OFFICIAL MEETING MINUTES
OF THE
PALM BEACH COUNTY COMMISSION ON ETHICS
PALM BEACH COUNTY, FLORIDA

MAY 3, 2012

THURSDAY **COMMISSION CHAMBERS**
1:36 P.M. **GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Manuel Farach, Esq., Chair – Arrived later
Robin N. Fiore, Ph.D., Vice Chair
Daniel T. Galo, Esq.
Ronald E. Harbison, CPA
Judge Edward Rodgers – Arrived later

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Senior Investigator
Alan S. Johnson, Esq., COE Executive Director
Gina A. Levesque, COE Executive Assistant
James A. Poag, COE Investigator
Megan C. Rogers, Esq., COE Staff Counsel

ADMINISTRATIVE STAFF:

Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Commissioner Robin Fiore stated that it appeared that a quorum was not present, and consideration of the minutes approval would be deferred. She added that the meeting would adjourn for the executive session.

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

III. – CONTINUED

Commission on Ethics (COE) Executive Director Alan S. Johnson, Esq. said that the commission chambers would be cleared to begin the executive session.

IV. APPROVAL OF MINUTES FROM APRIL 5, 2012

MOTION to approve the April 5, 2012, minutes. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Judge Edward Rodgers absent.

RECESS

Mr. Johnson asked for the room to be cleared to begin the executive session. He added that the audio recording would continue; however the live broadcasting would be turned off.

At 1:39 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 2:23 p.m., the meeting reconvened with Manuel Farach, Robin Fiore, Ronald Harbison, and Judge Edward Rodgers present.

V. EXECUTIVE SESSION

VI.a. C12-002

Commissioner Robin Fiore read the public report and final order of dismissal as follows:

> The Complainant, Leonard Corrigan, filed the above-referenced complaint on February 28, 2012, alleging a possible ethics violation involving Respondents, City of West Palm Beach officials and employees, Jeri Muoio, Mayor; David Hanks, Director of Public Utilities; Anthony Carrabis, Human Resources; and Pat Cooney, Human Resources.

VI.a. – CONTINUED

> The basis of this Complaint was that Leonard Corrigan was improperly terminated from employment with the City of West Palm Beach on April 12, 2011. All alleged actions regarding Mr. Corrigan's termination from employment occurred prior to June 1, 2011, the date at which the City of West Palm Beach came under the jurisdiction of the Commission on Ethics. Therefore, the Commission on Ethics dismissed the Complaint on May 3, 2012, due to no legal sufficiency.
>
> Therefore, it is ordered and adjudged that the Complaint against Respondents is hereby dismissed. Done and ordered by the Palm Beach County Commission on Ethics in public session on May 3, 2012. Signed by Manuel Farach, Chair.

Mr. Johnson recommended that roll call should be taken again.

(CLERK'S NOTE: Roll call was taken at this time with Manuel Farach, Robin Fiore, Ronald Harbison, and Judge Edward Rodgers present.)

Mr. Johnson stated that a quorum was present.

VI. SETTLEMENT CONFERENCE

VI.a. C11-027 (Dr. Scott Swerdlin)

Mr. Johnson said that Pro Bono Advocate Joseph D. Small, Esq. would present an overview regarding the item.

Mr. Small said that the Respondent's Representative, Craig Galle, Esq., had informed him that Dr. Scott Swerdlin had a medical emergency and would not be present; however, he had Dr. Swerdlin's full authority to proceed with the settlement conference. He continued by stating that:

- Three counts existed against the Respondent.
- The negotiated settlement stated that the Respondent would admit to violating count 3, which was the disclosure of voting conflicts, and that he would be assessed a $500 fine and a public letter of reprimand.

VI.a. – CONTINUED

- With the COE's approval, counts 1 and 2 would be dismissed, and they would determine whether count 3's violation was intentional or unintentional.

- Dr. Swerdlin was the chairman of the Equestrian Preserve Committee (EPC), which was an advisory board of the Village of Wellington (Village). All EPC members were appointed by the Village council and were under the COE's jurisdiction as of June 1, 2011.

- On or about December 14, 2011, Dr. Swerdlin, in his EPC commissioner capacity, substantially debated and participated in a matter involving Equestrian Sports Productions (ESP), a customer or client who shared a financial interest with him. He abstained from voting, he did not file State form 8B.

- By participating in the matter, Dr. Swerdlin violated the voting conflicts provision by not abstaining and by failing to file an 8B mandatory conflict form.

- Dr. Swerdlin had admitted that he provided approximately $10,000 in services to ESP over the preceding 24 months.

Mr. Galle stated that Dr. Swerdlin had consented to the settlement terms; however, he was requesting that the COE accept the negotiated settlement and find that his conduct was unintentional since, in retrospect, knowing what he knew today, he would have acted differently on December 14, 2011.

