7. Savings Clause.**

273 All complaints, investigations, advisory opinions, recommended orders, final orders,
274 requests for advisory opinions, hearing processes, and all other functions of the Palm Beach
275 County Commission on Ethics, initiated or completed pursuant to Ordinances 2011-10, 2011-11,
276 or 2011-39, as may be amended, shall remain in full force and effect.

277 **Part 8. Repeal of Laws in Conflict.**

278 All local laws and ordinances in conflict with any provisions of this Ordinance are hereby
279 repealed to the extent of such conflict.

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281

282 **Part 9. Severability.**

283 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any
284 reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect
285 the remainder of this Ordinance.

286 **Part 10. Inclusion in the Code of Laws and Ordinances.**

287 The provisions of this Ordinance shall become and be made a part of the Code of Laws
288 and Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be
289 renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to
290 "section," "article," or other appropriate word.

291 **Part 11. Effective Date.**

292 The provisions of this Ordinance shall become effective upon filing with the State of
293 Florida Department of State.

294 APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach
295 County, Florida, on this the ____ day of _____, 2015.

296 SHARON R. BOCK
297 CLERK & COMPTROLLER

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

298
299
300

301 By: _____
302 Deputy Clerk

By: _____
Shelley Vana, Mayor

303
304
305
306 (SEAL)

307
308
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311 APPROVED AS TO FORM AND
312 LEGAL SUFFICIENCY

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314
315

316 By: _____
317 County Attorney

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319

320 Filed with the Department of State on the ____ day of _____,