

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

JUNE 5, 2014

**THURSDAY
1:30 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

- I. CALL TO ORDER**
- II. ROLL CALL**

MEMBERS:

Salesia V. Smith-Gordon, Chair
Michael S. Kridel, Vice Chair
Clevis Headley
Michael F. Loffredo
Carmine A. Priore – Arrived Later

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Senior Investigator
Anthony C. Bennett, COE Investigator
Steven P. Cullen, COE Executive Director
Christie E. Kelley, COE Staff Counsel
Gina A. Levesque, COE Intake Manager

ADMINISTRATIVE STAFF:

Dominique Marseille, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Chair Salesia Smith-Gordon requested that cell phones were silenced or placed on vibrate.

IV. APPROVAL OF MINUTES FROM MAY 1, 2014

MOTION to approve the May 1, 2014, minutes. Motion by Michael Kridel, seconded by Michael Loffredo, and carried 4-0. Carmine Priore absent.

(CLERK'S NOTE: Commissioner Carmine Priore joined the meeting.)

V. LEGISLATIVE UPDATE BY TODD BONLARRON

Todd Bonlarron, Legislative Affairs Director, said that:

- Senate Bill 846, which was passed, made it clear that elected officials around the State would be required to have at least four hours of ethics training. The bill also dealt with disclosures and voting conflicts.
- Water management districts in the State would be required to have a lobbyist registration system.
- The Office of Program Policy Analysis and Government Accountability (OPPAGA) report that was released was brought forward by the Joint Auditing Commission.
 - The OPPAGA report contained multiple suggestions about the County's Commission on Ethics (COE) particularly in regards to procedure and process.
 - The report was reviewed and input was provided to Senator Joseph Abruzzo and his staff to discuss concerns.
 - The main concern regarding the COE was related to due process, and how individuals were treated during the findings process as opposed to appearing before the board.
 - Legislation was following the OPPAGA report; however, it was later withdrawn from the current session.
- The County was asked to take the lead in developing a County ethics summit for August 2014. The summit would include the COE, three ethics commissions from around the State, and the State Commission on Ethics.

V. – CONTINUED

- The summit would be held to discuss and share ideas concerning ethics, best practices, and legislation.

Chair Smith-Gordon said that she understood that the COE did provide due process, as in a court of law.

Mr. Bonlarron continued:

- An issue that came up with legislators concerning the COE was that the same people on the commission determined a prehearing, reviewed evidence, decided whether or not they would charge someone, and concluded if the person was guilty or not based on findings.
- The COE's lack of separation when it came to reviewing initial information about an issue, and determining whether a person was guilty of the findings was a problem for legislators.
- He believed that legislators wanted an individual to have as many opportunities for due process as was available in the court system.

Commissioner Michael Kridel suggested that if a question of due process concerning the COE came about, similar questions should be directed to the Department of Business and Professional Regulation's (DBPR) process. He said that complaints handled by the DPBR were reviewed for legal sufficiency, probable cause, and received a final decision by the same group of people. He added that the COE's process was consistent with other forms of regulation in the State.

Mr. Bonlarron said that as his staff developed the 2015 legislative program, they would work with the COE and its executive director to determine what should be incorporated into the program.

Commissioner Priore said that mirroring the State COE's was more appropriate to legislators than following the County's COE procedures.

V. – CONTINUED

Mr. Bonlarron said that he believed Senator Abruzzo and Representative Lake Ray wanted to find the best way to conduct the process, and whether improvements could be made in other local COEs.

Steven Cullen, COE Executive Director, said that staff was in the process of conducting a comparison of the various commissions around the State. He added that a spreadsheet detailing information about other commissions would be provided.

Chair Smith-Gordon said that she was concerned about the continuous statement of due process because it implied that the COE was not abiding by such a process.

Mr. Bonlarron said that:

- He just wanted to communicate the feedback received from the legislation session.
- The legislation that was withdrawn could be reviewed to see if any other ideas concerning process emerged or if the COE's process was acceptable.
- Any changes made by the State that became law, would require modifying the local ordinance.
- Fiscal issues may be involved with any changes, since separate hearing officers might be part of a new process.
 - Changes could cost thousands of dollars depending on the number of cases.

Commissioner Priore asked whether there would be a determination to qualify groups or individuals that could teach the four-hour course referred to in Senate Bill 846.

