

## **MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS**

**I. CALL TO ORDER:** September 2, 2010, at 4:03 p.m., in the Commission Chambers, 6<sup>th</sup> Floor, Governmental Center, West Palm Beach, Florida.

### **II. ROLL CALL**

#### **MEMBERS:**

Judge Edward Rodgers, Chair  
Manuel Farach, Esq., Vice Chair  
Dr. Robin Fiore  
Ronald E. Harbison  
Bruce Reinhart, Esq.

#### **STAFF:**

Tammy L. Gray, Public Affairs Department Informational Specialist  
Alan S. Johnson, Esq., Commission on Ethics (COE) Executive Director  
Gina A. Levesque, COE Administrative Assistant  
Heather C. Shirm, Public Affairs Department Web Design Coordinator  
Julie Burns, Deputy Clerk

### **III. CHAIRMAN'S INTRODUCTORY REMARKS**

Judge Edward Rodgers reminded everyone to turn off their cell phones, and he added that public comments would be accepted for two minutes or less.

### **IV. APPROVAL OF MINUTES FROM JULY 15 AND AUGUST 5, 2010**

Dr. Robin Fiore asked that the following portion of the July 15, 2010, minutes on page 7 be stricken for the lack of clarity:

Dr. Fiore stated that she was fine with editorializing conflicts of interest because an opinion was being made in understanding the statement, and it was unnecessary to interpret the policy in accordance with the code.

Judge Rodgers replied that the statement would be stricken.

#### **IV. – CONTINUED**

Bruce Reinhart requested that wherever internal audit COE was referenced on pages 5, 6 and at the top of page 7, that it be changed to internal audit committee.

Judge Rodgers responded that the change would be made.

Mr. Reinhart requested that the language on page 10, the next to the last paragraph, be changed to show that he said, “unless a violation was uncovered, quid pro quo could apply.” He said that his recollection of his comment was, even if no violation of the ethics code occurred, it could still potentially be prosecuted if there were a quid pro quo.

Judge Rodgers stated that the minutes clerk would make the corrections.

**MOTION to approve the July 15, 2010, minutes as amended. Motion by Bruce Reinhart, seconded by Dr. Robin Fiore, and carried 5-0.**

**MOTION to approve the August 5, 2010, minutes. Motion by Manuel Farach, seconded by Dr. Robin Fiore, and carried 5-0.**

#### **V. WEBSITE PRESENTATION**

Alan S. Johnson, COE Executive Director stated that the COE Web site, palmbeachcountyethics.com, was now online.

##### **V.a. Heather Shirm**

Public Affairs Department Web Design Coordinator Heather C. Shirm stated that:

- Visiting the Web site, pbcgov.com/ethics, or clicking “report ethics violations” on the County’s Web site homepage would also direct someone to the COE’s Web site.

## V.a. – CONTINUED

- The COE's Web site homepage included a mission statement and a welcome statement from Mr. Johnson.
- The last recorded meeting would post to the Web site within 24 to 48 hours after a meeting's conclusion.
- The next meeting would be posted on the Web site, and previous agendas and minutes could be viewed under the meeting schedule and minutes link.
- The Rules of Procedure, the Bylaws, the Palm Beach County Ethics Pledge, the County's Code of Ethics (Code), and some of the Grand Jury reports that were released in 2009 and 2010 would be published on the Web site.
- The training link was launched earlier this year for advisory board members, the COE, and employees.
  - The training was required for all advisory board members and employees.
- Archived COE videos, taped training sessions, and PowerPoint presentations would be posted under the multimedia link.
- Links to related offices would be posted under helpful links.
- The resources link published various ordinances, the ethics complaint form, and a speaker request form.
  - The formal ethics complaint form could not be submitted electronically because it needed to be notarized.
- The "About Us" link listed each COE member, along with a picture and a biography.
  - The hiring process was continuing so the "Meet the Staff" link was not completely populated.

