

MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS (COE)

I. **CALL TO ORDER:** August 4, 2011, at 3:08 p.m., in the Commission 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 N. Fiore
Ronald E. Harbison
Bruce E. Reinhart, Esq. – Absent

STAFF:

Alan S. Johnson, Esq., COE Executive Director
Gina A. Levesque, COE Administrative Assistant
Megan C. Rogers, COE Staff Counsel
Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

Judge Edward Rodgers stated that three Commission on Ethics (COE) members constituted a quorum.

Commission on Ethics Executive Director Alan Johnson, Esq., stated that Bruce Reinhart was out of town, and that Manuel Farach would arrive between 3:15 p.m. and 3:30 p.m.

III. **INTRODUCTORY REMARKS**

Judge Rodgers said that:

- If anyone wished to speak, a comment card containing the agenda item should be filled out.
- Public comment was limited to three minutes, and should be relevant to the agenda item.
- Public comment would be presented at this time, and Kurt Bressner could speak.

(CLERK'S NOTE: See Mr. Bressner's comments under item VIII.)

IV. APPROVAL OF MINUTES FROM JULY 7, 2011

MOTION to approve the July 7, 2011, minutes. Motion by Dr. Robin Fiore, and seconded by Ronald Harbison.

Mr. Johnson said that:

- Staff was working with the Clerk & Comptroller's Office (Clerk) regarding protocol to better serve the COE.
- Staff had reviewed the minutes, and the Clerk's staff reviewed them twice.
- The Clerk's staff should be thanked for their hard work, along with the COE's staff.
- An ethics pocket guide was now available for County employees, elected officials, and advisory board members.
 - Copies would be sent to all municipalities and various County departments.
 - The County's Graphics and Printing Division published the guide as a County function with no cost to the COE.
 - The COE's administrative staff should be thanked.

Judge Rodgers requested that Mr. Johnson or his staff write a letter to the Board of County Commissioners (BCC) or to the Graphics and Printing Division's department head, thanking them for their work.

Mr. Johnson stated that John Johnson was the graphics manager, and he would send a letter out tomorrow.

UPON CALL FOR A VOTE, the motion carried 3-0. Manuel Farach and Bruce Reinhart absent.

(CLERK'S NOTE: For continuation of item IV., approval of minutes, see page 3.)

(CLERK'S NOTE: Mr. Farach joined the meeting.)

RECESS

At 3:13 p.m., the chair declared a recess to take up the executive session.

V. EXECUTIVE SESSION (3:15 P.M. – 4:00 P.M.)

V.a. Page 6

V.b. Page 5

V.c. Page 4

(CLERK'S NOTE: For discussion of the final orders on V.a. – V.c., see pages 4-6.)

RECONVENE

At 4:00 p.m., the meeting reconvened with Manuel Farach, Dr. Robin Fiore, Ronald Harbison, and Judge Rodgers present.

IV. – CONTINUED

Judge Rodgers stated that item IV. would be reopened for Mr. Farach's comments.

Regarding the July 7, 2011, minutes, Mr. Farach stated that:

- Page 4, the words, from the public comment rule, should be inserted in the motion between the words, final hearing, and the word, involving.
- Page 8, the word, onto, should be replaced with the word, into, in the sentence that began, The COE would work with the County.
- Page 19, the word, abusive, should be replaced with the words, abuse of, in the sentence that began, On one hand.
- Page 20, the sentence that began, Mr. Farach stated, should add the words, and give a special benefit to that board, after the words, elected official.

MOTION to approve the July 7, 2011, minutes as amended to include the changes made by Mr. Farach. Motion by Ronald Harbison, seconded by Dr. Robin Fiore, and carried 4-0. Bruce Reinhart absent.

(CLERK'S NOTE: Items V.a. – V.c. were presented at this time.)

V.c. C11-014

Judge Rodgers read C11-014's final order:

Complainant, Pamela Lazarus, a Village of Tequesta employee, filed the above-referenced complaint on June 27, 2011, alleging possible ethics violations involving respondent, Jason Taylor, a Village of Tequesta employee. The complaint alleges that Jason Taylor on or about April 20, 2011, misused his position, his authority, as a Village employee by sending email on the Village mail system to fellow employee – Village employees, regarding a business owned and operated by his wife. Pursuant to chapter 2, article V., division 8, section 2-258(a) of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the County Code of Ethics. Misuse of the public office for financial benefit is prohibited pursuant to article III., section 2-443(a)(7) of the Palm Beach County code. On July 26, 2011, after initial inquiry into the matter, the complaint was determined by staff to be legally insufficient and presented to the Commission on Ethics on August 4, 2011, with a recommendation of dismissal as legally insufficient. According to the complaint, the alleged misconduct occurred prior to June 1, 2011, the date that the Code of Ethics and the Commission on Ethics ordinance became effective in the municipalities within Palm Beach County. Therefore, the Commission on Ethics lacked jurisdiction in this matter. The Commission on Ethics reviewed the investigative report and determined that the commission lacked jurisdiction to investigate the alleged respondent, Jason Taylor, violated section 2-443(a) of the Palm Beach County Code of Ethics and dismissed the complaint on August 4, 2011, due to no legal sufficiency. Therefore, it is ordered and adjudged that the complaint against the respondent, Jason Taylor, is hereby dismissed. Done and ordered by the Palm Beach County Commission on Ethics in public session on August 4, 2011.