Mr. Johnson clarified that the COE's Code of Ethics (Code) left the finding of intentional or unintentional to the COE's discretion. He said that the COE members could question the Respondent and the pro bono advocate to reach a determination. The COE could also examine the agreed-to written facts.

Commissioner Ronald Harbison said that Dr. Swerdlin was advised by the Village's attorney that he should not participate in the matter. He added that Dr. Swerdlin's attempt to circumvent protocol due to his conflict of interest led him to question whether the COE could reasonably conclude that there was no intent regarding a Code violation and corrupt actions.

VI.a. – CONTINUED

Mr. Johnson stated that the COE could take anything into consideration in making a determination whether the violation was intentional and unintentional.

Commissioner Farach commented that the issue before the COE was relative to an administrative hearing as opposed to a court hearing. He said that even if the matter went to a final hearing, hearsay would have been admissible, and a fundamental due process would have been given without a strict application of rules of evidence. Mr. Johnson added that relevance was the guiding determination of admissibility.

Commissioner Farach said that Mr. Small could read the stipulated facts from the proposed letter of reprimand into the record.

Mr. Galle said that to his knowledge, Dr. Swerdlin had not filed form 8B.

Mr. Johnson clarified that:

- Filing form 8B was a State requirement. The County's Code also required that the COE receive 8B form; however, the requirement was not made part of the negotiated settlement since a violation already existed.

- Additionally, public accounting for the failure and a letter of reprimand, which discussed the actual conflict, existed.

Commissioner Fiore said that since the facts were now different than they were on December 14, 2011, form 8B should be filed as part of the settlement.

Mr. Johnson said that:

- In determining intentional or unintentional, the COE members could consider that form 8B was not filed, or they could reject the negotiated settlement.

- Dr. Swerdlin was not present to agree to file form 8B. He did not believe that the COE could go beyond the agreement without rejecting it, unless Dr. Swerdlin was present to accept the added provision.

- The negotiated settlement was actually a public order imposing a penalty. It was not considered cleaning up a past wrong but holding someone responsible, whether intentional or unintentional.

VI.a. – CONTINUED

- The public order and the letter of reprimand should be in the record if the COE accepted the negotiated settlement.

Judge Rodgers stated that he opposed accepting the negotiated settlement since Dr. Swerdlin was the EPC's chair with a full leadership role and complete knowledge of the EPC's rules. He added that as the EPC's chair, he was held to a higher standard of care than the other members and that a $500 penalty was an insufficient punishment.

Mr. Johnson said that $500 was the maximum fine per count that could be imposed by the COE. Commissioner Fiore commented that she believed that the fine was symbolic of a form of reparation for violating the rules of society, and, in particular, the COE.

Mr. Galle said that the ultimate sanction incurred by Dr. Swerdlin was public embarrassment.

Judge Rodgers stated that he understood Dr. Swerdlin's statement that medically he could not attend the settlement conference, but he would have preferred a requested continuance.

Commissioner Harbison stated that he would support the COE going forward with a full hearing on any matter that was in the public interest.

Mr. Small pointed out that the Respondent was being assessed the full penalty, that he was further being assessed a public letter of reprimand, and that this was a proper resolution to the matter.

Commissioner Fiore asked whether some of the actions that Dr. Swerdlin failed to take, such as if form 8B had been filed, if he had resigned from the EPC, and if he were present at today's settlement conference, would be readdressed.

Mr. Galle said that Dr. Swerdlin had apologized for what had occurred and was requesting that the COE accept the negotiated settlement.

Commissioner Fiore commented that an apology was insufficient without the actions that supported a change in attitude or actions and willingness to accept the community's standard, which, in this case, was filing form 8B.

VI.a. – CONTINUED

Mr. Small stated that although he did not personally invite anyone from the EPC to attend today's settlement conference, he believed that Mr. Kurtz (phonetic) from the EPC was aware of the meeting.

Mr. Johnson said that he had invited Mr. Kurtz and Complainant Carol Coleman to the settlement conference, but he did not specifically invite anyone from the EPC. He added that Mr. Kurtz and Ms. Coleman said that they would watch the proceeding on television.

Commissioner Harbison stated that intent could be discussed as a separate matter, but he would accept the negotiated settlement if pro bono counsel believed that the settlement was just and was in the public interest.

Mr. Small replied that he believed the settlement was fair based on the penalty that could be assessed and that the Respondent would have a founded ethics complaint against him.

MOTION to accept the negotiated settlement. Motion by Ronald Harbison, and seconded by Robin Fiore.

Mr. Johnson clarified that the COE members could include in the motion a finding of intentional or unintentional, or the matter could be bifurcated.

Mr. Harbison stated that his motion was predicated that the matter of intent would be bifurcated, and that the question of intent would be handled separately.

