

MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS

I. CALL TO ORDER: July 15, 2010, at 4:08 p.m., in the Jane M. Thompson Memorial Chambers, 6th Floor, Governmental Center, West Palm Beach, Florida.

II. ROLL CALL

MEMBERS:

Judge Edward Rodgers, Chair
Manuel Farach, Esq., Vice Chair – Arrived later
Dr. Robin Fiore
Ronald E. Harbison
Bruce Reinhart, Esq. – Appeared telephonically

STAFF AND OTHERS:

Tammy L. Gray, Public Affairs Department Informational Specialist
Patty Hindle, Board of County Commissioners Agenda Coordinator
Alan S. Johnson, Esq., Commission on Ethics Executive Director
Shannon Ramsey-Chessman, Clerk & Comptroller Chief Operating Officer
of Finance
Sheryl Steckler, Palm Beach County Inspector General
James Titcomb, Executive Director, Palm Beach County League of Cities
Sydone Thompson, Deputy Clerk

III. INTRODUCTORY REMARKS

Judge Edward Rodgers introduced Sheryl Steckler, Palm Beach County Inspector General and commented that:

- Those attending the meeting should turn off their cellular telephones.
- Comment cards were available for those who wanted to speak on a particular subject matter.
- Each person would be allotted two minutes to speak at the end of each agenda item.

IV. APPROVAL OF MINUTES FROM MAY 27, 2010 and JUNE 8, 2010 MEETINGS

MOTION to approve the May 27, 2010, and the June 8, 2010 minutes. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Manuel Farach absent.

V. REVIEW OF ADVISORY OPINIONS

V.a. Advisory Opinions/Proposed

V.a.1. Request from Gary Walk – RQO 10-002

Commission on Ethics (COE) Executive Director (ED) Alan S. Johnson, Esq., stated that the request for advisory opinion would be presented to the COE for approval, disapproval or revision. He stated that a letter referred to the COE was received on May 14, 2010, by Patty Hindle, Board of County Commissioners Agenda Coordinator from Gary Walk of Casey Ciklin Lubitz Martens & O'Connell regarding a potential conflict of interest with an application to serve on the County Internal Audit Committee.

Bruce Reinhart, Esq. stated that he contacted Mr. Johnson after receiving a copy of the letter and suggested that the COE not render a decision on the matter.

Mr. Johnson requested that the letter be approved with the omission that the Board of County Commissioners (BCC) would make a recommendation in this matter.

Judge Rodgers asked whether the revisions recommended by Mr. Reinhart were made. Mr. Johnson responded affirmatively.

Ronald Harbison requested clarification on the wording that was modified from the original document to the one that was being presented for approval at the meeting.

Dr. Robin Fiore stated that the second version instructed the applicant to see the BCC for a waiver instead of anticipating their decision on the application.

Mr. Johnson clarified that the previous advisory opinion language on page 2 was stricken: "The Ethics Commission recognizes that the nature of the contractual relationship, etc., is minimal and omitted."

V.a.1. – CONTINUED

Mr. Reinhart agreed to the amended letter that was prepared by Mr. Johnson.

MOTION to approve withdrawing the first letter for a proposed advisory opinion and accepting the second letter with the revisions made by Mr. Johnson. Motion by Bruce Reinhart.

Judge Rodgers asked how the proper letter would be distinguished.

Mr. Johnson said that the letter was saved in his records as letter #2 for Gary Walk.

Judge Rodgers stated that:

- The letter being referenced should be marked #2/ RQO 10-002 to clarify that the document was being voted on.
- The motion would be amended to withdraw the first motion and substitute it with the modified letter.

MOTION to approve accepting the second letter with the revisions read by Mr. Johnson. Motion by Bruce Reinhart, seconded by Ronald Harbison, and carried 4-0. Manuel Farach absent.

Judge Rodgers stated that the revised letter would be sent to the recipient as amended.

V.a.2. Request from Jeffrey Kurtz, Esq. – RQO 10-006

Mr. Johnson commented that:

- An advisory request was made by Jeffrey Kurtz, Esq. on behalf of Matt Willhite who was an elected councilperson from the Village of Wellington and a County employee.
- The original request was sent to Assistant County Attorney Leonard Berger. Although the letter stated that it was a request for an advisory opinion, it was not. Therefore, it was requested that the COE allow Mr. Willhite to withdraw his letter.

V.a.2. – CONTINUED

- The Code of Ethics (Code) could have some bearing on the request, and additional time was needed to research the matter to determine whether a conflict of interest existed in this case.

Dr. Fiore commented that there were concerns about withdrawing the request for advisory opinion once it was submitted, although it was written in draft form.

Mr. Johnson responded that the document was a part of public record and would be available for viewing in the event that the COE approved its withdrawal. He added that the original letter depicted a conversation with the County Attorney, and no formal request was made for an advisory opinion.