Mr. Johnson clarified that the respondent was Jason Turner.

V.c. – CONTINUED

Judge Rodgers reread the first sentence of C11-014:

Complainant, Pamela Lazarus, a Village of Tequesta employee, filed the above-reference complaint on June 27, 2011, alleging possible ethics violations involving respondent, Jason Turner, a Village of Tequesta employee.

V.b.

Judge Rodgers read C11-012's final order:

Complainant, Pamela Lazarus, a Village of Tequesta employee, filed the above-referenced complaint on June 27, 2011, alleging a possible ethics violation involving respondent, Derick Velez, an employee of the Village of Tequesta. The complaint alleges that Derick Velez on or about May 17, May 22, June 1, June 4, June 8, June 13 and June 20, 2011, misused his position and authority as a Village employee by sending seven emails to Village employees using the Village email system regarding a fundraising event for a nonprofit corporation of which he and his wife are officers and directors, and soliciting donations for this nonprofit entity improperly by using the Village email system. Pursuant to chapter 2, article V., division 8, section 2-258(a) of the Palm Beach County code, the Commission on Ethics is empowered to enforce the County Code of Ethics. Misuse of the public office for financial benefit is prohibited pursuant to article XIII., section 2-443(a,) of the Palm Beach County Code. Use of public resources for solicitation of charitable contributions from vendors, lobbyists, principals or employers of lobbyists of a municipality for nonprofit organizations is prohibited under article XIII., section 2-444(h)(3) of the Palm Beach County Code. On July 5, 2011, the complaint was determined by staff to be legally sufficient. The matter was investigated and presented to the Commission on Ethics August 4, 2011, with a recommendation of no probable cause. The Commission on Ethics reviewed the investigative report, determined that the investigation provided no reasonably trustworthy facts and circumstances for the commission to conclude that the respondent, Derick Velez, violated section 2-443(a) or section 2-444(h)(3) of the Palm Beach County Code of Ethics and dismissed the complaint on August 4, 2011, due to no probable cause.

V.b. – CONTINUED

Therefore, ordered and adjudged that the complaint against the respondent, Derick Velez, is hereby dismissed. Done and ordered by Palm Beach County Commission on Ethics in public session on August 4, 2011. Signed by Edward Rodgers, chair.

V.a.

Judge Rodgers read C11-011's final order:

Complainant, David Floring, filed the above-referenced complaint on June 6, 2011, alleging a possible ethics violation involving respondent, Jose Rodriguez, the elected mayor of Boynton Beach. The complaint alleges that Mayor Rodriguez misused his position and authority, obtaining a special financial benefit by having residential property owned by a Florida corporation of which he is an officer and director assessed below the actual use value of the property by the Palm Beach County Property Appraiser's Office resulting in an improper property tax rate for this property. Pursuant to chapter 2, article V., division 8, section 2-258(a) of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the County Code of Ethics. Misuse of public office for financial benefit is prohibited pursuant to article XIII., section 2-443(a)(7) of the Palm Beach County Code. On July 26, 2011, after initial inquiry into the matter, the complaint was determined by staff to be legally insufficient and presented to the Commission on Ethics on August 4, 2011, with a recommendation of dismissal as legally insufficient. The Commission on Ethics reviewed the memorandum of inquiry and determined that the complainant has no personal knowledge that the respondent, Jose Rodriguez, used his official position to obtain a special financial benefit in violation of section 2-443(a) of the Palm Beach County Code of Ethics and dismissed the complaint on August 4, 2011, due to no legal insufficiency. Therefore, ordered and adjudged that the complaint against respondent, Jose Rodriguez, is hereby dismissed. Done and ordered by the Palm Beach County Commission on Ethics in public session on August 4, 2011. Signed by Edward Rodgers, chair of the commission.

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

VII. FORM 8B CONFLICT OF INTEREST DISCLOSURE (MANUEL FARACH)

Mr. Johnson stated that:

- Form 8B for Mr. Farach had been previously filed with the Clerk.
- Form 8B was added to the agenda for public disclosure in a public meeting.

(CLERK'S NOTE: For continuation of item VII., see page 7. The numeric order of the agenda was restored.)

VI. PUBLIC COMMENT – None

VII. – CONTINUED

Mr. Johnson said that Mr. Farach had fulfilled his disclosure obligation during the July 7, 2011, COE meeting by making public disclosure, then filing the appropriate form.

Commission on Ethics Administrative Assistant Gina Levesque stated that a requirement on the form was for it to be publicly read upon completion.

Judge Rodgers explained that the COE was attempting to determine when a COE member could abstain from voting.

Mr. Farach said that:

- He had filled out Form 8B because of a possible direct, financial interest regarding a July 7, 2011, agenda item before the COE.
- He had previously performed work for the Forbes Company, and he had abstained from any discussion and vote regarding the agenda item.

VII. – CONTINUED

- He read the following disclosure:

I do not currently represent the Forbes Company, but have done so in the past. Although I have no current plans to do so, there's a possibility I may be retained as an attorney to represent it in the future on some matters. Accordingly, in an abundance of caution, I abstained from any vote on July 7 agenda item, XII.h.; that is to say, RQO 11-034, a request for opinion brought before the Commission on Ethics at the request of the Forbes Company.

- Form 8B was true and complete, and the signature on it was his.