## **V.a. – CONTINUED**

- All opinions that were reviewed at COE meetings and any final orders that were issued on complaints would be uploaded onto the opinions link.
- Individuals could call, email or write a COE member, or contact the inspector general on the “Contact Us” link.
  - The ethics complaint form and the speaker request form were also listed.
- Construction of the COE Web site thus far was considered to be Phase I.
  - Staff was working on a searchable library to enable keyword searches.
  - It was anticipated that the searchable library would be implemented by early 2011.

Mr. Johnson clarified that:

- Training, videos and DVDs were ongoing processes.
- The COE would phase out the County’s training videos and replace them with COE staff.
- The Code needed to be updated.
  - The process would begin September 13, 2010, with a live, taped training session regarding Code amendments that were recommended by the COE.
- In the near future, the COE would partner with colleges and the Dreyfoos School of the Arts to implement animation on the COE Web site.

## **V.b. Relationships with Non-Profit Organizations**

Mr. Johnson stated that:

- Although the Web site, [cityethics.org](http://cityethics.org), was a 501(c)(3) nonprofit organization, it sold services as a consultant to start ethics initiatives, or assisted in ethics initiatives.

## V.b. – CONTINUED

- Cityethics.org was removed from the COE Website.
- It would be appropriate to discuss whether those types of organizations should be included on the COE Web site.

Ronald Harbison suggested that linking an organization, such as Leadership Palm Beach County (LPBC), to the COE's Web site would be appropriate because they shared the common goal of education. He disclosed that because he was the president of LPBC, he would recuse himself from any vote. He added that the COE would have a link on the LPBC's Web site.

Mr. Reinhart stated that he supported linking any non-selling community organization or entity that endorsed the ethics initiative.

Manuel Farach suggested that Mr. Johnson, as executive director, could initially decide without first bringing it before the COE whether organizations fell under a category where special scrutiny was needed.

Mr. Johnson stated that:

- LPBC would be an appropriate addition to the COE's Web site, but it was different from the COE's existing Web site links.
  - The existing COE Web site links were for informational purposes.
  - Cityethics.org was originally linked to the COE's Web site because they had a unique database.
  - Discussions were ongoing with cityethics.org staff to attempt replication of their Web site's information onto the COE's Web site.

Dr. Fiore said that Mr. Johnson should not be required to respond to each vendor that sold ethics services or each organization that sought contracts if the COE reached a consensus regarding the issue.

**PUBLIC COMMENT:** Gale Howden.

Mr. Farach disclosed that he was also an LPBC member.

## **V.b. – CONTINUED**

Mr. Johnson clarified that there would not be a voting conflict because there was no financial interest; but Mr. Farach stated that he would abstain from voting.

**PUBLIC COMMENTS:** Suzanne Squire and Alexandria Larson.

Mr. Johnson clarified that:

- The items that Ms. Larson referenced were backup, supporting documents to the COE agenda.
- All backup materials, which were not available to the public, would now be posted on the COE Website.

Mr. Reinhart stated that Ms. Larson's comments and concerns about waivers and advisory board memberships dealt with a political matter between the voters and the Board of County Commissioners (BCC) instead of the COE. He added that the COE merely enforced the BCC's ordinances.

Judge Rodgers stated that he would not object to having a one-on-one discussion with Ms. Larson.

## **VI. ADVISORY OPINIONS**

Mr. Johnson stated that:

- Proposed opinion letters that were not finalized by a COE vote would depict a watermark with the word, proposed, on the letter.
- The proposed opinion letters would be posted to the COE Web site, and the COE members would receive copies of them at the same time the agenda was prepared.

Dr. Fiore stated that proposed opinion letters posted to the COE Web site should not be written on letterhead to avoid being reproduced as a document for other purposes; Mr. Johnson said that he agreed.

Mr. Reinhart said that he was in agreement as long as the proposed opinion letters contained the watermark.

