

MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS

I. CALL TO ORDER: August 5, 2010, at 4:09 p.m., in the Commission Chambers, 6th Floor, Governmental Center, West Palm Beach, Florida.

II. ROLL CALL

MEMBERS:

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

STAFF:

Leonard Berger, Assistant County Attorney
Tammy L. Gray, Public Affairs Department Informational Specialist
Alan S. Johnson, Esq., Commission on Ethics Executive Director
Heather C. Shirm, Public Affairs Department Web Design Coordinator
Julie Burns, Deputy Clerk

III. CHAIRMAN'S INTRODUCTORY REMARKS

Manuel Farach stated that:

- Judge Edward Rodgers would be absent, and he would be chairing today's meeting.
- Cell phones should be turned off.
- Anyone wishing to speak needed to fill out a comment card indicating the agenda item.
 - Public comment would be limited to two minutes.

Alan S. Johnson, Esq., Commission on Ethics (COE) Executive Director (ED), requested that item X.c. be discussed during item VII.

IV. APPROVAL OF MINUTES FROM MAY 4, 2010, AND JULY 15, 2010

MOTION to approve the May 4, 2010, minutes. Motion by Ronald Harbison, seconded by Dr. Robin Fiore, and carried 4-0. Judge Edward Rodgers absent.

Mr. Bruce Reinhart stated that he did not read the July 15, 2010, minutes.

MOTION to postpone approval of the July 15, 2010, minutes to the next scheduled COE meeting. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Judge Edward Rodgers absent.

V. COMPLAINT 10C-001

Mr. Johnson stated that:

- The COE had received a complaint from Dr. Philip Kilmer regarding an alleged neighbor dispute. Dr. Kilmer had stated in his complaint letter that:
 - Commissioner Karen Marcus knew his neighbor, and she had used her power to initiate an investigation of his property by the County Planning Zoning & Building's code enforcement department (code enforcement).
 - Various response complaints that he submitted to code enforcement were missing or were blank.
- A letter was sent to Dr. Kilmer stating that:
 - The complaint's allegations involved activities that occurred prior to December 15, 2009.
 - The County's Code of Ethics (Code) and related codes went into effect May 1, 2010, and the Code did not allow for retroactivity.
 - The COE had no jurisdiction to investigate the complaint.
- The public report and final order of dismissal was provided to the COE.

V. – CONTINUED

Discussion ensued, and the following comments were made:

- Mr. Johnson commented that:
 - After receiving a phone call from Dr. Kilmer, he sent him a complaint form.
 - In the interim, he had sent Dr. Kilmer a letter, asking him if he wanted to provide any additional information after the ordinance had gone into effect, and he had not received a response.
 - At this time, no policy was in effect to refer complaints to someone else within his department; however, complaints with criminal implications were referred to the State Attorney's Office, the U.S. Attorney's Office, or an appropriate authority for investigation.
 - Dr. Kilmer's complaint did not appear to involve criminal activity.

Mr. Ronald Harbison expressed his concern that referring a complaint to someone else could imply that the COE had reached a conclusion, or that a referral could be misinterpreted. He suggested that other options and avenues could be explained to Mr. Kilmer.

Mr. Johnson said that the original letter factually supporting Dr. Kilmer's complaint was sent to the Attorney General's Office, the Federal Bureau of Investigation located in the City of West Palm Beach, and Herbert Kilmer, Esq., a possible relative of Dr. Kilmer.

(CLERK'S NOTE: Mr. Reinhart no longer appeared telephonically.)

Mr. Farach suggested that:

- The COE could direct Mr. Johnson to formulate policy language that determined whether a complaint's allegations could be viewed as violating any criminal law.
 - If a determination was made, the complaint should be forwarded to the appropriate law enforcement authorities.
 - The appropriate governmental agency should be informed about the complaint and its resolution.

V. – CONTINUED

Dr. Fiore said that in addition to enforcing the Code, the COE was tasked with promoting the culture of ethics, and she did not want the COE to be limited to probable cause.

Mr. Johnson clarified that article V. of the COE's enabling ordinance, section 2-2602, Notification and Referral to Other Authorities, required that all other appropriate officials or agencies would be notified of every complaint dismissal.

PUBLIC COMMENTS: Alexandria Larson, and Suzanne Squire.

Mr. Johnson stated that:

- The COE minutes and advisory opinions would be posted on the Web for many months.
- The public had full access to any COE records.
- Complaints would not be posted on the Web.
- The final reports and dispositions should be posted.
- After disposition of cases by the COE, he would review the possible referral of cases to the appropriate departments.

MOTION to approve dismissing complaint C10-001 per Mr. Johnson's July 23, 2010, memo. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 3-0. Judge Edward Rogers and Bruce Reinhart absent.