Mr. Johnson stated that prior to an ED being appointed, Mr. Berger handled ethics-based matters. All advisory opinions or correspondence with the County Attorney's Office that were COE related were then transferred to the ED and reviewed to determine their compliance to the Code.

Dr. Fiore responded that an advisory opinion should not be rescinded because the party did not want to be bound by the decision made on their request. She added that the request that was made to Mr. Berger was an official request and should, therefore, be processed accordingly.

Judge Rodgers commented that once a party filed a request for advisory opinion and no longer wanted to pursue it, they should be allowed to withdraw.

Mr. Reinhart stated that:

- His understanding was that the request was erroneous and involved dialogue with Mr. Berger and Mr. Willhite's attorney, and a formal request was never made.
- Given Dr. Fiore's point, coupled with public records laws, an applicant should not be allowed to withdraw their request when there was a chance that the outcome would be unfavorable.
- Until the outcome of a request was reached, an applicant should be allowed to withdraw instead of pursuing the matter.

Judge Rogers asked if Dr. Fiore would be satisfied with an individual withdrawing their claim if the process of review on their request had not been initiated.

V.a.2. – CONTINUED

Dr. Fiore responded that her opinion was based on not having a clear understanding of the dialogue that took place between Mr. Kurtz and Mr. Berger, and whether it was not considered an official conversation. She inquired as to the extent that requests for advisory opinions should be documented.

Mr. Johnson clarified that the conversation between Mr. Kurtz and Mr. Berger could be read into the record at the request of the COE. He stated that although an advisory opinion was discussed, it was not an actual request.

Dr. Fiore stated that she was in agreement with Mr. Johnson's decision, but she wanted to ensure that a precedent for withdrawing a request had not taken place in the midst of an official conversation.

MOTION to approve the request by Mr. Kurtz to withdraw the letter regarding Mr. Willhite, carried 4-0. Manuel Farach absent.

V.a.3. Request from Glen J. Torcivia, Esq. – RQO 10-008

Mr. Johnson stated that:

- On July 6, 2010, Glen Torcivia, Esq. submitted an opinion request regarding volunteering as counsel for the COE. He asked whether affiliations with a law firm that represented a number of local governments within the County would prohibit him or any member of his firm from serving the COE.
- According to the Code, Mr. Torcivia would be allowed to serve as volunteer counsel. Although he was a contracted provider, he was not an employee of the municipality.

MOTION to approve and ratify Mr. Johnson's opinion. Motion by Bruce Reinhart, seconded by Dr. Robin Fiore, and carried 4-0. Manuel Farach absent.

V.a.4. Request from County Internal Auditor Joe Bergeron – RQO 10-009

Mr. Johnson stated that Joe Bergeron had requested a proposed advisory opinion in reference to staffing an internal audit committee.

Dr. Fiore requested that the ED identify the changes that were made to the letter.

V.a.4. – CONTINUED

Mr. Johnson responded that:

- Modifications were made in paragraph four of Mr. Bergeron's letter with the addition of Florida Statute 3.B., a criminal law.
- The recommendation to permit employment with the County and serve as a treasurer on a campaign for an elected official would be upheld.
- The law stipulated that an individual who worked on a campaign and was also an elected official or public employee could not use County resources or their County title while serving as a paid campaign volunteer.
- He added that the wording, "paid volunteer," be changed to "any volunteer."

Mr. Harbison commented that:

- There were concerns that an individual who served on a County audit committee would also serve as a campaign treasurer for a County commissioner.
- There was an appearance of quid pro quo where the individual would be appointed to the audit committee in return for being that commissioner's campaign treasurer.
- The proposed actions did not appear to be in the ordinary scope of governance.

Judge Rodgers questioned whether the auditor had any discretion in documenting the figures contrary to what they analyzed.

Mr. Harbison responded that an auditor was governed by a number of standards. He said that while serving on an audit committee, the individual would be required to be involved in negotiating the selection of an audit firm, and he did not know whether this action was a violation of the Code. He stated that it was incumbent upon Mr. Bergeron to be objective in selecting members for the audit committee.

V.a.4. – CONTINUED

Mr. Reinhart remarked that:

- In reading the Code, the conduct in question was not prohibited. However, from a managerial stance, the decision to appoint an individual to the audit committee and permit them to serve as treasurer on a campaign needed to be addressed separately.
- The COE had the authority to make recommendations that would strengthen the ordinance. Similar situations could be used to exercise that responsibility by highlighting instances where marginally unethical allowances existed.

Dr. Fiore referenced the fifth paragraph and last sentence of Mr. Bergeron's letter which stated that "public officials should not be denied the same opportunity available to all other citizens to engage in the political process." She stated that acting in the capacity of treasurer in a political campaign was not a guaranteed right that would prohibit someone from participating in the political process.

Mr. Johnson stated that he included the regulation in the letter with the assumption that the individuals serving would be unpaid for their work. He added that the language could be deleted from the letter.

MOTION to approve deleting the language from Mr. Bergeron's letter: "public officials should not be denied the same opportunity available to all other citizens to engage in the political process." Motion by Bruce Reinhart.