**VI.a. RQO 10-012**

Mr. Johnson stated that:

- On July 29, 2010, Commissioner Marcus asked whether friends of her daughter and son-in-law could participate in future fundraising events to benefit her son-in-law in order to defray medical expenses.
- Commissioner Marcus had previously submitted a request for an advisory opinion to the State Commission on Ethics.
  - The State's COE opined that as long as she would not financially benefit and she did not participate in solicitations, the fundraiser would not violate the State Code of Ethics, Chapter 112.
- The County had a similar ordinance, and the gift law had already been examined for another advisory opinion.
- As long as Commissioner Marcus did not participate in the fundraiser, he recommended adoption of the letter, since it would not be a Code violation.
- Should Commissioner Marcus encounter a vendor that had contributed to the fundraiser, she should state that it would be inappropriate to continue the conversation.

Mr. Farach stated that he would like to see stronger language in Article VIII., section 2-443, of the Code. He suggested that Commissioner Marcus advise those individuals who were involved in the fundraiser that her name could not be used in any way, or for any purpose.

Mr. Johnson stated that language would be added to Request for Opinion (RQO) 10-012's final opinion reflecting the language suggested by Mr. Farach.

**MOTION to approve the proposed opinion letter as amended to include the change as discussed. Motion by Bruce Reinhart, seconded by Ronald Harbison, and carried 5-0.**

**VI.b. RQO 10-013**

Mr. Johnson stated that:

- The County's Department of Airports (DOA) requested an opinion as to whether a conflict of interest existed if the Aviation and Airports Advisory Board (AAAB) participated in a voting recommendation to the DOA regarding a fuel flowage fee at the three County general aviation airports when AAAB members owned aircraft and purchased airport fuel.
- The COE staff had received emails from August 4, 2010, to August 16, 2010, which provided supplemental information regarding general aviation fuel flowage, hangar space, tenants, and airport operations.
- The COE staff conducted substantial inquiry on how the airports functioned, how many airplanes flew in and out of the airports, and the amount of fuel that was sold; the gathered information was added to RQO 10-013.
  - Providing the factual information was important in helping the COE reach a conclusion whether there would be a personal or financial benefit to the AAAB members as opposed to a shared benefit with like members of the general public.
- The issue before the COE would be whether the AAAB recommended a "no" vote on the fuel flowage fee; and the specific language on page 1, paragraph 3, of the proposed opinion letter was based on the premise that the AAAB would recommend a "no" vote on the fuel flowage fee.

Mr. Harbison stated that to say that there should not be scrutiny on a "yes" vote and scrutiny on a "no" vote was not entirely accurate, and he questioned whether materiality should be taken into consideration.

Mr. Johnson responded that:

- The issue was not the amount of a gain or loss. The issue was:
  - Whether there was a gain.



## VI.b. – CONTINUED

- Whether the class or group of people that received a gain or a financial benefit was shared with similarly situated members of the general public and what the COE's definition of similarly situated members of the general public was for purposes of ordinance construction.
- The point at which that class or group of people who would receive a gain or a loss become a large enough group that there would not be a specific individual financial gain or loss.
- The State's COE viewed one percent of a class or group of people as a benchmark for the number of people who had to be similarly situated in the community.

Mr. Farach commented that it was more of a numerical benchmark as opposed to a material benchmark.

Mr. Johnson said that it was how many people constituted a class or group.

Dr. Fiore stated her disagreement that it was the amount of fuel that was used by the AAAB members compared to the amount of fuel that was used by other individuals.

Mr. Johnson stated his agreement that in the consideration, if one person in the similarly situated group gained more than others, then that was another benchmark to determine whether that person had a conflicting financial interest.

Mr. Farach stated that he was comfortable with the State COE's one percent numerical requirement as long as staff included the opinion that notwithstanding meeting the State COE's one percent requirement, there was no financial benefit to that particular public official.

