

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

OCTOBER 24, 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

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:

Barbara Strickland, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Chair Salesia Smith-Gordon stated that the meeting's purpose was to review COE rules, ordinances, and bylaws, and to discuss in a nonvoting forum any recommended amendments or changes.

IV. INTRODUCTION OF FACILITATOR AND SPECIAL GUESTS

Chair Smith-Gordon welcomed the attendees, as well as COE Executive Director Steven P. Cullen; past president of Leadership Palm Beach County and meeting facilitator David Baker; and Assistant County Attorney Leonard Berger. She recognized Mr. Berger as the chief author of the COE rules, ordinances and bylaws.

V. HISTORICAL OVERVIEW OF COE

Mr. Baker, past COE/Office of Inspector General Implementation Committee Chair, stated that Mr. Berger spent approximately one year drafting the Code of Ethics (Code) ordinance's organizational charter for both the COE and the Office of Inspector General (OIG).

Mr. Baker said that:

- The Code's ordinance was adopted by the Board of County Commissioners (BCC) prior to the citizens' adoption vote.
- Adoption led to a proposed amendment that made the OIG and the COE part of the County charter. It was approved by 72 percent of voters in the county and in every municipality.
- The COE's major components were hearings related to Code violations, public education, staff training, and advisories.
- Today's discussion focused on the COE's origins four years ago and evaluation of its current effectiveness.
- Members were invited to offer ideas and recommendations for any revisions to the goals and procedures, and to the ordinance itself.

V. – CONTINUED

Commissioner Clevis Headley said that the COE appeared to be functioning exactly as intended, according to the components enumerated by Mr. Baker.

Commissioner Carmine Priore said that no changes were needed as long as the COE implemented the Code and made decisions based on its provisions.

Commissioner Michael Loffredo said that the COE appeared to be on target.

Vice Chair Michael Kridel said that he sensed an education disconnect between the COE's purpose and the public's perception of its purpose. The COE's performance was consistent with its mission, he added.

Chair Smith-Gordon said that:

- She agreed that the COE performed its quasi-judicial task, and that community education was key to the public's perception of the COE.
- Although each COE seat was appointed, each commissioner was obligated to report the COE's activities back to individuals and groups.

Commissioner Priore said that as a League of Cities (LOC) member, he was aware that other LOC members understood the Code's language and the COE's purpose.

Commissioner Loffredo said that he would recap COE activities at the Palm Beach County Police Chiefs' Association (Association) monthly meetings.

Mr. Baker commented that part of the COE's education mission was to ensure that community groups had the latest information about COE activities. He said that Mr. Cullen would help him assemble a presentation.

Commissioner Headley stated that he intended to ask political science and philosophy clubs to sponsor meetings and lectures as a means to integrate ethics into the university's consciousness.

VI. ROLES OF COMMISSIONERS

VI.A. Relating to COE

Mr. Baker said that it was critical for commissioners to understand the COE's jurisdiction and responsibilities before entering public discussions about Code compliance and the COE charter.

Chair Smith-Gordon said that commissioners' roles were assigned primarily to the COE and secondarily to the OIG committee. She said that the community should understand that a third tier of commissioners' responsibility was to the State Attorney's Office. Slide presentations about the COE were available for viewing, she added.

Vice Chair Kridel said that his role was to be appointed by the Florida Institute of Certified Professional Accountants (FICPA) and report to three individual FICPA county chapters. As an ethics teacher for accountants, he could integrate some of the COE's actions into a structured ethics class, he said.

Commissioner Loffredo commented that among the 38 municipalities in the Association, several did not want to participate in COE activities.

Mr. Baker said that:

- Individuals who were normally not interested in the COE's or the OIG's activities could become very interested if found in violation of the Code.
- Education remained an essential COE component with its emphasis on staff training, advisory opinions, and outreach to County vendors and contractors.
- Citizens should know that the County achieved control of the rules that governed public officials' behaviors. Its well-organized, transparent system was recognized for the entire ethics initiative.
- Commissioners had opportunities to educate those who appointed them as well as the general public.

VI.A. – CONTINUED

- Baseless complaints allowed an official to clear his or her name publicly. The COE offered a method for explaining that no probable cause existed.

Chair Smith-Gordon said that it was important for commissioners, particularly newer members, to understand the review process from complaint to conclusion.