Mr. Johnson said that:

- Since Form 8B was a State form, there were two different conflict of interest alternatives that went beyond the County's Code of Ethics (Code).
- The State allowed advisory board members to participate on certain advisory boards, although they may have a conflict, which was when Form 8B should be read into the record.
- The following State's Form 8B language went beyond what was allowed by the County's Code: If you make no attempt to influence the decision except by discussion at the meeting.
- The COE should follow the letter of the law for Form 8B, and any future forms regarding the nature of the conflict should be read into the record at the next meeting.

VIII. **APPLICABILITY OF SECTION 2-444(5)(g) TO UNIFORMED FIREFIGHTER AND PARAMEDIC EXTRA-DUTY DETAILS**

Mr. Johnson stated that:

- Staff had received a letter from the Fire Chiefs Association of Palm Beach County (FCAPBC).

VIII. – CONTINUED

- The issue involved whether official law enforcement overtime or extra-duty detail provisions waiving the required submission of part-time outside employment, the conflict of interest waiver (waiver) forms, extended to similar uniform extra-duty detail work performed by County and municipal fire rescue employees.

Dr. Fiore requested that the letter be submitted as part of the official meeting documents.

Mr. Johnson stated that he would also file staff's response to Fire Chief Martin DeLoach, vice president of the FAPBC. He added that the COE should request that the clerk accept the document by receiving and filing it.

Judge Rodgers requested that the minutes clerk include the July 7, 2011, letter as part of the record.

Mr. Johnson continued:

- Uniformed fire rescue personnel performed uniform extra-duty detail work at public and private events.
- The extra-duty detail work was either contracted or administered by the applicable County or municipal fire rescue departments.
- The records were maintained by the departments in a manner similar or identical to those administered by police agencies.
- Fire Chief DeLoach wrote that the extra-duty detail work was provided in a similar fashion, often working side by side with our law enforcement partners.
- Staff provided several appellate cases.
 - One case, *Los Olas Tower Company versus City of Fort Lauderdale*, 742 So.2d 308, stated:

In statutory construction, a literal interpretation need not be given the language used, when to do so would lead to an unreasonable conclusion or defeat the legislative intent or result in a manifest incongruity.

VIII. – CONTINUED

- Staff recommended that the Code's construction, section 2-444(5)(g), that exempted uniform extra-duty detail work, be extended to uniformed firefighters as well as police officers.
- Union contracts were administered by the County or the municipality with union negotiation. Maintenance of the extra-duty detail records was a ministerial task, but it required that firefighters fill out the waiver form if they were not included in the exemption. To exempt or treat firefighters equal to police officers would mean that the County or the municipality would be administering the union contracts in the same manner as currently being administered.
- The County or the municipality was not always the employer of the firefighter's extra-duty detail work. From his understanding of the Ethics Ordinances Drafting Committee (EODC), some of the extra-duty detail work was administered by the County or the municipality, but that work was not considered to be a contract specifically entered into with the police agencies.
- Technically, under the Code, even if the extra-duty detail work was contracted with the County or a municipality, it would not be considered another governmental entity but an outside employer.

Former City of Boynton Beach Manager Kurt Bressner stated that he had been a former member of the EODC. He explained that the EODC had sent surveys to all municipal managers requesting information regarding their external security detail procedures. The survey's feedback, he said, led to the EODC's conclusion that the municipality's activity volume was extensive, and approving each waiver form on a case-by-case basis would have been unduly burdensome. He clarified that the exemption for the official law enforcement overtime or extra-duty detail work was under the Code's section 2-443, not section 2-444.

Mr. Johnson stated that the Code's specific section was 2-443(e)(5)(g).

Mr. Bressner said that had the EODC been provided similar information regarding municipal firefighters, he believed the EODC would have also included them under section 2-444 since they also performed either external site security, fire watches, or were involved in community events. He recommended that the COE could 1) issue some type of interim directive allowing inclusion of fire departments under the exemption in 2-443(e)(5)(g), or 2) request that a new EODC be formed to amend the ordinance's language.

VIII. – CONTINUED

Palm Beach County League of Cities (League) Executive Director Richard Radcliffe stated that it was an obvious EODC oversight that firefighters were excluded from section 2-443(e)(5)(g), and the League concurred with staff's report. He added that under section 2-443(e)(5)(g), municipalities were not responsible for payment of a firefighter's extra-duty detail work; they were simply authorizing the waiver.

Mr. Bressner clarified that based on the survey results, in most cases, service providers paid for the extra-duty detail work; and in most cases, the municipalities served as the billing agent for the services, then paid the officer for the detail work. He said that in many cases, the compensation could be included as pensionable income, depending on whether the income was included on tax forms 1099 or W-2; and collective bargaining agreements would govern how those matters were handled. He added that the EODC should have used the words, public safety, for fire rescue and police in section 2-443(e)(5)(g).

Judge Rodgers stated that:

- The COE did not have authority over municipalities, but someone could be found not guilty of violating a Code ordinance by interpreting the waiver as necessary, using common sense.
- The ultimate cure should come from legislative enactment.
- He did not believe that the COE could issue an administrative order.

Mr. Bressner suggested that all fire rescue agencies request an advisory opinion on an interim basis, and request that the COE approve embracing the concept of including them in the same ordinance language. Doing so would provide some legislative overview of the ordinance's intent, he added.