V. – CONTINUED

Mr. Bonlarron continued:

- Senate Bill 846 may give private providers the opportunity to conduct ethics training.
- The COE could have a strong role in being a provider of training for local municipal officials; however details concerning the bill were still in development.
- The Florida Association of Counties and The Palm Beach County League of Cities (LOC) engaged in a program that provided training for local elected officials.
- Senator Abruzzo and Representative Ray wanted County staff to spend the summer reviewing ethics ordinances around the State and develop potential solutions.

Chair Smith-Gordon said that she hoped Mr. Bonlarron would communicate to Senator Abruzzo and Representative Ray that the COE had a great deal of knowledge and expertise in the area of ethics training.

Commissioner Priore said that the LOC's main conference would be held August 2014, and he hoped that would be considered when arranging the ethics forum date.

Mr. Bonlarron said that:

- Senator Abruzzo's office was in the process of sending out requests to each of the State's COEs with date availabilities.
- The Senator's office would compile the available dates of all three COEs.
- The ethics forum would be an open public meeting and properly noticed so that Sunshine Law issues would not exist.
- He believed that anyone who wanted to participate in the forum, whether they were an executive director or commissioner, could do so.

V. – CONTINUED

Kimberly Diaz, Chief of Staff for Senator Abruzzo, said that his office was grateful to see all the changes completed after the release of the OPPAGA report. She added that the senator and his office were looking forward to working with the COE through the summer to help create the first legislative ethics summit in August 2014.

PUBLIC COMMENT: Alexandria Larson.

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA) – None

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. PROPOSED ADVISORY OPINIONS

VIII.a. RQO 14-010

Christie Kelley, COE staff counsel, said that:

- The vice mayor of the City of Pahokee (City) asked if funds she solicited for a nonprofit organization's yearly luncheon needed to be reported pursuant to the County Code of Ethics.
- Staff submitted the following for COE review:
 - As an elected official she was identified by State law as a State reporting individual for purposes of gift reporting, and was required to comply with the law.
 - According to the County Code of Ethics, she was allowed to solicit funds on behalf of nonprofit organizations from anyone as long as they did not have a pending application or award of any nature before the City.
 - The vice mayor could not use any staff or resources to solicit contributions.

VIII.a. – CONTINUED

- Any solicitation must be disclosed, and the solicitation form must contain the name of the nonprofit organization, the event for which the funds were solicited, the name of any person or entity that was contacted, and the amount of funds solicited.
 - The solicitation form must be filed with the COE within 30 days after the event, or, if it is not related to an event, it must be submitted within 30 days from the date of the solicitation.
 - She could not use her position in any manner that would result in a special financial benefit to her or to a nonprofit organization where she serves as an officer or a director.
 - Lending her name or official title to a fundraising effort would constitute using her official position to give a special financial benefit to the organization.
 - In order to avoid violating the County Code of Ethics, any solicitation made by the vice mayor should exclude any reference to her public title.
- The opinion was based solely on the vice mayor's personal solicitation.

Chair Smith-Gordon suggested that the letter sent to the vice mayor include the solicitation form that she would need to complete.

MOTION to approve proposed advisory opinion RQO 14-010. Motion by Clevis Headley, seconded by Michael Kridel, and carried 5-0.

VIII.b. RQO 14-011

Ms. Kelley said that:

- A County Fire Rescue employee asked if a prohibited conflict of interest existed if his outside business bids for and was awarded a County contract.

VIII.b. – CONTINUED

- Staff submitted the following for COE review:
 - The employee may not use his official position to give or influence others to give him or his outside business a special financial benefit.
 - The County Code of Ethics prohibits him or his outside business from contracting with the County, unless one of several exceptions applies.
 - Based upon the information that he provided, as an owner of the outside business, he was not eligible for a part-time employment waiver, his business was not the sole source of signage in Palm Beach County, and the signs would not constitute an emergency purchase.
- There were two potential exceptions that would allow him a contract with the County without violating the code's contractual relationship prohibition.
- Section 2-443 (e)(1), provided an exception for contracts entered into under a process of sealed competitive bidding, where his outside business was the lowest bidder, provided the following applied:
 - He did not participate in the bid specifications or determination of the lowest bidder;
 - He did not use his position in any way to influence the award; and,
 - He filed a statement with the Supervisor of Elections and the COE disclosing the nature of his interests in the business prior to submitting the bid.
- If each bid submission fully complied with the requirements, the code did not prohibit him or his outside business from contracting with the County.