Mr. Reinhart commented that the COE would be looking at whether the benefit to any individual AAAB member was disproportionate to the benefit of other similarly situated members of the general public.

Dr. Fiore stated that she agreed with Mr. Reinhart's comment without the COE concluding that there was no conflict of interest because the COE did not have enough evidence.

## VI.b. – CONTINUED

Mr. Johnson suggested that he could ask the DOA to research whether the AAAB had any records regarding how much fuel they had purchased at the three airports in the last year, and he read the following proposed language change to RQO 10-013's summary:

In summary, it is the opinion of the Ethics Commission that an affected class in excess of 600 persons is of sufficient size to disburse the financial benefit or loss among similarly situated members of the general public, provided there are no circumstances unique to the individual officials, which would enable any of them to gain more than the other members of the class.

Mr. Farach suggested that the proposed language could be expanded to say, "and there is no financial benefit to the official."

Mr. Johnson stated that the proposed language would need to say, "no greater benefit."

Mr. Reinhart stated that he would agree to issue the opinion as written and discussed, but he was unsure whether it provided any useful guidance to the AAAB members.

Mr. Johnson asked whether the following proposed language change to RQO 10-013 would be appropriate:

Provided there are no circumstances unique to the individual officials, which would enable any of them to gain more than the other members of the class, and there is no disproportionate gain to any of the board members.

Mr. Reinhart suggested that the sentence in RQO 10-013 which began, "Therefore, there is no voting conflict..." be stricken and the following language be added: "Based on the facts presented to us, we cannot render an opinion as to whether any current member of the board has a conflict."

Judge Rodgers asked whether the opinion letters could each include a statement that read: "These opinions are based upon the factual basis as presented at this time."

## VI.b. – CONTINUED

Mr. Johnson suggested the following proposed language change to the last page, last paragraph of RQO 10-013:

This opinion construes the Palm Beach County Code of Ethics ordinance and is based only upon the facts as presented by your request.

Dr. Fiore asked whether the sentence on page 1 of RQO 10-013 that said, "We opine that the class is of a sufficient size so as not to create a prohibited voting conflict" would be stricken.

Mr. Johnson responded that that proposed language would change to comport with the summary language, and he read the following proposed language:

Based on the facts submitted, we are unable to render an opinion on the individual board members as to whether in their circumstances they will obtain a disproportionate benefit by their vote.

Mr. Farach commented that it would be advantageous to send the message that everyone requesting an opinion should not expect to wordsmith that opinion request, then return to the COE and say, "There's no violation here because you rendered an advisory opinion."

Mr. Johnson clarified that:

- Laura Beebe, the Airports Business Affairs Deputy Director who requested the opinion on behalf of the DOA, was not wordsmithing.
- If the COE needed additional information regarding an opinion request, only the person requesting the opinion should provide that information.

Mr. Johnson reviewed the following proposed changes:

- The sentence on page 1, which began with the words, "In sum," would be changed to comply with the amended verbiage regarding the summary on the last page, which began with the words, "In summary."

## VI.b. – CONTINUED

- The sentence on the last page of RQO 10-013 which began with the word, “Therefore,” would be stricken, and the following proposed language would be added:

Based on the facts submitted, the Ethics Commission is unable to render an opinion on the individual board members as to whether, in their circumstances, they will obtain a disproportionate benefit by their vote.

Dr. Fiore suggested that it should read, “For any individual board member.”

Mr. Johnson stated that:

- The last portion of the previously read proposed language would be changed to, “by the vote of that board member.”
- All opinion letters will contain the following standard language:

This opinion construes the Palm Beach County Code of Ethics ordinance and is based only upon the facts and circumstances as presented to the commission.

- Arrangements would be made to display markups on a computer at the next meeting for the viewing public.