Mr. Johnson clarified that:

- The COE members would be providing only an interpretation of the ordinance and not an advisory opinion, nor would they be establishing law.
- Staff was recommending that the Code's intent on public policy was in keeping with interpreting any public service contract that was administered or contracted by the public entity.
- A vote on the interpretation may be necessary.

VIII. – CONTINUED

- If an advisory opinion request was submitted, the COE could provide an advisory opinion.

Judge Rodgers stated that the COE members were not legislators; and the legislature, the unions, the municipalities, and the County were also involved.

Palm Beach County Fire Rescue Chief Steve Jerauld stated that special detail work occurred almost daily. He added that all fire rescue agencies had an ongoing, common concern regarding whether the agencies would be violating the ordinance by not submitting the waivers.

Judge Rodgers stated that the COE should treat the issue with common sense as was done in the Las Olas Tower Company case. He stated that he agreed with the suggestion to submit a motion amending the ordinance to include the firefighters due to a scrivener's error.

Mr. Jerauld responded that the union supported an ordinance modification to include fire rescue.

Mr. Harbison suggested that procedurally, until a new EODC formed to discuss ordinance issues, the COE could vote that its interpretation regarded public safety rather than police.

Dr. Fiore stated that she agreed with Mr. Harbison's suggestion, and that the oversight was due to a scrivener's error.

Mr. Bressner suggested that rather than request that the EODC reconvene, the County Attorney's Office (CAO) could work with the COE's legal staff to prepare a Code amendment embracing the public safety concept for approval by the BCC.

Mr. Johnson stated that:

- It was inappropriate to refer to the oversight as a scrivener's error.
- The EODC referendum required a cumbersome process of reappointing a seven-member drafting committee to reassemble for 30 days for a specific change.

VIII. – CONTINUED

- Based on the July 7, 2011, letter, staff could submit an advisory opinion for COE approval at next month's COE meeting.
 - The advisory opinion would include how these contract types were administered and whether the process was identical to the law enforcement contract for extra-duty detail work.
 - Union and municipal concerns would be addressed in the advisory opinion.
 - The advisory opinion would be a COE interpretation of the law.
 - The COE should have something in writing besides the July 7, 2011, letter, before voting on the matter.

Mr. Farach stated that a strict interpretation of police was not intended. The COE could not interpret a statute or an ordinance in a way that would lead to an absurd result, he added.

Fire Chief DeLoach stated that many fire chiefs were looking for guidance regarding the COE's Code.

Judge Rodgers suggested tabling the item until staff could bring back a recommendation at the next COE meeting.

Mr. Johnson responded that:

- Staff would work with the CAO and County staff to determine whether the referendum allowed an expedited revision.
- He did not believe that the BCC had authority to amend the ordinance, absent the EODC's authority. The referendum provided for a specific protocol on any amendments.
 - The EODC would need to reconvene to address the particular amendment.
 - The EODC had 30 days to report the findings, which would then be placed on the agenda.

VIII. – CONTINUED

- The process may take up to four months.
- In the interim, staff could work on the recommendations while requesting the reconvening of the EODC to address the loophole issue.

Mr. Johnson clarified that a receive-and-file motion was necessary to file the July 7, 2011, letter, and the June 8, 2011, response.

MOTION to receive and file the July 7, 2011, letter and the June 8, 2011, response submitted by Alan Johnson. Motion by Ronald Harbison, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

Dr. Fiore stated that she opposed the formation of a new EODC to address the situation.

Mr. Johnson replied that he had meant to say that when the time came, the EODC could reconvene since requests would probably be made within the next year to bring back specific Code sections.

Mr. Harbison stated that he agreed with Dr. Fiore, and that he wanted to find a procedural solution and provide relief to the agencies.

City of West Palm Beach Ethics Officer Norman Ostrau clarified that he was representing himself in a private capacity, and that the COE could procedurally waive receipt of the waiver forms and allow them to be filed by each municipal agency.

Judge Rodgers said that perhaps through Mr. Radcliffe, the League could encourage the municipalities to file the waiver forms, but the COE could not dictate what the municipalities should do.

MOTION to direct staff to review the applicability of Section 2-443(e)(5)(g) to uniformed firefighter and paramedic extra-duty details and bring back a recommendation at the next COE meeting on how the COE should procedurally mitigate the oversight. Motion by Ronald Harbison, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

IX. RESPONSE LETTER FROM THE ATTORNEY GENERAL'S OFFICE RE: SECOND REQUEST FOR ADVISORY OPINION

Mr. Johnson stated that:

- The Attorney General's Office (AGO) had responded to staff's second advisory opinion request regarding conflict of interest abstention/disqualification in due-process matters involving bias, prejudice, or affinity involving financial conflict of interest.
- The COE did receive some substantive relief from the AGO on State Statute 112.3143 regarding conflict of interest.
 - A complainant, a respondent, or an advocate in a due-process hearing could file a motion to recuse or disqualify a COE member due to a bias.
 - All other responses received by the COE had indicated that if the matter did not involve a due process issue or a financial conflict, a COE member could not abstain based on State Statute 286.012.

Dr. Fiore stated that she was satisfied with the AGO's response.