AMENDED MOTION to include bifurcating the matter of intent. The seconder agreed, and by a roll call vote, the motion FAILED 2-2. Manuel Farach and Judge Edward Rodgers opposed. Daniel Galo absent.

Commissioner Farach said that a final hearing on the matter was set for the 12th and the 14th of June, 2012, and Mr. Johnson affirmed.

Commissioner Harbison commented that Dr. Swerdlin's appearance could make a difference to some COE members.

Commissioner Fiore said that the COE members had provided ample opportunity to Dr. Swerdlin, and a continuance had not been requested.

VI.a. – CONTINUED

Judge Rodgers said that he supported an additional hearing whereby the settlement matter could be raised again.

Mr. Johnson said that the settlement matter could be placed on the June 7, 2012, COE agenda; however, the final hearing would occur five days later.

Commissioner Farach commented that the final hearing dates could be moved. Mr. Galle requested that the final hearing be postponed for 30 days, and by consensus, the COE agreed.

Mr. Johnson said that before the COE members agreed to a continuation, the Respondent's attorney and the pro bono advocate should determine whether Dr. Swerdlin wanted to attend another settlement conference or would rather have a final hearing. He suggested that the final hearing dates remain pending notification from counsel within possibly 10 days.

Mr. Galle stipulated that he would bind his client to a 30-day final hearing continuation at the June 7, 2012, COE meeting, and Mr. Small said that he agreed with the stipulation.

Commissioner Farach stated that Mr. Galle and Mr. Small would be contacted by staff.

VII. ADVISORY BOARD MANDATORY TRAINING

Mr. Johnson stated that:

- Advisory board mandatory Code training came to the COE's attention when staff began conducting training reviews or audits.
- Code mandate, 2-446, required countywide training compliance.
- The COE and staff had met with the County and each municipality's administrator and had provided them with training materials.
- Staff had audited the County and found that some Palm Beach County Sheriff's Office (PBSO) officials had not complied with the required training by submitting an acknowledgement that they had been trained and had read the Code.

VII. – CONTINUED

- The COE's packets contained ongoing letters and legal analyses since September 2010 pertaining to the training.

- The PBSO's position was that the COE had no jurisdiction over its civilian or deputy personnel; that as a law enforcement organization, it was covered by State statute 112.533, which stated that the only device for internal investigations, other than criminal, was within an individual agency's internal affairs department.

(CLERK'S NOTE: Daniel Galo joined the meeting.)

- Staff did not take the position that the sheriff or his designee was under the Code's jurisdiction on committees where PBSO employees were appointed by law or mandated by an ordinance to serve on certain committees.

- The Code and the COE's jurisdiction only applied to someone who was appointed by a governing body under its jurisdiction.

- On May 15, 2012, the County would remove six members of boards and commissions for not taking the Code training.

  - The PBSO employees were not included in the removal since the COE had not yet determined whether those employees were under the COE's jurisdiction.

  - Staff had submitted that those employees would be under the COE's jurisdiction if they volunteered. If they did not comply with training, they were in noncompliance with the Code, and, therefore, should be removed.

- Staff disagreed with the PBSO legal department's position that a deputy remained a deputy twenty-four hours a day, seven days a week no matter where they were located and, therefore, the COE could not require advisory board mandatory training.

- When performing training audits, staff did not know where employees worked; only who had not complied with training. Staff knew of two volunteer County positions that were appointed and three County positions that were mandated by County Code.

VII. – CONTINUED

Judge Rodgers stated that he believed that constitutional officers, such as the sheriff, the public defender, and the State attorney, were mandated to serve on the Criminal Justice Commission (CJC).

Michael Rodriguez, CJC Executive Director, clarified that by County ordinance, constitutional officers and not their designees, were mandated to serve on the CJC.

Mr. Johnson commented that constitutional officers were also mandated to serve on the Investment Policy Committee and the Public Safety Coordinating Council (PSCC). He said that he would review the County's ordinances to determine whether designees were permitted. He added that under staff's recommendation, designees for the public defender and the State attorney should not be treated as volunteers.

Mr. Rodriguez clarified that the PSCC, a CJC subcommittee, was created by State statute, which mandated the attendees or their designees.

Mr. Johnson stated that either the sheriff or his employees voluntarily served on the Citizens Committee on Health and Human Services and the Homeless Advisory Board.

Commissioner Fiore said that she disagreed with the sheriff's rationale in his response letter that since he had to approve voluntary appointments, his employees who served on those committees were performing PBSO activities.

Mr. Johnson commented that:

- The code establishing the Homeless Advisory Board (HAB) contained a list of who would populate the board, one being a PBSO representative who was appointed by the Board of County Commissioners (BCC).

- The issue was more complex, but if the representative served on the HAB as an appointee, he or she would still be under the COE's jurisdiction.

- By County ordinance, the boards or committees at issue were established by the BCC.