**MOTION to approve the proposed opinion letter as amended to include the changes as discussed. Motion by Dr. Robin Fiore, seconded by Bruce Reinhart, and carried 5-0.**

## VI.c. RQO 10-014

Mr. Johnson stated that:

- The person requesting the opinion had asked in an August 5, 2010, email whether she, as a County library employee, could present a 30-minute program for a library patron’s child’s third birthday party.
  - The employee’s initial request stated that she had been offered payment, which she had declined; and she requested an opinion as to whether she could perform the program for free.

## VI.c. – CONTINUED

- The request was ultimately withdrawn by the employee because she decided not to present the program.
- In a previous COE meeting, a determination was made that an opinion request could not be withdrawn once it was made.
- It was his recommendation that no conflict existed.
- During a previous discussion with Dr. Fiore, she had expressed concern that the proposed opinion did not state that the program could not take place during work hours.
  - It was proposed that the following language could be added to page 2 of RQO 10-014, at the end of the paragraph which began with the word, “Clearly.”

As in any outside employment, participation must be during off-duty hours and not affect the faithful performance of your County job.

- The person who had requested the opinion would have performed the program during off-duty hours.

Mr. Farach commented that he did not want the opinion’s language giving anyone the impression that participating in an event could not take place during work hours if it benefited the County and the supervisor approved it.

Mr. Reinhart suggested adding the following language to page 2 of RQO 10-014, at the end of the sentence which began, “It should be noted that”: “Nor have you indicated that it would be performed during work hours.”

There was a consensus that Mr. Reinhart’s proposed language would replace the previously proposed language.

**MOTION to approve the proposed opinion letter as amended to include the changes as discussed. Motion by Bruce Reinhart, seconded by Dr. Robin Fiore, and carried 5-0.**

**VI.d. RQO 10-017**

Mr. Johnson stated that:

- Lisa DeLaRionda, Public Affairs Director, had sent in an opinion request stating that she had been invited to teach a four-hour public relations class at the Florida Association of Special Districts' (FASD) annual conference.
- The opinion request centered on whether the FASD could pay for her overnight stay at the conference.

Mr. Johnson added that the FASD was not a lobbyist, and staff had recommended that Ms. De La Rionda be allowed to accept the hotel accommodations from the FASD.

**MOTION to approve the proposed opinion letter. Motion by Dr. Robin Fiore, and seconded by Bruce Reinhart.**

Mr. Johnson stated that:

- Ms. DeLaRionda was not being provided a personal benefit, and it was unclear whether the FASD would reimburse her for the hotel accommodations, or they would pay the hotel bill directly.
- Ms. DeLaRionda was not being paid to teach the class.

Mr. Johnson suggested that the following language could be added to page 1, the last paragraph of RDO 10-017:

Based on the facts and circumstances provided, you will not be receiving any financial benefit for your lecture.

Mr. Farach commented that any financial benefit should go to the County, and Mr. Reinhart suggested changing the proposed language to, "personal financial benefit."

**AMENDED MOTION to change the language as proposed by Mr. Reinhart.**

The maker and the seconder agreed to the amended language, and upon call for a vote, the motion carried 5-0.

**VI.d. – CONTINUED**

Mr. Reinhart requested that items VII.a. and VIII. be tabled until the next meeting and that item VII.b. be presented at this time.

**VII. RULES OF PROCEDURE & BY-LAWS**

**VII.a. Permanent Adoption of Interim Rules & By-Laws – Not Discussed**

**VII.b. Revision to Advisory Opinion Section B, 2.5**

Mr. Johnson asked whether the COE wanted to ratify the COE's July 15, 2010, decision, which would alter the COE's Rules of Procedure to add a proposed amendment to section B., Advisory Opinions, section 2.5, Processing Advisory Opinions. He said that a subsection f would be added with the following proposed language:

- f. Once submitted, an advisory opinion request may not be withdrawn by the submitting party.

Mr. Johnson stated that he had not yet posted the proposed change to the COE's Web site.