Mr. Johnson said that he would review whether a bylaw change may be necessary. He added that:

- He could devise a statutory revision for the legislative delegation's review, or the COE could ask the legislature to create an exemption.
- If the legislature "carved out" an exemption, the COE needed to ascertain how to form a quorum due to the recusal/disqualification.
 - One solution would be to count the abstaining COE member as present for a quorum.
 - His concern was that three abstaining COE members would prevent a quorum.

Discussion ensued, and COE consensus was that directing staff to bring a statutory revision before the legislature was unnecessary.

IX. – CONTINUED

Judge Rodgers suggested that the COE could change the procedural process by advising individuals requesting advisory opinions that they could request a COE member's recusal. The COE would then inform all pertinent parties of the COE member's abstention, he added.

Dr. Fiore commented that COE members should not be required to recuse themselves due to a relationship with someone requesting an advisory opinion.

Mr. Johnson said that staff would bring back recommendations to the next meeting.

MOTION to approve that the COE revise its rules of procedure allowing a COE member to recuse or disqualify himself or herself. Motion by Dr. Robin Fiore, and seconded by Ronald Harbison.

Dr. Fiore clarified that the motion did not intend that the individual coming before the COE could disqualify the COE member.

Mr. Harbison questioned whether the COE would violate State statute by approving the procedure.

Mr. Johnson responded that staff's recommendations would be in accordance with State Statutes 120.665, 112.3143, and 286.012.

Dr. Fiore said that she wanted staff's recommendations to address only due-process matters and not matters involving economic conflicts of interest. Mr. Johnson responded that staff would bring back only complaint process recommendations.

UPON CALL FOR A VOTE, the motion carried 4-0. Bruce Reinhart absent.

X. GENERAL DISCUSSION – PUBLIC EMPLOYEE INSTITUTIONAL DISCOUNTS

Mr. Johnson stated that:

- Item X. did not require a motion.
- Currently, COE opinion allowed a nonvendor to give institutional discounts for public employees, provided there was no quid pro quo, or there was no past, present, or future performance of a job in exchange for a discount.

X. – CONTINUED

- The COE opinion may require revision due to questions arising from AT&T and other institutional vendors offering broad-based governmental discounts or rates.
- A well-reasoned 2006 State COE opinion written by Mr. Ostrau referred to about a broad-based discount that did not target procurement officers or a certain officer class but everyone who was similarly situated.
- Staff recommended that the COE view broad-based governmental discounts from institutional vendors as reportable nongifts.

Discussion ensued, and COE consensus was that broad-based, non-quid pro quo governmental discounts offered by institutional vendors should be allowable.

Mr. Ostrau, speaking for himself, said that the State's Code ordinance referenced publicly advertised offers for goods or services from a vendor under the same price and terms as offered to the general public. He noted that the general public should be interpreted as a major class such as employees.

Dr. Fiore said that she regarded broad-based governmental discounts from institutional vendors to be employee benefits as long as the discounts were negotiated with the County or the municipalities as employers for employees. A limited class of employees would cause her concern, she added.

Mr. Bressner commented that these types of discounts were provided to all public employees, and that it should be at the municipality's discretion whether to allow a discount.

Mr. Johnson stated that the COE had previously opined that a public discount provided by a nonvendor was not prohibited, but any discount over \$100 and not in the aggregate would be reportable.

RECESS

At 5:31 p.m., the chair declared a recess.

RECONVENE

At 5:41 p.m., the meeting reconvened with Dr. Robin Fiore, Ronald Harbison, and Judge Rodgers present.

XI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

Dr. Fiore requested that item XI.d., RQO 11-044, be pulled from the consent agenda.

MOTION to approve the Consent Agenda as amended pulling item XI.d. Motion by Ronald Harbison, and seconded by Dr. Robin Fiore.

(CLERK'S NOTE: Mr. Farach rejoined the meeting.)

UPON CALL FOR A VOTE, the motion carried 4-0. Bruce Reinhart absent.

XII. ITEMS PULLED FROM CONSENT AGENDA

XI.d. REQUEST FOR ADVISORY OPINION (RQO) 11-044

Mr. Johnson stated that:

- Glenn O'Cleary, a County Department of Airports employee, asked whether coworkers may agree to switch shifts. The coworker requesting a shift change would provide additional financial compensation directly to the coworker agreeing to work the different shift.
- Staff recommended that as long as an employee did not use his or her official position to influence a coworker in a manner inconsistent with the proper performance of his or her public duties, there was no prohibition within the Code preventing coworkers from switching shifts.
- The COE could not opine as to the internal County or departmental procedure regarding such a shift change arrangement.

Dr. Fiore expressed concern that the Code was referenced in the advisory opinion letter since the COE could only state that the coworkers had a personal arrangement that was approved by a supervisor. Rather than citing specific Code sections, she suggested the following advisory opinion letter language, There's nothing in the arrangement that you describe that violates the Code of Ethics.

MOTION to approve processed advisory opinion letter RQO 11-044 as amended to strike any Code citations, and to add language that, based on the facts, the advisory opinion did not violate any Code sections. Motion by Dr. Robin Fiore, and seconded by Ronald Harbison.

XI.d. – CONTINUED

Dr. Fiore stated that the question was whether the coworker could financially pay another coworker for covering his or her shift.

Mr. Johnson stated that the advisory opinion letter addressed the gift issue in that the financial compensation was for the less desirable shift; therefore, it was not considered a gift.