(CLERK'S NOTE: The motion was seconded later in the meeting.)

Mr. Reinhart stated that he was in agreement with Dr. Fiore's request for verbiage deletion. He added that public officials were prohibited from engaging in many actions within the political process that ordinary citizens were able to engage in. He stated that the fifth paragraph was unnecessary for the COE's interpretation of the Code.

MOTION SECONDED by Ronald Harbison, and carried 4-0. Manuel Farach absent.

V.a.5. Request from County Commissioner Aaronson – RQO 10-004

Mr. Johnson commented that:

- On June 16, 2010, Commissioner Aaronson faxed a letter asking whether he and Maury Kalish, who was on the Board of the Lake Worth Drainage District, could be honored at a fundraising dinner at Temple Emeth in Delray Beach.
- Commissioner Aaronson agreed not to participate with fundraising efforts or permit Temple Emeth members to appear before the BCC for any reason in the foreseeable future.
- In a follow-up telephone call, Commissioner Aaronson indicated that he was not an officer or board member of Temple Emeth.
- The request related to the Code and Florida State Statutes (F.S.S.) as follows:
 - F.S.S., section 2-443 – Prohibited conduct;
 - F.S.S., section 2-444 – Gift law;
 - F.S.S., section 111.012 – Testimonials for public officers; and,
 - F.S.S., section 112.31484(4) – Reporting gifts from lobbyists.
- Mr. Johnson said that the statutes specifically defined the actions that Commissioner Aaronson would be authorized to take. He added that when a charitable organization solicited funding by using the name of the honoree, they inadvertently represented that official because benefits would be realized by their affiliations to the honoree.

Dr. Fiore commented that:

- She was concerned about lobbyists participating in the fundraising process.
- She consulted with Mr. Johnson about Commissioner Aaronson's request and disagreed with the interpretation that he would not benefit from being honored. Due to his membership in this religious institution, he had personal ties with the future of the temple.

V.a.5. – CONTINUED

- Theoretically, it would be reasonable to expect that lobbyists would make contributions to the temple in honor of Commissioner Aaronson in order to gain his appreciation.
- There was concern that such actions could be viewed as commonplace.

Mr. Harbison commented that:

- Elected officials should not permit lobbyists to provide significant contributions toward charitable organizations of their choosing.
- Such allowances would lend to the appearance of unscrupulous conduct.
- Once similar scenarios presented themselves, onlookers could perceive these actions negatively.

Dr. Fiore cited her disagreement with the language that stated, "The commission considered and rejected an interpretation of the gift law section that would include a charitable organization fundraiser honoring a public servant to be on his or her behalf."

Mr. Johnson said that the F.S.S. prohibited lobbyists from giving gifts to charitable organizations, but the County Code did not have that limitation. He said that actions by lobbyists could be used to align themselves to the honoree, and without that exclusion in the Code, the BCC may not want to include that interpretation in the Code. He recommended that lobbyist exclusions for elected officials be imposed under the gift law.

Dr. Fiore stated that the absence of an exemption for lobbyist contributions in the County ordinance was dispositive.

Judge Rodgers commented that honoring Commissioner Aaronson without using his title would have a different connotation. However, it was clear that his title would be the drawing point for attendees to the function, he said.

Mr. Johnson stated that there were no facts to support that Commissioner Aaronson's title was used to promote the event.

V.a.5. – CONTINUED

Mr. Reinhart commented that:

- The language in the ordinance which stated, “no County Commissioner or any person or business entity on his or her behalf,” meant that although the commissioner was named as an honoree, the solicitation that was being made on his behalf would levy some influence on the event’s success.
- Given the circumstances, Commissioner Aaronson would not be prohibited from being honored at the temple, but lobbyist contributions would not be permitted.
- The ordinance stipulated that an elected official could solicit money for fundraising efforts once they did not hold membership on a board or served as an officer in a charitable organization for which they were being honored. A maximum lobbyist gift of \$99 would be imposed.

Mr. Johnson recommended that the response to Commissioner Aaronson’s request be amended to state that the COE considered the plain language of the Code in section F.S.S. 2-444 and opined that no lobbyist could donate more than \$100 at a charitable fundraiser for an employee or public official.

Dr. Fiore stated that an official that used their public office to solicit funding for a charitable organization was in violation of the Code.

Mr. Johnson stated that once the COE determined that an official benefitted from the solicitation for an event, those actions could be deemed to be in violation of the Code and would be dependent on the interpretation of the law.

Mr. Reinhart stated that even if no violation of the ethics code occurred, it could still potentially be prosecuted if there were a quid pro quo. Nevertheless, other mechanisms existed to prosecute officials who benefitted financially from their position in office.

Judge Rodgers recommended that Mr. Johnson restructure the advisory opinions to include the concerns of the COE.