VII. – CONTINUED

- He would verify with the County Attorney's Office whether the sheriff had discretion to determine if a PBSO representative should serve on the HAB if BCC appointed.

Commissioner Fiore opined that although the sheriff may authorize a PBSO representative to serve, he would not have the authority to decide whether the representative received the training.

Mr. Johnson said that the issue regarded enforcement, and there was no reprimand or fine since it was not actionable as a complaint. He said that he was requesting guidance rather than a vote whether the COE agreed or disagreed with staff's recommendations.

Regarding the internal affairs process under State statute 112.533, Commissioner Harbison expressed his doubt that the PBSO, or any other constitutional office, would pursue an internal investigation of one of its own who acted inappropriately while voluntarily serving as a citizen on a board when that inappropriateness had nothing to do with law enforcement or the constitutional office.

Mr. Johnson said that the State's COE members had informed him that they performed numerous investigations of ethics complaints against law enforcement officers.

Commissioner Farach stated that it was difficult to understand the PBSO's position that the statute exempted sworn law enforcement officers from compliance with local codes.

Mr. Johnson said that he believed the PBSO's position was that the statute applied to law enforcement officers who violated the law while acting in their official capacity.

Commissioner Galo commented that how the COE responded to Code noncompliance should be made on a case-by-case basis.

VII. – CONTINUED

Mr. Johnson read 1A of State statute 112.533:

> Every law enforcement agency and correctional agency shall establish and put into operation a system for the receipt, investigation, and determination of complaints received by such agency from any person, which shall be the procedure for investigating a complaint against law enforcement and correctional officers, and for determining whether to proceed with disciplinary action or to file disciplinary charges, notwithstanding any other law or ordinance to the contrary.

Commissioner Fiore said that the question was whether someone should continue to serve on a board, and the COE's only obligation was to report to the BCC those individuals who had not taken the required Code training.

Mr. Johnson said that Commissioner Fiore's statement was staff's recommendation.

MOTION to approve staff's recommendation to inform the Board of County Commissioners of those independent constitutional officers and their employees who were in noncompliance with the Code of Ethics' (Code) ordinance requiring advisory board mandatory Code training and submittal of a training acknowledge form. Motion by Judge Edward Rodgers, and seconded by Ronald Harbison.

Mr. Johnson reiterated that the issue did not require a vote.

UPON CALL FOR A VOTE, the motion carried 4-1. Daniel Galo opposed.

Mr. Johnson clarified that when contacting the BCC, he would not be reporting individuals for noncompliance who were appointed by law or mandated by the Code to serve on County boards or committees.

VIII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VIII.a. Request for Advisory Opinion (RQO) 12-028

VIII.b. RQO 12-031

MOTION to approve the Consent Agenda. Motion by Judge Edward Rodgers, seconded by Daniel Galo, and carried 5-0.

IX. ITEMS PULLED FROM CONSENT AGENDA – None

X. PROPOSED ADVISORY OPINIONS

X.a. RQO 12-025

Megan Rogers, Esq., COE Staff Counsel, stated that:

- An employee, whose firm lobbied on behalf of private individuals and businesses, had asked two questions regarding the countywide lobbyist registration ordinance, which went into effect on April 2, 2012.
    - The first question was whether a landscape architecture firm's (firm) staff members, who met with County staff to ask project-related technical questions, were considered lobbyists, and would be required to register pursuant to the lobbyist registration ordinance.
    - The second question was when a registered lobbyist attended a meeting and was engaged in lobbying and accompanied by firm staff members, including engineers, to assist the lobbyist or answer technical questions, whether the accompanying staff members, would also be required to register as lobbyists in addition to the registered lobbyist.
- After reviewing the definition of lobbying and lobbyist enclosed within the lobbyist registration ordinance, staff had determined that both words had the same definition.
- Staff had submitted that purely ministerial or administrative functions, as may be provided by an assistant to a lobbyist, would not rise to the level of lobbying. However, an engineer, who was employed by a firm and contracted by a principal to lobby the government, directly negotiated or inputted information into the staff meeting with the registered lobbyist and actively participated in a discretionary manner, included matters regarding those technical requirements, would likely fall within the definitions of lobbyist and lobbying.

Mr. Johnson said that the proposed opinion letter did not address self-representation where someone in management appeared at a meeting on behalf of his or her company.

X.a. – CONTINUED

Commissioner Farach expressed concern that when reading the letter, everyone was now a lobbyist, even when someone talked to a lower-level employee who had no ability whatsoever to influence a decision. He added that the Code should not be interpreted where almost everything became a violation.

Mr. Johnson responded that the definition of lobbying was broad since it included employees.

Ms. Rogers said that people who worked under a lobbyist were not considered lobbyists unless they too were attempting to influence or persuade.

Commissioner Fiore said that the issue was ensuring that people in decision-making capacities knew who was speaking to them, whether it was a lobbyist or someone being paid by a lobbyist to represent a certain point of view.