Dr. Fiore said that she wanted the advisory opinion clarified to state, if you have used your position to obtain this benefit, since the COE was unsure how the coworker enticed his or her coworker to agree to the shift change.

Commission on Ethics Staff Counsel Megan Rogers clarified that:

- The submitted facts stated that Mr. O’Cleary asked the coworker if he would be interested in switching shifts.
- Commission on Ethics Investigator Mark E. Bannon spoke with Mr. O’Cleary on July 22, 2011, and he noted that both parties had agreed to the additional compensation for the switched shift.
- The supervisor approved the switched shift.
- Both coworkers were negotiating what the financial compensation would be for the less desirable shift.

MOTION WITHDRAWN.

MOTION to approve processed advisory opinion letter RQO 11-044. Motion by Ronald Harbison, seconded by Dr. Robin Fiore, and carried 4-0.

XIII. PROPOSED ADVISORY OPINIONS – RE: CHARITABLE ORGANIZATIONS

Mr. Johnson stated that:

- On June 1, 2011, State Statute 2-444(h) of the revised Code was enacted, permitting the solicitation of charitable donations from vendors, lobbyists, and principals, providing a detailed log was submitted to the COE for transparency purposes, and as long as there was no quid pro quo or other special consideration, including any direct, financial benefit to the official, employee, or the person or entity being solicited.

XIII. – CONTINUED

- A misuse-of-office question arose in RQO 11-029.
- When staff reviewed 2-444(h), the solicitation exception applied only to the gift law and only to 2-444(a)(b), which was the prohibition against soliciting or accepting gifts over \$100 from vendors, lobbyists, principals, or employers of lobbyists.
- Staff recommended that it would be a misuse of office for public officials serving as charity officers or board members to become involved in solicitation for the charity.
 - The public official serving as a charity's officer or board member would be providing a special financial benefit to a charitable organization at the exclusion of all other charities.
 - The Code's misuse of office provision was not applicable to public officials who were charity members; only when corruption was involved.
 - Public officials could remain as charity officers or board members, but they could not use their official titles to solicit for the charity.
 - In all instances, if solicitation was permitted, a log was required to maintain solicitation of \$100 or more from vendors, lobbyists, principals, and employers of lobbyists.

XIII.a. RQO 11-029 (RESUBMITTED)

Mr. Johnson stated that:

- City of West Palm Beach (City) Commissioner Kimberly Mitchell submitted an advisory opinion requesting whether, as an elected official, she could serve on a local nonprofit organization's board and could continue to fundraise on behalf of the nonprofit organization.
- Staff had recommended that she may not use her elected office to give a special financial benefit to a nonprofit organization while serving as the charity's officer or director since it constituted a violation of section 2-443(a)(7), misuse of office.

XIII.a. – CONTINUED

- Commissioner Mitchell may either resign her position with the charity or not use her official City title in soliciting directly or indirectly for the charity. When soliciting for donations over \$100 from City vendors, lobbyists, principals, or employers of lobbyists, she must maintain a detailed log, including details regarding herself or the charity if her name was used for solicitation purposes.
 - The log should be submitted to the COE within 30 days of the charitable event or within 30 days of the solicitation.
 - Commissioner Mitchell may not solicit a donation in exchange for any special consideration on her part as a City commissioner.
- Staff recommended that advisory opinion letter RQO 11-029 be adopted.

MOTION to approve proposed advisory opinion RQO 11-029. Motion by Dr. Robin Fiore, and seconded by Ronald Harbison.

Mr. Ostrau, speaking on behalf of himself, said that the COE was misinterpreting a portion of the Code since a public official's use of his or her title would not equate to a misuse of position.

Mr. Johnson responded that someone could serve on a charity's board using his or her official title. He said it became an issue when solicitation or fundraising occurred.

Mr. Ostrau noted that Dr. Fiore's curriculum vitae (CV), which was posted on the University of Miami's web site, referenced that she was a commissioner.

Dr. Fiore replied that:

- Her CV indicated that her community service included commission service, but that reference did not help her acquire grants.
- She did not solicit or accept any gifts from anyone.

Mr. Farach pointed out that even without corrupt intent, if a public official solicited on behalf of a nonprofit organization using his or her official title, only one charity would benefit.

XIII.a. – CONTINUED

Judge Rodgers commented that the issue merited further discussion. He said that the COE may need to decide the use of a public official's title on a case-by-case basis.

UPON CALL FOR A VOTE, the motion carried 4-0. Bruce Reinhart absent.

XIII.b. RQO 11-039

Mr. Johnson stated that:

- A Village of Tequesta (Tequesta) attorney asked whether a municipality could hold a charity fundraising event on behalf of a nonprofit that benefitted public safety officers using off-duty firefighters and certain on-duty municipal staff to solicit and run the event.
- A municipal employee and a Tequesta council member served on the nonprofit board, with donations being solicited from Tequesta vendors.
- The event included raffles, door prizes, and silent auctions. All raised funds would be deposited into the nonprofit's account; however, 75 percent of the funds would be redistributed to other local nonprofit organizations approved by Tequesta's council.
- Staff had advised that:
 - Municipal employees or officials may not use their official position to provide special financial benefits to any nonprofit in which they were an officer or a director.
 - While an officer or a director, neither they, nor anyone on their behalf or on behalf of the nonprofit, may use their official title to solicit donations over \$100 from vendors, lobbyists, or their principals.
 - To comply with the Code's conflict-of-interest section, public officials should abstain from any official action that would specially and financially benefit the nonprofit in which they were an officer or a director.