V.a.5. – CONTINUED

Mr. Johnson recommended that the last paragraph on page 1 should read, “any use of official position, or the taking or failing to take an action resulting in financial benefit to the employee, official or other entities or individuals enumerated in s. 2-443 would be a violation of the code as well.” He said that the modified letter would be provided to the COE.

MOTION to approve the letter to Commissioner Aaronson as amended by the COE. Motion by Ronald Harbison, seconded by Dr. Robin Fiore, and carried 4-0. Manuel Farach absent.

V.a.6. Request from County Administrator Robert Weisman – RQO 10-003

Mr. Johnson stated that:

- Mr. Weisman sent an email to determine whether ethical implications existed with regard to Urban Design Kilday Studios (Kilday) who was a consultant for the County’s Facilities Development and Operations Department (FDO), while at the same time servicing private clients.
- Upon review of the Code, there was no evidence of a violation with regard to a private vendor securing contracts with private clients while conducting business with a governmental entity such as the County.
- The public often accused the BCC of giving Kilday unfair advantage over other vendors, and this prompted the need for a decision on the matter.
- It was proposed that the County would write a letter stating that the Code did not apply, and it would address the issues of appearances.
- The COE would be asked to determine if further action was needed.

(CLERK’S NOTE: Manuel Farach joined the meeting.)

V.a.6. – CONTINUED

Dr. Fiore commented that:

- It was unclear whether the COE should provide cover for FDO because there was a conclusion that Kilday was not an official or an employee, and, therefore, not bound by any restrictions.
- The second half of the letter from FDO supported Kilday's version of how their work took place as a basis for approving or making a public statement about their actions, because the COE was not charged with judging appearances.

Mr. Johnson stated that:

- The language, "according to the testimony of the facilities development and operations department staff", was added to page 3 of the letter.
- Dr. Fiore's stance of authorizing FDO's actions could be viewed as questionable because there were competing interests of efficiency and saving taxpayer's money.
- The appearance was that inside dealings had impacted other businesses from obtaining contracts in the County and gaining access.
- No other party came forward and gave an alternate set of facts to dispute the claim that Kilday was receiving special treatment.

Mr. Harbison stated that:

- There was a premise that Kilday was the only firm that could provide services for FDO, and he was concerned that the matter had the appearance of a closed system where certain vendors were preferred and others would not have the opportunity to legitimately compete for a contract.
- Once that premise was accepted, the COE could ratify that implication.

V.a.6. – CONTINUED

- The word, “local,” in a section of the letter that addressed contracting of local private consultants was not necessary because location would not determine if a firm could do an adequate job of consulting.
- The sentence that stated, “In fact, there were substantial benefits to the taxpayer,” could not be quantified by using a company outside the government. To make that statement, would mean that a study was conducted to justify that argument.

Mr. Farach commented that:

- The COE’s jurisdiction could impact their ability to make a decision on this matter which did not appear to be covered under the Code. There were ethical barriers that existed, and this led to the appearance that a conflict of interest was present.
- The activities that Kilday engaged in were quasi-judicial in nature because the company represented clients who also appeared before the BCC. The issue needed to be explored further because its statement that their “actions were not a detriment to other parties” needed to be addressed.

Mr. Reinhart stated that:

- The factual record was incomplete. It was not COE’s responsibility to undertake because the Code did not apply to this situation, and the BCC would have to amend the Code and bring the matter back to the COE.
- At this time, the COE could only state whether or not the Code applied to this situation. The County could then express why they had used this particular entity, and the public could respond.

Judge Rodgers stated that once exclusivity of performance was evident, the BCC could give Kilday a waiver.

Mr. Johnson stated that upon reviewing the Code, no violation existed.

Dr. Fiore stated that FDO appeared to be making strides toward securing additional consulting firms.

V.a.6. – CONTINUED

Mr. Harbison stated that from a protocol standpoint the concerns should be voiced as an opinion, while the advisory letter should be descriptive.

Mr. Reinhart stated that:

- He would make a proposed motion to strike the verbiage in the third paragraph on page 2, which stated, “notwithstanding the determination,” to page 3 with the paragraph that began, “in summary,” and that the remainder of the opinion would be adopted.
- The letter would flow from the last paragraph of that sentence that began, “the purpose of their appearance with FDO would be to present their findings as to the appropriate board or commission and not for purposes of advocacy.” This opinion construed the ordinance. The opinion would stipulate what was being concluded and the facts that were used to make that determination.

MOTION to approve drafting the advisory opinion with the modifications made by Mr. Reinhart. Motion by Bruce Reinhart, and seconded by Dr. Robin Fiore.

Mr. Johnson stated that he concurred with the COE’s reasoning.

Mr. Farach asked whether Mr. Reinhart would amend the motion to add the language, “notwithstanding formal opinion to be issued by the commission that the commission was troubled by the issue of the appearance of access that one contractor had as to the exclusion of others,” or words to that effect.

Mr. Reinhart agreed, but he added that there was a problem of perception which County management needed to mitigate.