League of Cities Executive Director Richard Radcliffe stated that although he agreed with staff's letter, it had opened up much discussion and concern regarding the erosion of the definition for lobbyist and lobbying.

Ms. Rogers clarified that the $25 lobbyist registration fee was per lobbyist, per principal; meaning, if the lobbyist represented a different principal, he or she had to file another $25 fee. She added that if a lawyer represented a principal in a public forum, he or she was not required to register as a lobbyist, but if it was a one-on-one meeting with a commissioner or an advisory board member, he or she was required to pay the $25 fee.

Mr. Farach commented that if someone was attempting to influence a building official into issuing a building permit, the application would be considered lobbying. He said that the letter started to go down the path of making everything a lobbying scenario.

Mr. Johnson said that:

- It would not become a lobbying situation if a realtor, in applying for a building permit, had worked out its details, making it unnecessary to go before the planning, zoning and building department.

- Under the Code's lobbying definition, any lawyer who met with a County official on a case not involving economics was not considered lobbying as long as the County's lawyer was also present to discuss the case.

X.a. – CONTINUED

Ms. Rogers stated that she believed that the letter followed the reasoning held by the COE in another circumstance with a similar situation where a professional had sought or exchanged information with staff on the limited basis of technical specifications. She said that it became lobbying when a registered lobbyist met with staff to exchange technical information, and that information was taken outside the paper exchange and was used in a persuasive manner.

MOTION to approve proposed opinion letter RQO 12-025. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-1. Manuel Farach opposed.

RECESS

At 4:41 p.m., the chair declared a recess.

RECONVENE

At 4:56 p.m., the meeting reconvened with Manuel Farach, Robin Fiore, Daniel Galo, Ronald Harbison, and Judge Edward Rodgers present.

X.b. RQO 12-026

Mr. Johnson stated that:

- A municipal elected official asked whether she could initiate a proclamation declaring May 20-26, 2012, as Small Business Week in her municipality concurrent with the United States Business Administration's National Small Business Week.

- In addition to her position as City of Lake Worth (City) commissioner, she held a position as a certified business analyst for the Small Business Development Center (SBDC) at Palm Beach State College (PBSC) and worked with small business clients of the SBDC.

- The elected official's position was the subject of a prior COE advisory opinion. According to State statute, PBSC was considered a government entity and not her outside employer.

X.b. – CONTINUED

- For purposes of this question, the Code did not prohibit an official from initiating a general proclamation declaring May 20-26, 2012, as Small Business Week, notwithstanding the employment position with PBSC, and provided that her actions did not specially financially benefit her in a manner not shared with similarly situated members of the general public, or result in any kind of a quid pro quo benefit in exchange for her public action.

- Staff found that there was no ethics violation or consideration regarding her proclamation.

MOTION to approve proposed opinion letter RQO 12-026. Motion by Ronald Harbison, seconded by Judge Edward Rodgers, and carried 5-0.

X.c. RQO 12-027

Mr. Johnson stated that:

- The same City commissioner as in RQO 12-026 asked, as the commissioner of a city, whether she could meet with a City vendor to assist the vendor's development as a small business in the context of her position as the certified business analyst for PBSC. She also inquired whether such a meeting would result in a conflict of interest should the company appear before the City commission in the future.

- As part of her job with the SBDC, City-operated businesses occasionally sought advice through the PBSC, and businesses that she counseled could occasionally appear before her as a City commissioner.

- The City employed a sealed, competitive bid process. After completion of the bid process, staff would present the top five bids and the low bid to the City commission.

- Staff had submitted that under the specific Code sections, her outside employer, PBSC, was considered a government entity and was exempt; therefore, no conflict existed. Corrupt misuse, however, always applied.

- Staff had inserted an appearance of impropriety paragraph into the proposed opinion letter, which had been done previously in several other advisory opinion letters.

X.c. – CONTINUED

- County Code, section 2-441, said that, "Officials shall act and conduct themselves so as not to give occasion to distrust their impartiality." The COE's Code, section 2-260.9, said that, "An advisory opinion is - the purpose is to establish a standard of public duty, if any." And the COE's Rules of Procedure, section 2.8(f), said that, "If deemed appropriate by the Commission on Ethics, additional comment regarding ethics, appearance of impropriety, or similar advice to a requesting party, based upon the factual scenario as presented, may be given."

- Staff had submitted that:

  - Section 2.8(f) should be included in the letter since an appearance of impropriety may result if she participated in a vote where she had actually counseled one of the businesses.

  - She should take great care if she significantly counseled a small business to avoid an appearance of impropriety by voting on that issue.

MOTION to approve proposed opinion letter RQO 12-027. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 5-0.

X.d. RQO 12-030

Ms. Rogers stated that:

- A Drowning Prevention Coalition of Palm Beach County (Coalition) manager asked whether the County department could accept booth space at SunFest donated by a local swim school for handing out drowning prevention literature to the public.