**MOTION to approve that the proposed change to the COE's Rules of Procedure, section B. subsection 2.5, be posted to the COE's Web site for at least 30 days, and that a motion on the proposed change be tabled until the next COE meeting. Motion by Manuel Farach, seconded by Bruce Reinhart, and carried 5-0.**

**VIII. COMPLAINTS**

Mr. Johnson stated that:

- Complaints C10-002 and C10-003 were from the same complainant.
- Neither complaint was legally sufficient, nor were they within the Code's timeframe because the actions allegedly took place prior to May 1, 2010.
- He would recommend adoption of C10-002 and C10-003, and that Judge Rodgers sign the Final Report and Final Order of Dismissal for both complaints.



## VIII. - CONTINUED

- Staff would be sending a copy of C10-002's and C10-003's documents to the State Attorney's Office, the U.S. Attorney's Office, and the State COE; all of whom had jurisdiction over these matters.

### VIII.a. C10-002

**MOTION to approve accepting the Public Report and Final Order of Dismissal for C10-002. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 5-0.**

### VIII.b. C10-003

**MOTION to approve accepting the Public Report and Final Order of Dismissal for C10-003. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 5-0.**

## IX. EXECUTIVE DIRECTOR COMMENTS

### IX.A.

**DISCUSSED:** Municipality Update.

Mr. Johnson stated that:

- He had given presentations to representatives of the following municipalities: the City of Riviera Beach, the Town of Boynton Beach, the City of Delray Beach, the Town of South Palm Beach, the City of Lake Worth, the Village of Wellington, the Town of Royal Palm Beach, the City of Greenacres, the Town of Lantana, and the City of West Palm Beach.
  - The Town of Lantana would be conducting its first reading of the Code's and the COE's ordinances on September 13, 2010, and planned on adopting its versions.
- All changes had been made to the enabling ordinances and to the interlocal agreement.
- Any interlocal agreement would sunset with the acceptance of a particular municipality.



**IX.B.**

**DISCUSSED:** Ethics Education.

Mr. Johnson stated that:

- He and Dr. Fiore had met with Palm Beach Atlantic University officials.
- Countywide, there were many good ethics ideas and programs, but they were all individual.
- The COE could become an umbrella that could bring ethics together regarding education in the public schools and the colleges through fellowships, internships, and scholarships.

**IX.C.**

**DISCUSSED:** Attorney Interviews.

Mr. Johnson said that interviews for an attorney would take place at the end of September, and he was hoping to introduce someone, at least by name, by the next meeting.

Mr. Harbison clarified that the education initiatives described by Mr. Johnson were mandated by, and were part of, the original ordinance for community education.

**PUBLIC COMMENT:** Suzanne Squire.

**X. COMMISSION COMMENTS**

**X.A.**

**DISCUSSED:** Office of the Inspector General (OIG) Employment Postings.

Dr. Fiore stated that:

- She had been contacted by a citizen who was interested in applying for an OIG position and asked for the employment postings location, because the OIG's Web site did not list employment postings.

**X.A. – CONTINUED**

- Assistant County Administrator Brad Merriman was consulted, and he stated that staff recommended that jobs be posted through the County, although the process was not required.
- Currently, the hiring process conducted in the OIG was not being implemented through the County.

Judge Rodgers commented that an announcement should be made as to where OIG employment postings were located.

Mr. Harbison stated his belief that it was appropriate that the inspector general be completely independent and not use County resources. He suggested that anyone interested in applying for an OIG position could contact the inspector general.

Judge Rodgers requested that Mr. Johnson discuss the issue with the inspector general.

**XI. ADJOURNMENT**

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

**At 5:55 p.m., the meeting was adjourned.**

APPROVED:

A handwritten signature in blue ink, appearing to read "Edward Rodgers", is written over a horizontal line. The signature is stylized and cursive.

Chair/Vice Chair