AMENDED MOTION to approve drafting the advisory opinion with the changes made by Mr. Reinhart and Mr. Farach. The maker and the seconder agreed, and the motion carried 5-0.

V.b. Advisory Opinions/Processed

V.b.1. RQO 10-001, RQO 10-005, RQO 10-007

Mr. Johnson stated three advisory opinions were processed and that they were included in the packet that was given to the COE for review.

VI. PROPOSED CODE REVISIONS

Mr. Reinhart remarked that the COE would be recommending potential changes to the ordinance, which would be brought back to the BCC for approval, and Mr. Johnson concurred.

Mr. Johnson stated that:

- Proposed changes were recommended to section G, page 3, lines 22-25 of the Code.
- There were instances where advisory board members were not appointed by the BCC to regional boards or committees but by another entity or County in the State of Florida.
- The recommendation was that the language, "appointed by the Board of County Commissioners to serve on any advisory board," be added to section G.

Dr. Fiore asked whether the proposed amendments came from the Implementation COE and Mr. Berger. Mr. Johnson responded that all of the proposed changes were drafted during consultations with Mr. Berger and the IG Implementation Committee.

Mr. Johnson commented that:

- Proposed changes were recommended to section F, page 3, lines 13-14 of the Code of Ethics ordinance.
- There was no practical difference between an employee, contracted employee, or independent contractor performing the same duties.
- The recommendation was to add the language, "employee, contracted employee, or independent contractor of a government agency."

Dr. Fiore asked whether the rule would apply to quasi-public organizations such as the United States Post Office, regional transportation authorities, the South Florida Water Management District, or similar government agencies, and whether they would be considered lobbyists.

VI. – CONTINUED

Mr. Johnson stated that the current Code did not exclude any entity other than the County. He added that in researching local and national Codes, he had not been able to find verbiage which described another governmental entity as a lobbyist.

MOTION to approve the proposed amendments in item 1 section F, page 3, lines 13-14, of the Code ordinance. Motion by Ronald Harbison, seconded by Manuel Farach, and carried 5-0.

Mr. Reinhart requested that members of the public and the IG Implementation Committee be given an opportunity to comment on items of interest.

MOTION to approve the proposed amendments in item 2 section G, page 3, lines 22-25, of the Code ordinance. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 5-0.

Mr. Johnson stated that the revision in item 2, section G, page 3, lines 22-25 of the Code, would apply to all board members appointed by the BCC as opposed to County boards that were primarily comprised of private/public members.

Mr. Johnson referenced item 3 of the proposed amendments and page 3, lines 27-30, Article 13, section 2-442 of the Code, and stated that:

- He would recommend that language be adopted that would exclude the State or any other regional, local, or municipal government from the definitions of outside employer or business.
- Of the 38 municipalities, either an agreement or contract existed between them and the County. Therefore, a County employee could not serve on a board because an interlocal agreement existed, and this could pose a potential conflict of interest.

MOTION to approve the recommendation made by Mr. Johnson that the BCC adopt item 3 of the proposed revisions to the Code. Motion by Bruce Reinhart.

(CLERK'S NOTE: Motion was restated and seconded later in the meeting.)

VI. – CONTINUED

Dr. Fiore asked whether the omission in the Code would interfere with the County employee's general commitment to their position as opposed to some other entity or municipality. She stated that one of the issues was conflict of commitment and inquired whether a provision in the Code would be made to combat that.

Mr. Johnson stated that:

- A County employee could only volunteer with a private or public charity that had no agreements or contracts with the County.
- Once a County employee served on a board, they could not conduct business on that board during normal County business hours because those actions would constitute theft of service.
- The ordinance was never intended to exclude other governmental entities. The issue was that County employees, irrespective of their department, were considered a part of one governmental body.

RESTATED MOTION to approve the recommendation that the BCC modify the ordinance based on the proposal made by Mr. Johnson. Motion by Bruce Reinhart, seconded by Ronald Harbison, and carried 5-0.

Mr. Johnson explained that a Scrivener's error was made on item 4 of the proposed amendments, page 4, line 27, Article XIII, section 2-443 (a) (3): the word, "step-child," was added, and the word, "child," was omitted. He recommended that the word, "child," be added to the language of the Code.

MOTION to approve item 4 of the proposed amendments with the changes made by Mr. Johnson. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 5-0.

Referencing item 5 of the proposed amendments, page 6, lines 23-24, Article XIII, section 2-443(d)(4) of the Code, Mr. Johnson said that:

- The State statute was drafted in 1977 and stipulated that officials with outside employer or business contracts with the County were excluded from serving on advisory boards or commissions when the aggregate contract value exceeded \$500. This would be one exception.

VI. – CONTINUED

- There was public sentiment that the County Code should resemble the State Code, which meant that an employee could not serve on a board where their department had contracts with the County that were under \$10,000 annually.

MOTION to approve the existing language in the ordinance regarding the \$500 limit on page 6, lines 23-24. Motion by Dr. Robin Fiore.