- Staff had submitted that:

  - While an official may not use his or her official position to obtain a special financial benefit for him or herself, a spouse or domestic partner of his or her outside business or employer, as well as additional persons or entities with whom the official may have some financial or fiduciary relationship, no such relationship existed in the above scenario.

X.d. – CONTINUED

- No Coalition staff member worked for the Big Fish, Little Fish Swim School or had a relationship of the nature that was prohibited by the misuse of office section of the Code.

- Since the donated booth space was donated to the County itself and not an individual member, it was not considered a gift since it was for use solely by the County in conducting its official business of distributing drowning prevention literature to the public.

Commissioner Farach said that he had requested that this item be excluded from the consent agenda since it appeared that one particular company would benefit; however, there appeared to be no violation by strictly applying the Code. He expressed concern that without a competitive bidding process, one particular for-profit company was, in effect, being given credibility by being affiliated with the County.

Commissioner Fiore said that she questioned why the City of West Palm Beach could not find space for a County entity to hand out its public service literature and that it appeared that the County was indirectly endorsing the swim school.

Ms. Rogers clarified that the Coalition did not endorse specific programs. She added that a financial benefit would exist for the County to encourage public/private partnerships.

MOTION to approve proposed opinion letter RQO 12-030. Motion by Ronald Harbison, seconded by Judge Edward Rodgers, and carried 4-1. Robin Fiore opposed.

X.e. RQO 12-032

Mr. Johnson stated that:

- A City of Boynton Beach (Boynton Beach) commissioner asked whether the Code prohibited him as an elected official from receiving a monthly expense allowance established by the Boynton Beach commission's resolution, and contained in the Boynton Beach personnel policy manual, to cover travel and expense expenditures made in the performance of his official duties.

X.e. – CONTINUED

- The commissioner also asked whether a record of the expenditures should be submitted for transparency purposes, and whether he could use a portion of the expense stipend to make charitable contributions to support nonprofit organizations within the community, including a school where his wife worked.

- The Boynton Beach resolution and its personnel policy manual did not define what was considered an official use or a public purpose.

- The approximate $5,000 yearly expense allowance was retained if not spent. State statute 112.3135(5) permitted voting on a salary, expense, or other compensation.

- Providing an advance monthly expense allowance rather than having a reimbursement policy in place was perilous, and a Code violation could exist since Boynton Beach commissioners were not required to return any unused funds. Boynton Beach's resolution also left matters open for scrutiny as to how the funds were being spent, and it should be better defined.

- Donating a portion of the expense stipend to a charity could possibly be permitted but not to his wife's employer, which would be a Code violation.

Commissioner Fiore commented that:

- Instead of characterizing and interpreting Boynton Beach's ordinance and policy manual, the only issue to be addressed was whether the activity violated the Code.

- The COE could answer the commissioner's second question, but the monthly expense allowance was, in essence, considered a slush fund.

- The request was being made by a Boynton Beach commissioner and not by Boynton Beach.

Mr. Johnson said that:

- The commissioner was asking whether Boynton Beach's policy violated the Code.

X.e. – CONTINUED

- The monthly expense allowance was not similar to a slush fund as referenced in the Grand Jury report; rather, it was at the discretion of the Boynton Beach commissioners whether they wanted expenditures paid upfront or to be reimbursed afterwards.

- Discretionary funds addressed in the Grand Jury report regarded taxation items that were sent into a general account.

- The proposed opinion letter could be tabled for further review and possible language revision by staff.

Commissioner Harbison suggested that the commissioner should discuss the issue with his tax accountant.

Mr. Johnson said that:

- The commissioner had informed him that the $5,000 was Internal Revenue Service taxable since it was upfront and unregulated.

- If the COE had received a complaint on an expenditure that was determined not to be for an official use, the individual could be subject to the complaint.

- A County employee who had an automobile allowance and rode a bike to work was different from the scenario in RQO 12-032 since it depended on whether the allowance was a negotiated-for contractual benefit or was part of a pay package considered as gross income.

- After the proposed opinion letter was issued, he had received communication from the commissioner that Boynton Beach would be making the monthly expense allowance process more transparent.

MOTION to table proposed opinion letter RQO 12-032. Motion by Judge Edward Rodgers, seconded by Daniel Galo, and carried 5-0.

XI. EXPEDITED ADVISORY OPINIONS

XI.a. RQO 12-039

- The proposed opinion letter was submitted on May 1, 2012, and was expedited since the issue was coming to fruition on May 15, 2012. Pursuant to the COE's Rules of Procedure, a person may request an expedited opinion.

- A question was asked whether, as an elected official, a lawyer may represent a customer or client of his outside law firm in front of an advisory board for the City of Delray Beach (Delray Beach) commission so long as he subsequently abstained from voting and did not participate in any part of the decision-making process when the matter eventually reached the commission.