VIII.b. – CONTINUED

- Section 2-443 (e)(4) also provided an exception, when the total amount of the contracts or transactions in the aggregate between the employee's outside business and the employee's public employer did not exceed \$500 per calendar year.
- If the total amount of his outside businesses' contracts or transactions with the County did not exceed \$500 in the aggregate, then he was not prohibited from contracting with the County.

MOTION to approve proposed advisory opinion RQO 14-011. Motion by Michael Kridel, seconded by Clevis Headley, and carried 5-0.

VIII.c. RQO 14-012

Ms. Kelley said that:

- A commissioner for the City of South Bay asked whether it would be a prohibited conflict of interest for him to vote on matters involving the Okeelanta Corporation, since that corporation was his former employer and contributed toward a pension plan which currently paid his retirement benefits.
- Staff submitted the following for COE review:
 - Based on the facts submitted, the commissioner was not prohibited from voting on matters involving the Okeelanta Corporation as long as the matters did not involve issues that would affect his pension benefits and result in a special financial benefit to him.
 - The County Code of Ethics prohibited him from using his official position, in a manner that would result in a special financial benefit to himself or his outside employer.
 - The Okeelanta Corporation was no longer considered his outside employer since he was retired; therefore, he would only be prohibited from voting on a matter involving the corporation if it resulted in a special financial benefit to him.

VIII.c. – CONTINUED

- The commissioner's responsibility to comply with the code of ethics was ongoing, since the issues that he may be called to vote upon were speculative.
- Best practices dictated that the commissioner carefully review each issue coming before the city commission to ensure that his participation and vote complied with the code of ethics.
- If a conflict existed, which would result in him receiving a special financial benefit regarding his pension benefits or any other matter within the purview of the code of ethics, he would need to do the following:
 - Publicly disclose the nature of the conflict before the city commission discussed the matter;
 - Abstain from voting on the matter; and,
 - File a State voting conflict form.

Chair Smith-Gordon asked why the inquiry was speculative.

Ms. Kelley said that when she followed up with the commission, it did not have anything on an upcoming agenda concerning the Okeelanta Corporation. She added that the commissioner wanted to know the proper steps to take if an item were to appear before the city commission.

MOTION to approve proposed advisory opinion RQO 14-012. Motion by Michael Kridel, seconded by Clevis Headley, and carried 5-0.

IX. EXECUTIVE DIRECTOR COMMENTS

IX.a.

DISCUSSED: Model Disclosure Form.

Mr. Cullen said that the model disclosure form that was before the commission last month was revised by staff. He added that staff was working with the LOC to make a comprehensive instruction sheet.

X. COMMISSION COMMENTS – None

XI. PUBLIC COMMENTS

XI.1.

DISCUSSED: Inspector General Selection.

Anne Kuhl said that she had questions and comments regarding the interview process for the Inspector General (IG).

As a point of order Mr. Cullen stated that the COE was not sitting as the Inspector General Committee (IGC).

Chair Smith-Gordon said that Ms. Kuhl could make her comment; however, it would be improper for the COE to answer her questions concerning the IGC. She added that Ms. Kuhl could make her comments about the IG at the next IGC scheduled meeting.

Ms. Kuhl said that:

- She was concerned with the following:
 - John Carey mentioned that he did not really deal with the news media, since everything was classified; therefore, the public would not know what investigations were being done.
 - Mr. Carey spent a lot of time in the County, which may have caused someone to lobby the IG selection panel before he was chosen.
 - Four members of the selection panel waived their follow-up questions during Mr. Carey's interview process.
- She wanted to know the main reason why Mr. Carey rose to the top during the interview process.

XI. – CONTINUED

XI.2.

DISCUSSED: Inspector General Selection.

Alexandria Larson said that she was also concerned about the IG selection process; however, she would present her questions at the next IGC meeting.

Chair Smith-Gordon said that the COE members were volunteering their time and committing themselves to making the County a better place.

XII. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Michael Kridel, seconded by Carmine Priore, and carried 5-0.

At 2:21 p.m., the chair declared the meeting adjourned.

APPROVED:


Alexandria Larson
Chair/Vice Chair