VI. ADVISORY OPINION RQO 10-011

Mr. Johnson stated that:

- Commissioner Burt Aaronson had requested an advisory opinion regarding a testimonial fundraising dinner.
- The COE had previously determined that Commissioner Aaronson could be honored at the religious fundraiser provided that certain rules were abided.
 - Lobbyists or their principal or employer could not donate more than \$100 per the Code.

VI. – CONTINUED

- Commissioner Aaronson had sent a second letter stating that he would no longer be the honoree, and he had been asked to act as the master of ceremonies and speaker honoring only Maury Kalish.
- After reviewing section 2-443 of the Code, he found that it did not apply to Commissioner Aaronson.
- Commissioner Aaronson, his family, or any prescribed individuals could not have any financial gain.
- No sections of the Code barred him from participating in the fundraising event, provided he did not benefit from it, or that he was not the honoree.
- The proposed advisory opinion stated that Commissioner Aaronson would be able to participate as the master of ceremonies and guest speaker.
 - A cautionary paragraph was added that Commissioner Aaronson continued to take every precaution practicable to avoid the appearance that the charitable event was in any way on his behalf or would otherwise engender his good will on behalf of the donors or their clients.

MOTION to approve the advisory opinion letter dated August 5, 2010. Motion by Ronald Harbison, and seconded by Dr. Robin Fiore.

PUBLIC COMMENT: Suzanne Squire.

UPON CALL FOR A VOTE, the motion carried 3-0. Judge Edward Rodgers and Bruce Reinhart absent.

VII. PROPOSED CODE REVISIONS

Assistant County Attorney Leonard Berger stated that:

- The first proposed amendment to the Code dealt with outside employment for County employees.
 - The County's Human Resources Department (Human Resources) merit rule stated that an employee needed to submit a written outside employment request to their department head.

VII. – CONTINUED

- No conflict could exist between outside employment and a County position, and the outside employment could not impair the employee's performance of their County position.
- The proposed amendment to the Code's section 3.A. was not a waiver from the Code's provisions.
- The goal was to try to fine tune prohibited contractual relationships outside of any official misbehavior.
- The reporting requirement that was added to the Code, which stated that a County employee needed to indicate the amount of money received from outside employment, was not necessary, and it may be viewed as intrusive.

Mr. Johnson said that he was attempting to narrow the Code's language so that outside employment was only part-time, and that the language involved only working for an entity possessing a County contract.

MOTION to approve adding proposed amendment subsection (5), and deleting proposed amendment subsection (6), in section 3.D. of the Code. Motion by Ronald Haribison, seconded by Dr. Robin Fiore, and carried 3-0. Judge Edward Rodgers and Bruce Reinhart absent.

Mr. Berger stated that:

- The second proposed amendment to the Code dealt with contingent fee prohibitions.
- The Code's current contingent fee prohibition essentially mimicked State law.
- Two exceptions were being introduced: real estate brokerage fees and ordinary course of business commissions.
- The two options would be to add the two exceptions that had been established by State law or to leave the Code's language as originally written.

VII. – CONTINUED

Mr. Johnson recommended that it would be more advantageous to leave the Code's language as originally written; and if problems arose, the language could be revisited.

PUBLIC COMMENT: Suzanne Squire.

MOTION to approve leaving the language in section 3.F. of the Code as originally written. Motion by Ronald Harbison, seconded by Dr. Robin Fiore, and carried 3-0. Judge Edward Rodgers and Bruce Reinhart absent.

Mr. Berger stated that:

- The third proposed amendment to the Code dealt with a general statement of purpose.
- Insertion of the proposed language into the general statement of purpose would indicate the Code's legislative intent.
- It would be helpful to include the proposed language.

Dr. Fiore requested that the proposed language be changed to read, "Officials and employees in public service shall be conscious that public service is a public trust, and shall be impartial and devoted."

Mr. Johnson stated that:

- The proposed language in section 1. of the Code would be too vague to add to section 3.A. of the Code for the COE's specific action on complaints.
- For legislative intent, the proposed language would be helpful in terms of interpreting other parts of the Code when actions of an official or employee were questioned regarding some matters.

PUBLIC COMMENT: Barbara Susco.

Mr. Johnson suggested that the words, "the County," in section 1. of the Code could be changed to either, "the people" or "the people of Palm Beach County." He read the following revision:

VII. – CONTINUED

Officials and employees in the public service shall be conscious that public service is a public trust, shall be impartial and devoted to the best interests of the people of Palm Beach County, and shall so act and conduct themselves as not to give occasion for distrust of their impartiality.

Dr. Fiore requested that the words, “and shall so act and conduct themselves as not to...,” be changed to “and shall act and conduct themselves so as not to...”

MOTION to approve the proposed amendment in section 1. of the Code as amended. Motion by Dr. Robin Fiore.