(CLERK'S NOTE: Motion was seconded later in the meeting.)

Mr. Reinhart asked whether the recommendation would be made to the BCC by someone other than the ED or would the COE make the recommendation.

Mr. Johnson stated that the recommendation would be made by the COE and carried out by the County Attorney's Office.

Dr. Fiore stated that a strong statement in opposition to changes in this section of the ordinance would be warranted.

AMENDED MOTION to approve the existing language to include the COE's opposition to any amendment to the ordinance that would raise the \$500 limit. Motion by Dr. Robin Fiore, and seconded by Bruce Reinhart.

Mr. Harbison stated that the COE's actions would compel the BCC to vote for waivers.

Mr. Farach stated that he agreed with Dr. Fiore's position and did not know whether there would be an abundance of waiver requests. He said that since the statute was adopted in 1977, increasing the rate to \$2,500 was within reason.

Mr. Harbison stated that the net effect of increasing the rate would mean that the County's agenda would decrease.

Dr. Fiore stated that if the COE did not make a recommendation on this item, the BCC would still be able to propose an increase in the threshold. Therefore, the COE should make an opposing statement about the increase.

Mr. Reinhart stated that whether the COE opposed or supported the ordinance the BCC had the volition to abide by it.

VI. – CONTINUED

Dr. Fiore stated that it was better to remain at the current threshold of \$500.

Mr. Johnson stated that he would communicate to the BCC that the COE did not want to take action on the matter of increasing the threshold. He added that if directed by the BCC, the COE would make a decision.

SECOND AMENDED MOTION to include opposing changing the threshold for review by the BCC in waiver. Motion by Dr. Robin Fiore, and seconded by Bruce Reinhart.

Dr. Fiore stated that advisory board members could serve without a waiver, publicly justify why they contracted with the County and were a party to the advisory board process in the County.

Judge Rodgers inquired whether Dr. Fiore's motion would include directing the ED to write a letter to the BCC indicating that the COE opposed an increase to the \$500 threshold.

Mr. Johnson stated that he would draft one public document and distribute it to the BCC and County Attorney's Office.

THIRD AMENDED MOTION to include recommending no changes to the threshold for the BCC in waiver. Motion by Dr. Robin Fiore, and seconded by Bruce Reinhart.

Judge Rodgers recommended that the ED provide a letter to the BCC on behalf of the COE that expressed their opposition to increasing the threshold.

UPON A CALL FOR A VOTE, the motion carried 5-0.

Mr. Johnson referenced page 6, line 25, page 7, line 22, Article XIII, section 2-443(d) of the Code and stated that:

- This section of the ordinance pertained to hourly or rank and file County employees who supplemented their income with a second job. Safeguards were put in place where their secondary employer or business could not have any existing contract with the County.

VI. – CONTINUED

- An employee whose part-time job was waitressing could not remain employed at a restaurant that contracted with the County to provide emergency food for hurricane relief. The employee would be required to resign from their County position or secondary position.
- Employees' limited exclusion from the prohibition on contracting with the County would have certain safeguards, and all of the following conditions would need to apply:
 - a. The employee or relative of the employee does not work in the County department which would enforce, oversee or administer the subject contract; and,
 - b. Entering into the contract would not interfere with the full and faithful discharge of the employee of his/her duties to the County; and,
 - c. The employee or relative of an employee has not participated in determining the subject contract requirements or awarding the contract; and,
 - d. Job responsibilities and job description will not require him/her to be involved in the contract in any way including but not limited to enforcement, oversight, administration, amendment, extensions termination or forbearance; and,
 - e. They would have to submit for an advisory opinion which would be scrutinized by the COE.

Mr. Johnson stated that initially he and Mr. Berger discussed a \$10,000 fee which was rejected because it was an arbitrary amount. He said that the COE could determine whether a threshold would be applied to the prohibitions.

VI. – CONTINUED

Mr. Johnson stated that:

- There were 12,000 County employees, but the lower-level employees would be most affected by the conditions.
- There were instances where workers resigned from secondary jobs with companies that contracted with the County.
- No employee had submitted a request for advisory opinion.

Dr. Fiore stated that it was the County's responsibility to determine whether an employee's secondary job posed a conflict of interest. She suggested that the COE should not review advisory opinions on these matters.

Mr. Farach stated that the purpose of the request for advisory opinion served to promote transparency rather than inundating the COE with making decisions for the County.

Dr. Fiore stated that the issue was that addressing County employee's part-time jobs was a human resource function.

Sheryl Steckler, Palm Beach County Inspector General stated the County would have a dual appointment and would determine if a conflict of interest existed.

Mr. Reinhart recommended that the County make the determination and notify the COE and ED in the event that such a conflict presented itself, which would then be addressed.

Dr. Fiore asked that paragraph e of the Code be modified to include language indicating that the employee obtained the permission of their manager and completed the required disclosures.