- A prior advisory opinion letter had dealt with an advisory board member that appeared before another advisory board, but staff had never encountered a situation where someone picked advisory boards, then appeared before one of those advisory boards.

- Staff had submitted that:

    - As an elected official and vice mayor for Delray Beach, he was prohibited from using his official position to give himself, his outside business, or a customer or client of his outside business a special financial benefit not shared with similarly situated members of the general public.

    - He could not vote on a client's proposal or on any related issues pending before the Delray Beach commission.

    - He could not participate in conversations or attempt to influence his fellow commissioners, Delray Beach staff, or advisory board members in his official capacity since it would constitute a misuse of office. The prohibition extended to both he, as a Delray Beach commissioner, or anybody using his official title or name as commissioner.

XI.a. – CONTINUED

- An appearance before a Delray Beach advisory board was not prohibited, provided that the elected official did so in his personal or business capacity and did not use his official position in any manner, including interaction with the advisory board's staff, to obtain a special financial benefit for himself or his client,

- While the Code did not speak to this particular situation, the State's Code, statute 112.313(7), dealing with conflicting employment or contractual relationships, stated that a public officer may not hold any employment or contractual relationship with any business entity subject to the regulation of his or her agency. It was also advised that the elected official should obtain an opinion from the State's Code.

- The elected official only appointed one advisory board member, but he voted regarding all seven appointees.

Commissioner Harbison said that he questioned whether an elected official who had nominated and voted for an advisory board member and was now appearing as a private lawyer representing that advisory board member was not somehow swayed or tainted in his opinion.

Judge Rodgers suggested that the language, "May result in an appearance of impropriety," as contained in RQO 12-027 be added to this opinion letter.

Ms. Rogers clarified that the elected official, although the member of a law firm, was the sole representative for the case involving the advisory board member. She added that the elected official had stated that no one in his law firm was sufficiently informed at this point to handle the matter.

Commissioner Galo stated that he did not perceive the issue as being an adversarial process, rather, he viewed it as a presentation being made to an advisory board regarding a project that required certain variances and changes. Since the elected official was an experienced land use attorney, he could discuss the issues in the context of what the board needed, he said.

Commissioner Fiore said that the elected official could avoid the problem by having someone else in his law firm represent the firm's client.

XI.a. – CONTINUED

Commission Galo commented that the COE should avoid discouraging good, quality individuals from foregoing participation in the public sector due to an inability to maintain a livelihood or to perform a job that they were well trained to do.

Judge Rodgers said that in most cases that required specialized lawyers, many courts had held that the entire firm should be hired and not just one lawyer.

Commissioner Harbison stated that this matter was worthy of including Judge Rodger's suggested language.

Mr. Johnson said that staff could insert the verbatim admonishment language that was contained in RQO 12-027, and which Judge Rodgers previously referred to.

Ms. Rogers clarified that that language in RQO 12-027 was also contained in RQO 12-039 on page 109, two paragraphs above the "In summary" content. She added that while the elected official may have specialized in other matters, at this point in time, he was primarily operating in land-use law.

MOTION to approve proposed opinion letter RQO 12-039. Motion by Robin Fiore, seconded by Daniel Galo, and carried 4-1. Judge Edward Rodgers opposed.

Mr. Johnson recommended that item XII. be placed on the next COE agenda. He said that he would have a brief comment regarding the Inspector General (IG) and the COE.

RECESS

At 6:00 p.m., the chair declared a recess.

RECONVENE

At 6:05 p.m., the meeting reconvened with Manuel Farach, Robin Fiore, Daniel Galo, Ronald Harbison, and Judge Edward Rodgers present.

XII. SOCIAL MEDIA

In providing a presentation, Ms. Rogers said that:

- Facebook had created a separate mechanism for governmental entities so "friending" that existed in regular profiles was nonexistent in governmental profiles.

- The public only had an ability to "like" the governmental Facebook page, thus limiting inappropriate interaction.

- The City of San Francisco (San Francisco) had incorporated applications (apps) into its Facebook page to create a more interactive experience, such as Livestream, which allowed Facebook fans to watch commission meetings.

- San Francisco also provided a city services app, which provided an emergency notification system.

- Facebook governmental-entity pages could restrict the public's ability to post to a page or to a timeline; however, commenting could not be restricted without using a profanity blocker.

    - Specific words would require a staff's manual deletion if a profanity blocker was not used, and there was a report abuse button.

    - Governmental entities should remember the Constitutional considerations when creating a public forum.

    - Staff would draft a Facebook policy regarding what types of comments would be permitted and the government's right to delete specific comments. The policy would require content and COE oversight.

- Creating, maintaining, and building a voice would increase the followers and traffic to the COE's Facebook page and, in turn, would increase a part-time staffer's hours.