PUBLIC COMMENT: Suzanne Squire.

MOTION SECONDED by Ronald Harbison, and carried 3-0. Judge Edward Rogers and Bruce Reinhart absent.

Mr. Berger stated that:

- The next proposed amendment dealt with the lobbyist registration ordinance.
- When the Code was adopted, staff had amended the existing lobbyist registration ordinance.
- Before the COE was established, violations of the lobbyist ordinance went before the county administrator and then to a hearing officer.
- The proposed amendment was being brought before the COE as a housekeeping matter.

Mr. Johnson clarified that the COE would have no jurisdiction because there was no direct knowledge of the actual complainant, who was the county administrator, without adding the following language:

For purposes of further investigation and enforcement by the Commission on Ethics, a complaint submitted under this subsection by the county administrator shall be deemed legally sufficient.

Mr. Johnson further clarified that:

VII. – CONTINUED

- Any violation of the registration ordinance could be initiated by either a citizen who had personal knowledge, by the state attorney, by the inspector general (IG), or by the COE ED.
- An inadvertent violation would not be a violation of criminal laws because there needed to be a certain criminal intent.
 - The word, “willful,” could be stricken from part 2, section 2-357 of the proposed amendment to the Code’s lobbyist registration ordinance.

Mr. Farach commented that discussion of part 2., section 2-357 of the proposed amendment to the Code’s lobbyist registration ordinance, was not on today’s agenda, and there was a consensus to place the item on the COE’s next meeting agenda.

Mr. Berger provided the following timeline:

- Permission to advertise would be August 31, 2010.
- First reading would be September 14.
- The proposed amendment Code revisions that were passed today would travel with the proposed amendments to the IG ordinance that needed to be in place by October 1 for the budget year.
- At the next Board of County Commissioners (BCC) regular meeting, he would inform the BCC that the COE was reviewing the use of the word, “willful,” in part 2, section 2-357 of the Code.

Mr. Johnson noted that today’s agenda contained a general notice of code revisions, and there would be no problem discussing the issue now.

Mr. Berger clarified that:

- Under willful violations, inadvertent violations could come before the COE that would be subject to the COE’s jurisdiction for lesser fines.

VII. – CONTINUED

- The word, “willful,” was added to the proposed amendment revisions because if the COE found that there was a willful, meaningful violation, the COE could refer the violation to the state attorney for prosecution as a second-degree misdemeanor.
- In addition to the civil penalty of meting out fines, the COE could also debar someone from lobbying for several years.

PUBLIC COMMENT: Suzanne Squire, and Alexandria Larson.

Mr. Johnson said that:

- The lobbyist registration ordinance on the Website was the old ordinance.
- The Website, palmbeachethics.com, would contain the up-to-date “municodes.”
- Items that had been crossed out in the Code were part of the old ordinance, and the old ordinance did not include the COE.

MOTION to approve that the COE adopt the proposed amendment in section 2-356 of the Code. Motion by Ronald Harbison, seconded by Dr. Robin Fiore, and carried 3-0. Judge Edward Rodgers and Bruce Reinhart absent.

Mr. Berger stated that:

- The next two proposed amendments dealt with the COE ordinance.
- The first proposed amendment to the COE ordinance, section 7.B., would allow the IG, the state attorney, and the COE ED to self-initiate complaints.

Mr. Harbison requested that the words, “Executive Director,” in section 7.B., line 15 of the COE ordinance be clarified by adding “Commission on Ethics.”

Mr. Johnson stated that:

- There was no reason why a COE member could not speak to the COE ED, the IG, or the state attorney regarding specific concerns.

VII. – CONTINUED

- Allowing a COE member to sign a complaint would not be advisable because that would leave only four COE members.

MOTION to approve the proposed amendment in section 7.B. of the COE ordinance as amended. Motion by Dr. Robin Fiore, and seconded by Ronald Harbison.

PUBLIC COMMENT: Alexandria Larson.

Mr. Johnson clarified that:

- Whistleblower complaints could be sent to the IG, the State Attorney's Office, and the COE.
- Allowing the ED to file a complaint on the COE's behalf permitted the state attorney, the COE ED, or the IG to take sworn statements, and then file a complaint based upon those sworn statements.
- Governmental employees were not required to sign or notarize anything regarding a complaint, but they must speak with whoever investigated the complaint.

PUBLIC COMMENT: Suzanne Squire.

UPON CALL FOR A VOTE, the motion carried 3-0. Judge Edward Rodgers and Bruce Reinhart absent.

Mr. Berger stated that:

- The second proposed amendment to the COE ordinance, section 7.F., dealt with trimming down subpoena power for consistency with local government.
- The proposed language was borrowed from Miami-Dade County, which was a pre-1967 Constitution Home Rule county with subpoena power similar to the State Attorney's Office.
- The COE had limited administrative subpoena power, and the remaining language in 7.F. was what the COE would be empowered to carry out.