(CLERK'S NOTE: Item VI. continued on page 23.)

IX. IMPLEMENTATION ADVISORY COE AND CHARTER AMENDMENT

David Baker, Esq. Inspector General Implementation COE (COE) Chair stated that:

- The COE reviewed the version of the Charter Amendment ordinance that was approved by the June 29, 2010, regular BCC meeting.
- The BCC discussed the funding mechanism which would have allowed a group consisting of more than 75 percent of the participants, other than the County, who were subject to the IG, petitioning the County to change the IG fee.
- The BCC objected to that provision because ultimately it was the County's responsibility to fund the operation without another entity controlling its funding.
- The Charter Amendment currently provided that upon adoption, the implementing ordinances would be recommended to the BCC by an ordinance drafting COE which would consist of the League of Cities (LOC), the attorney for the LOC, County representatives, the County Attorney and in varying circumstances, either the ED or the IG. It was anticipated that the drafting COE process would be cumbersome, but it would ensure that no changes to the ordinances would be made without a comprehensive public discussion.
- The IG Committee recommended that the IG fee of one quarter of one percent needed to be minimally set forth in the Charter Amendment.
- It was agreed that the IG would initiate a temporary reduction to the IG fee once it was determined that all operational needs had been met.
- There would be an amendment to the Charter Amendment ordinance that would be circulated on July 16, 2010, and presented to the BCC on July 20, 2010. It was anticipated that the ordinance would be approved so that the Charter Amendment could be voted on in November 2010.

(CLERK'S NOTE: Item VIII. was discussed at this time.)

VIII. WORKSHOP ITEMS

VIII.a. Website/Secure Server – Information Systems Services Presentation

Michael Butler, Palm Beach County Information System Services (ISS) Director of Network Services made a presentation at this time and explained the department's services.

VIII.b. Page 25

RECESS

At 6:03 p.m., the chair declared the meeting recessed.

RECONVENE

At 6:18 p.m., the meeting reconvened with all COE members present.

(CLERK'S NOTE: Item VI. was continued at this time.)

Mr. Johnson proposed tabling items 11 and 12 from the Proposed Amendments to the Commission on Ethics Ordinances in item VI. until the next scheduled meeting.

Mr. Johnson referenced page 7, lines 27-31, Article XIII, section 2-443(f) of the Code and stated that:

- In jurisdictions with broad contingent fee prohibitions, there were no ordinary commissions such as real estate or salesman commissions. The courts interpreted that this statute would not prohibit those types of commissions that operated in the ordinary course of business.
- This change was recommended in June 2010 by Mr. Berger construing that the language would adopt the Florida Statute's view, and would not prohibit salespersons from engaging in legitimate government business on behalf of a company, or from receiving compensation or commission.

Dr. Fiore recommended that a commission disclosure be added to the ordinance regarding real estate and sales commissions.

Mr. Johnson recommended that this item be brought back to the COE at the August meeting, and he would draft new disclosure language.

VI. – CONTINUED

Mr. Johnson stated that according to the statute, any business that received commissions would be bound by the language in the prohibition.

Mr. Farach suggested that public adjusters should also be included under this provision because the County often retained their service after a hurricane; and they would be paid a percentage of the disputed claim from an insurance company.

Judge Rodgers stated that the item would be tabled until the next meeting.

Mr. Johnson referenced page 8, lines 10-14, Article XIII, section 2-443(i) of the Code and stated that:

- There was no general conflict of interest duty to the public. He and Mr. Berger agreed that the item would be added to the prohibited conduct section of the ordinance.
- The statute was not criminal in nature, and a public servant owed a duty to the public.

Mr. Reinhart commented that the language in the proposed ordinance was open-ended and could lead to the adjudication of every claim. He said that the language did not give fair guidance to the employees whom it would apply.

Mr. Johnson recommended placing the language from the prohibited conduct clause into the "Statement of Purpose" or the "Whereas" section of the ordinance.

Mr. Harbison stated that establishing an expected standard of conduct was necessary.

Mr. Johnson recommended that verbiage regarding employee conduct be added to the second "Whereas" paragraph of the ordinance as a preamble. He added that the amendment served to ensure that employees' actions served to promote the County's best interest while at work and off duty.

Dr. Fiore stated that the preamble could create grounds for criticizing employees who were affiliated with a religious or political group while they were on their own time.

VI. – CONTINUED

Mr. Johnson stated that he would bring the item back for discussion at the next meeting in August 2010.

(CLERK'S NOTE: Item VIII.b. was discussed at this time.)

VIII.b. Discussion of Business Forum – Letter of June 14, 2010

Mr. Johnson referenced page 9, lines 24-28, Article XIII, section 2-443(e)(1)(b) of the Code and recommended that the word, " Grandparents," be added. He said that the Business Forum sent a letter to him that outlined concerns that relating to the Code.

Dr. Fiore recommended that the word, "in-law," not be added to this ordinance.