XIII.b. – CONTINUED

- The Code did not prevent Tequesta from holding fundraising events to assist local nonprofit organizations, including organizations that provided assistance to Tequesta's employees.
 - Tequesta could assign staff members to assist in the event planning. If Tequesta's council determined that the nonprofit solicitation was for a public purpose, staff members may solicit on Tequesta's time.
 - Specific to section 2-444(h)(3), Tequesta employees may not solicit donations over \$100 from Tequesta's vendors, lobbyists, principals, and employers of lobbyists on Tequesta's time.
 - If soliciting from Tequesta's vendors, lobbyists, principals, or employers of lobbyists, a log of solicitations over \$100 must be maintained and provided to the COE within 30 days of the event.
- The two issues involved Tequesta's use of employees on public time, and public officials serving as officers or board members of a nonprofit.

Dr. Fiore said that since the COE was unaware which nonprofits received the remaining 75 percent in funds, the COE could not discern the relationship between Tequesta's officials and the nonprofit organizations.

Mr. Johnson said that:

- The situation only applied to Tequesta officials who voted on issues affecting charities where they were officers or board members.
- By its nature, anonymous donations would not have a corrupting influence since no one knew the donations' sources.
- Public officials could not solicit or accept donations over \$100 during the course of one year from vendors, lobbyists, principals, or employers of a lobbyist who sold, leased, or lobbied the public officials' municipality.
- A question arose when public employees received anonymous donations on street corners while on County and municipal time.

Dr. Fiore stated that the log maintained by public employees assigned by the municipality to solicit nonprofit donations should be monitored and supervised.

XIII.b. – CONTINUED

Mr. Johnson said that Code violations could occur if an anonymous donor contacted a public employee who did not log the donation information.

Judge Rodgers commented that he felt that the COE could be creating more problems than were being solved.

MOTION to approve proposed advisory opinion letter RQO 11-039. Motion by Dr. Robin Fiore.

MOTION DIED FOR LACK OF A SECOND.

Mr. Johnson stated that he would need direction in responding to the advisory opinion letter. The advisory opinion letter could be resubmitted as two separate letters, he said.

Mr. Farach suggested that the letter could be drafted stating that, The Code does not prohibit your doing so.

Mr. Johnson stated that he would bring back RQO 11-039 as one draft letter containing two separate sections at the next COE meeting.

MOTION to table proposed advisory opinion letter RQO 11-039. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

Mr. Johnson stated that since advisory opinion letter RQO 11-051 was almost identical to RQO 11-029, it could be taken up at this time.

XIII.c. Page 26

(CLERK'S NOTE: Item XIII.d. was presented at this time.)

XIII.d. RQO 11-051

Mr. Johnson stated that:

- A Town of Juno Beach (Juno Beach) councilman asked whether, as a director of a Florida nonprofit corporation, he was permitted to solicit donations and hold fundraising events for the nonprofit while serving on Juno Beach's council. The councilman also anticipated eventually receiving compensation from the nonprofit.

XIII.d. – CONTINUED

Staff recommended that:

- The revised Code permitted public officials or employees to solicit contributions directly or indirectly on behalf of a nonprofit charitable organization, including solicitations and acceptance of donations from Juno Beach vendors and lobbyists; however, the solicitations may only be made if a log was maintained for transparency purposes.
- As a nonprofit director, a public official or employee may not use his or her public position to specially and financially benefit the nonprofit that he or she served, including the use of his or her official title, directly or indirectly, in soliciting donations.
- Conflict-of-interest provisions applied to public officials with a voting potential who may specifically and financially benefit a nonprofit for which the public officials were officers or directors.
- Should public officials or employees be compensated by a nonprofit organization in the future, the nonprofit may be considered an outside employer or business; and a special, financial benefit could not be provided on that basis as well.
- Public officials could resign from the nonprofit's board and become a nonprofit member.
 - Maintenance of a log would still be required.
 - Public officials could then solicit using their official title.
- Public officials could maintain their nonprofit board position, but they could only solicit in their non-public official capacity.

Mr. Farach stated that he saw a significant difference between RQO 11-029 and RQO 11-051 in that the person requesting the opinion anticipated or believed that a future payment was possible for soliciting for the nonprofit organization. He expressed concern that the public official would be given authority to solicit, then state that he or she was resigning as a nonprofit officer or director to receive compensation from the nonprofit organization.

XIII.d. – CONTINUED

Mr. Johnson stated that:

- He was unaware that any municipality compensated a public official to serve in a full-time capacity as vice-mayor.
- Due to unanticipated issues, staff's recommendation would be to table item XIII.d. since the letter's language should be slightly stronger.
- Under section 2-443(c), a conflict of interest existed if public officials anticipated a financial benefit, and they should not be voting on the issue, whether they were or were not on the nonprofit's board.

MOTION to table proposed advisory opinion letter RQO 11-051. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

(CLERK'S NOTE: Mr. Johnson requested that item XIII.c., RQO 11-041, be presented at this time, and the COE's consensus allowed that request.)

XIII.c. RQO 11-041

Mr. Johnson stated that:

- Judge Rodgers was asked to receive an Anti-Defamation League (ADL) award for professional achievement.
- Judge Rodgers asked whether he was prohibited from accepting the award or attending the ADL Jurisprudence Award.