- Setting up a governmental Facebook page was free; however, minimal costs existed in creating and maintaining apps.

- Twitter allowed immediate, 140-character messages on mobile devices without an app.

- Hashtags were a form of metabata and could be a form of tracking any trending conversations.

- Retweets were a quick way for people to share information that the COE provided to them.

- The County and its library system each had a Twitter page.

- YouTube was the most practicable and the quickest startup mechanism for the COE to become involved in social media.

- Creating a YouTube account also created a channel similar to a television channel which contained playlists.

Commissioner Fiore commented that teachers used YouTube in their classes, so initiating a COE YouTube channel would be beneficial for school access.

Commissioner Harbison said that providing a YouTube account would be in line with the COE's mission to educate.

Ms. Rogers stated that the COE's file format for its training videos could be easily translated to YouTube. She added that:

- Staff had researched the use of Smartphone apps.

    - Apple and Android development systems required development accounts. Apple was $99 annually, and Android was a $25 one-time fee.

    - Both systems required the use of their own developer tools to create the apps. Apple's system required the use of an Apple computer, which staff did not have.

    - Outsourcing the app creation to an app builder would eliminate the additional costs. App builder costs varied, and many commercial app builders used for-profit ads associated with apps, which could be problematic.

XII. – CONTINUED

- Three apps that were usually available were text apps, searchable databases, and filing or e-signing transactional apps such as Paypal.

Commissioner Fiore commented that college courses on building apps were available.

Ms. Rogers replied that staff would review Commissioner Fiore's suggestion; however, overall system maintenance was staff's main concern.

Commissioner Farach commented that the social media mechanisms described in the presentation were the way to reach the public, and that he supported moving forward with implementation.

Ms. Rogers responded that:

- Twitter and YouTube may be the most efficient use of resources since neither one required comment monitoring.
- Both social medias possessed effectiveness of transmitting messages.
- Twitter would allow staff to post links to advisory opinions as they were approved by the COE without creating a need for additional comment.

Mr. Johnson commented that staff would work with the County's public affairs department since they had initiated some social media projects. He added that at the COE's request, staff would continue to develop social media and would report any progress in one or two-month intervals.

Commissioner Farach said that staff should first review any policies regarding social media, and that the COE's directional consensus was to continue researching social media implementation.

XIII. EXECUTIVE DIRECTOR COMMENTS

XIII.a.

DISCUSSED: COE appreciation.

Mr. Johnson thanked the COE for a great meeting.

XIV. COMMISSION COMMENTS

XIV.a. **DISCUSSED:** The COE and the IG's Jurisdiction.

Mr. Johnson stated that Judge Rodgers had concerns regarding an article about the City of West Palm Beach (WPB) and the jurisdiction of the COE and the IG. He said that certain WPB officials or employees were saying that they thought the IG's jurisdiction began June 1, 2011.

Commissioner Harbison clarified that the WPB mayor had made the statement.

Mr. Johnson added that:

- The COE enforced a code which impacted individuals. The COE had power to issue reprimands, to fine individuals, and to find individuals guilty of ethics violations, and those matters were laws that affected individuals and were considered substantive.

- The COE could not find someone guilty of a law violation that predated the Code going into effect, which was June 1, 2011, for municipalities and March 1, 2010, for the County.

- The IG's work was procedural and not substantive. The crux of her work dealt with contracts, processes, procedures, fraud, misuse, and nonfeasance, and she could review a matter going back as far as was needed.

- The IG could not fine someone, issue letters of reprimand, or find someone guilty of a violation. All she could do was issue reports, findings, policy statements, and recommendations.

XIV.b.

DISCUSSED: Election Appreciation.

Commissioner Farach thanked the COE for electing him as chair, and that he hoped to do as good a job as Judge Rodgers. He added that the COE's greatest assets were its credibility and its ability to inform.

XV. PUBLIC COMMENTS

XV.a.

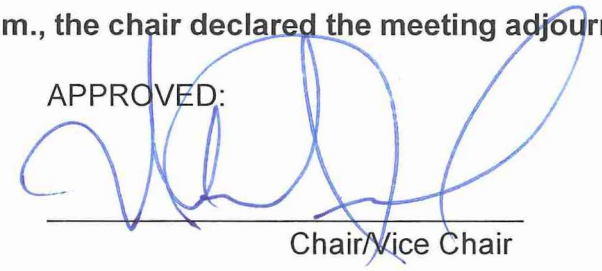
DISCUSSED: Palm Beach County Ethics Bowl.

Mr. Radcliffe stated that he had the pleasure of judging at the first Ethics Bowl for the County's school system on April 28, 2012. He congratulated Ms. Rogers for being present, and he said that he was impressed with the students' ethics knowledge.

XVI. ADJOURNMENT

At 6:34 p.m., the chair declared the meeting adjourned.

APPROVED:



Chair/Vice Chair