VII. – CONTINUED

- One recommended option would be to contact the legislative delegation during its next session and discuss the possible enactment of a local law, which would give the COE broader subpoena power authority.

Mr. Johnson clarified that the COE's subpoena power was not a substantive issue that needed to be vetted sooner than later, and staff had no objection to tabling the issue.

Mr. Farach stated that the issue would be tabled until the next meeting.

PUBLIC COMMENT: Sharon Waite.

(CLERK'S NOTE: Item X.c. was presented at this time.)

X.c. Interlocal Agreements Status Report Workshop Items

Mr. Johnson stated that:

- The County had passed the referendum, and it would be placed on the election ballot.
- Numerous municipalities had indicated an interest in becoming subject to the jurisdiction of the Code and the COE.
- He would recommend that the COE enter into interlocal agreements with any municipality who wished to be terminated on January 1, 2011, when the referendum went into effect, but only include the COE's and the Code's ordinances in those interlocal agreements.
 - He believed that the other ordinances needed to be vetted by the Implementation Advisory Committee for the referendum.
 - The COE's ordinance and the Code's ordinance could be altered to logically include the municipalities.

Mr. Berger said that:

- It was unlikely that new countywide ordinances would be in place on January 1, 2011.

X.c. – CONTINUED

- The charter amendment provided that drafting committees needed to formulate uniform language.
- Municipalities would need to adopt their own version of the ordinances, and they would need to hold two public hearings.
 - Municipality staff would probably need to be trained on the ordinance language.

Mr. Johnson clarified that by ordinance, municipalities paid for COE services through ad valorem taxes. He added that there was one position currently open for a second attorney.

PUBLIC COMMENT: Jamie Titcomb.

There was a consensus that Mr. Johnson could proceed with approaching the municipalities regarding the interlocal agreements.

(CLERK'S NOTE: The numerical order of the agenda was resumed.)

VIII. BUSINESS FORUM LETTER OF JUNE 14, 2010

Mr. Johnson stated that:

- Many of the issues relating to the Palm Beach County Business Forum letter had been previously addressed.
- The letter and staff's recommendations were in the record.
- The COE members could proceed to the next agenda item unless they wanted to discuss the item or ask questions.

MOTION to approve directing Mr. Johnson to respond appreciatively to the Palm Beach County Business Forum. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 3-0. Judge Edward Rodgers and Bruce Reinhart absent.

IX. IMPLEMENTATION ADVISORY COMMITTEE AND CHARTER AMENDMENT UPDATE

Mr. Johnson stated that:

- A brief update was provided when Mr. Berger was present.
- Once the charter amendment was placed on the November 2010 election ballot, the COE would then be represented on the Implementation Advisory Committee, which would mold all the ordinances into one ordinance.
- He was a member of the Implementation Advisory Committee, in addition to three members chosen by the League of Cities, three members chosen by the County, and Mr. Berger was a possible member.

X. EXECUTIVE DIRECTOR COMMENTS

X.a. Website

Mr. Johnson stated that the palmbeachcountyethics.com Website would be online within the next few weeks, and he hoped to unveil the Website at the next meeting.

X.b. Advocate Training Report

Mr. Harbison stated that:

- He had attended the advocate training in order to view the protocol for the filing of investigations and the formatting of documents.
- Mr. Johnson and the advocate and the investigator for the Miami-Dade County Ethics Commission were present.
- Fourteen or 15 attorneys volunteered their time as pro bono advocates.
- The training was recorded or videotaped for future training purposes.

X.c. Pages 12-13

X.d. Unscheduled Item

X.d.1.

DISCUSSED: Ethics Awareness Week.

Mr. Johnson requested that the BCC be asked to proclaim an ethics awareness week during the spring of 2011. He added that:

- The COE would be partnering with the County's primary and secondary education schools regarding ethics awareness.
- He had spoken with Palm Beach County School Board members, and individuals from the Palm Beach State College.
- He envisioned a year-round ethics outreach.
 - The ethics outreach would culminate during an ethics awareness week.
 - Various programs, such as scholarships for an essay writing contest, and an award for the face of ethics in public service, could take place.

There was a consensus that Mr. Johnson could proceed with implementation of an ethics awareness week.

XI. COMMISSION COMMENTS

The COE members thanked Mr. Johnson for his advanced preparation of today's meeting, and for his continued COE work.


XII. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Dr. Robin Fiore, seconded by Mr. Harbison, and carried 3-0. Judge Edward Rodgers and Bruce Reinhart absent.

XII. – CONTINUED

At 6:25 p.m., the vice chair declared the meeting adjourned.

APPROVED:


Chair/Vice Chair