(CLERK'S NOTE: Judge Rodgers left the meeting.)

Staff advised that:

- The COE chair was not prohibited from accepting the award for professional achievement since it was not considered a gift under the Code's specific "carve out."
- The COE chair was not prohibited from accepting tickets from the nonprofit ADL and attending the accompanying awards reception if it was a public event and the tickets were not provided by someone who was otherwise a County vendor or lobbyist.

XIII.c. – CONTINUED

- Tickets valued over \$100 should be reported.
- The nonprofit sponsor was not prohibited from using the COE chair's name in referencing his years of service as a judge, a civil rights leader, an advocate of civil rights as a former prosecutor, the first African-American prosecutor, and the county's first African-American jurist in the written materials promoting the award, as long as a record was submitted indicating all solicitations made, and pledges, and donations received over \$100 from vendors, principals, lobbyists, and employers of lobbyists who lobbied the COE or who were vendors or lobbied the County's departmental staff.

Mr. Johnson said that the ADL did not consider its donor list to be proprietary, and other than for Internal Revenue purposes, the ADL did not disclose its donors.

Dr. Fiore suggested that the ADL could be provided a list of County vendors.

Mr. Johnson responded that staff could formulate a list of current County vendors, and it would be posted on the COE's web site.

MOTION to approve proposed advisory opinion letter RQO 11-041. Motion by Ronald Harbison, seconded by Dr. Robin Fiore, and carried 3-0. Judge Edward Rodgers and Bruce Reinhart absent.

(CLERK'S NOTE: Judge Rodgers rejoined the meeting.)

XIII.e. RQO 11-059

Mr. Johnson stated that the Village of Palm Springs (Palm Springs) police chief asked whether it would violate section 2-444(h), if Palm Springs' employees participated in the American Cancer Society's (ACS) Breast Awareness fundraiser on October 22, 2011.

Staff recommended that:

- Palm Springs' employees and officials were not prohibited from participating in the nonprofit event; however, solicitation of contributions over \$100 from Palm Springs' vendors, lobbyists, principals, or employers of lobbyists while on Palm Springs' time was prohibited.

XIII.e. – CONTINUED

- If Palm Springs' employees elected to solicit donations over \$100 from Palm Springs' vendors, lobbyists, principals, or employers of lobbyists during their personal time, a log must be maintained, detailing the charity's name, the person or entity soliciting the charity, and the amount pledged. The log must be submitted to the COE within 30 days of the event.

Mr. Johnson said that in all Code sections except gift reporting and nepotism, not submitting the log willfully, knowingly, and with possible corrupt intent could be a first-degree misdemeanor. He added that:

- The COE only had power to reprimand, to fine up to \$500, order restitution, and to provide letters of instruction.
- The COE did not have the power to request that the ACS return donations due to lack of a recorded log. If it was a misuse of office, the municipality would make that determination.
 - If the charity was owned and operated by a municipal employee, the COE could decide that it was unjust enrichment.
 - The incident would need to be fact specific and fairly egregious for the COE to order restitution or a return of donations.

Dr. Fiore commented that the fact that the donations were received by a charity was a problem in that it did not purify the situation.

Mr. Johnson clarified that if a public employee solicited charitable donations from a municipality's vendors during his or her personal time, the COE should become aware of the Code violation through an audit, through a COE inquiry, or from someone anonymously informing the COE of a submitted compliant, or through a sworn complaint from personal knowledge.

Dr. Fiore said that if a log was not filled out, at some point the EODC would need to acknowledge that fact and revise the Code provision.

MOTION to approve proposed advisory opinion letter RQO 11-059. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

XIII.e. – CONTINUED

XIV. PROPOSED ADVISORY OPINIONS

PUBLIC COMMENT: B. Reznik.

Judge Rodgers stated that he believed that Mr. Reznik was in the wrong place since his situation appeared to involve the court system or the BCC. He added that the COE could not offer any relief, and that Mr. Reznik should consult his lawyer.

MOTION to table item XIV. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

XV. EXECUTIVE DIRECTOR COMMENTS

Mr. Johnson stated that:

- The COE's staff had a significant workload, and he would attempt to fit COE issues into one meeting.
- There were numerous issues due to the Code's newness, and the municipalities brought a new dimension to those issues.
- Some municipality issues, such as fundraising for the Muscular Dystrophy Association, may need to be dealt with on an emergency basis.
- In some instances, a second COE meeting may be necessary during certain months.
- Today's COE meeting could be considered a workshop since a few items were discussed that had not previously been before the COE.

Judge Rodgers stated that the COE members should meet among themselves to discuss procedural changes that would be advantageous to the COE.

Mr. Johnson said that:

- The City of Boca Raton's Airport Authority (BRAU) would be coming under the COE's jurisdiction.
- The agreement with the BRAU had been reached, and the COE would present the agreement to the BCC for ratification.

XV. – CONTINUED

- The BRAU would be paying on a per-case basis for advisory opinions.
- Ethics functions and seminars were always available to the COE members and staff. Broward County was attempting to initiate a COE.

XVI. PUBLIC COMMENTS – None

XVII. ADJOURNMENT

At 7:15 p.m., the vice chair declared the meeting adjourned.

APPROVED:



Chair/Vice Chair