Mr. Johnson stated that the appearance of gift-giving in exchange for special privileges was the issue and would impose an exemption of gifts from family members or household occupants. He added that no dollar amount was imposed on gifts.

Judge Rodgers stated that the amendment could prove intrusive to some employees.

MOTION to approve recommending that the BCC adopt the amended definition to the ordinance. Motion by Bruce Reinhart, seconded by Ronald Harbison, and carried 5-0.

(CLERK'S NOTE: Item VI. was continued at this time.)

Mr. Johnson stated that:

- Florida State Statute HB1301 allowed the punishment of ethics codes as first-degree misdemeanors, and he was withdrawing the 10th proposed amendment that was referenced on page 11, lines 29-31, page 16, lines 13-15 of the Code, the amendments to the lobbyist statutes.
- A recommendation be made to the BCC that the lobbyist ordinance should not be included under the revision to the statutes, and that the penalty for violating the Code remain a second-degree misdemeanor. Currently, Code violations were prosecuted as first-degree misdemeanors.

VI. – CONTINUED

MOTION to approve the recommendation that a Code violation be prosecuted as a first-degree misdemeanor. Motion by Dr. Robin Fiore, seconded by Bruce Reinhart, and carried 5-0.

VII. PUBLIC COMMENTS – Not Discussed

VIII. Pages 23 and 25

IX. Page 22

X. DISCUSSION OF INTERLOCAL AGREEMENTS WITH MUNICIPALITIES AND OTHER ENTITIES – INTERIM

X.a. Funding for Services

Mr. Johnson commented that:

- Several municipalities had agreed to be subject to the jurisdiction of the COE.
- An interlocal agreement template was drafted.
- Discussions were held with the Palm Beach County School Board (School Board), and had planned to discuss the interlocal agreement at their next meeting.
- Per the referendum, the 38 municipalities would have the function of the COE without cost and could obtain advisory opinions, complaint adjudication, and training.
- The rule would not apply to the IG.
- Mr. Berger had recommended that the municipalities adopt the ordinances, and the COE would enter into an interlocal agreement with the communities ahead of the referendum if they chose to do so.
- Any agreements entered into would be in force from the date the agreement was signed until January 1, 2011. Once the referendum was adopted, another agreement could be signed.

X.a. – CONTINUED

Mr. Reinhart stated that once each municipality entered into an interlocal agreement with the COE, they should not be allowed to develop their own Code of Ethics because it would create discord.

Mr. Johnson added that the municipalities would be submitting to the jurisdiction of the COE.

Judge Rodgers recommended that the municipalities be allowed to make modifications to the Code that were not conflicting.

Mr. Reinhart commented that he would be opposed to allowing the municipalities to modify the codes because any agreement signed at this juncture would only be in effect until January 1, 2010.

Mr. Farach commented that the termination provision stated that either party could terminate the interlocal agreement. He asked whether ongoing investigations would stop and the records would return to the originating municipality. He recommended that ongoing investigations be reported to the State Attorney, State Ethics COE, or the IG.

Mr. Johnson stated that any fraud or mismanagement that invoked the IG's participation would be prosecuted by that office. He said that the interlocal agreement template was fashioned from the Miami-Dade County model and that documents from the municipalities would be returned to them unless a crime was reported.

**MOTION to approve the drafting of interlocal agreements with municipalities.
Motion by Ronald Harbison, and seconded by Manuel Farach.**

Mr. Johnson stated that:

- His office would be funded based on provisions in the Charter Amendment.
- Interlocal agreements could be signed once the draft agreement was approved by the COE.
- A reasonable fee for service would be determined for the School Board.

X.a. – CONTINUED

- Independent taxing districts would be paying for their interlocal agreements.

UPON A CALL FOR A VOTE, motion carried 5-0.

X.b. Adoption of Code of Ethics and Grand Jurisdiction to Commission on Ethics – Not Discussed

XI. COMMISSION COMMENTS

Dr. Fiore informed the COE that she would no longer be available for meetings on the third Thursday of the month.

XII. EXECUTIVE DIRECTOR COMMENTS

XII.a. Moving Meeting to Hearing Room at 2300 Vista Parkway

Mr. Johnson recommended that COE meetings be broadcasted to the public and that they be held either at the Vista Center or the BCC Chambers at 6:00 p.m. or 7:00 p.m.

Judge Rodgers stated that he was concerned about security in the parking lot for the meetings, and there was a consensus that the meetings would be held at 4:00 p.m. in the BCC Chambers, and the date would be announced.

Mr. Johnson invited the COE to advocacy training at the ED office on July 30, 2010, from 10:30 a.m. to 12:30 p.m. with the Miami-Dade County advocate and her investigator. He stated that the PowerPoint presentation could be shared with the COE as well.

XIII. IMPLEMENTATION ADVISORY COE AND PUBLIC COMMENTS – Not Discussed

XIV. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 5-0.

At 7:00 p.m., the chair declared the meeting adjourned.

APPROVED:


Chair/Vice Chair