Mr. Cullen stated that:

- The rule-driven complaint process was outlined in the book he wrote on all the rules and ordinances controlling the COE.
 - A sworn, confidential written complaint alleged facts sufficient to constitute an offense under the ordinance. Although staff was unable to make it public, the complainant could do so.
 - A legal sufficiency determination initiated a detailed investigation to which staff counsel or a volunteer prosecutor was assigned.
- Complaints came to the COE in closed executive sessions. The COE decided whether trustworthy facts and circumstances demonstrated violations.
 - A “No” vote ended the matter, and a “Yes” vote entitled the respondent to a public trial before the COE.
- The public could view the case file on the COE’s Web site with audio and video of the proceedings.
- A meaningful discussion could be held regarding procedures for political complaints, which were handled differently among several Florida counties.
 - Staff was sensitive to time deadlines surrounding election campaigns and the filing of complaints.
 - This COE could review and modify the procedures established by other groups for greater effectiveness.

VI.A. – CONTINUED

Vice Chair Kridel commented that no agency could prevent media manipulation.

Mr. Berger said that:

- Politically motivated uses of the COE occurred off and on the election cycle.
- Miami-Dade County followed an expedited process for complaints filed during elections so that the entire COE was not required to convene.

Chair Smith-Gordon recommended the creation of specific procedures for complaints submitted during political campaigns.

Commissioner Priore said that the COE could take this up as another process, and possibly hold another workshop, to create the language enabling the disposition of such complaints.

Mr. Baker said that discussion should continue in a formal setting with possible public input and that Mr. Cullen would add further discussion or a workshop as an agenda item.

VI.B. Relating to Appointing Entities

Mr. Cullen stated that:

- Staff training was exclusively a staff function. He conducted ethics training on a comprehensive Web site directed toward local elected officials, municipal and County employees, and advisory board members.
- The lobbyist registration ordinance currently did not require lobbyist training. County staff handled the registrations and answered questions.

VI.B. – CONTINUED

- Mandatory lobbyist, contractor, and vendor training could be discussed by the COE.

Mr. Berger said that:

- The County was served by approximately 12,000 vendors and thousands more served the municipalities. There was no budget for training them.
- Elaborate purchasing schemes in the cities made it difficult to gauge who actually conducted business with government offices.

Mr. Baker commented that theoretically, every employee of the Florida Power and Light Company (FPL), one of the county's largest employers, was governed by the Code in its interactions with County and municipal officials. He said that FPL employees could become more conscious of the Code in various ways.

Palm Beach County League of Cities Executive Director Richard Radcliffe stated that in every city, informational door signs stated that vendors and lobbyists must sign in and identify themselves.

Chair Smith-Gordon asked Commissioner Priore to collaborate with Mr. Radcliffe to identify ways of educating vendors about the COE and the Code and bring them back for group discussion.

Mr. Baker said that the issuance of advisory opinions remained an active function of the COE.

Mr. Cullen said that:

- Requests for advisory opinions must be submitted in writing by someone under the Code's jurisdiction. Approximately 35 requests were handled in 2014.

VI.B. – CONTINUED

- Staff's opinion letter was routinely presented to the COE as an agenda item. A press release announcing the opinion was released following discussion and approval. All opinions were published on the Web site.

RECESS:

At 11:15 a.m., the chair declared a recess.

RECONVENE:

At 11:30, the meeting reconvened with Commissioners Headley, Kridel, Loffredo, Priore, and Smith-Gordon present.

VII. DISCUSSION POINTS

VII.A. The Office of Program Policy Analysis and Government Accountability (OPPAGA) Report and Changes Implemented

Chair Smith-Gordon informed the group that State Senator Joseph Abruzzo (Sen. Abruzzo) was available by telephone during the discussion, and that his representative was in the audience.

Mr. Cullen stated that:

- The agenda packet contained the OPPAGA 2013 audit report, a letter written in response to it, and a chart of the changes implemented.
- Findings included the following:
 - staff overlap in some functions,
 - questions on the COE's practice to hear a case on both probable cause and final hearing,
 - commissioner appointment and disqualification processes,
 - mandatory ethics training for vendors,

VII.A. – CONTINUED

- commissioner training and performance metrics.
- The remaining issue to be discussed was whether the COE should hear cases in both probable cause and final hearings or whether an ordinance change would permit trials by hearing officers. All other suggestions were cured or clarified by administrative and rule changes.

Mr. Cullen said that:

- After an ethics complaint was filed, the COE heard it to determine whether probable cause existed. Although several probable causes were found to date, no formal trial resulted since the COE's inception.
- The current law was that a respondent had the right to a trial before the full COE. Under the rules, the chair may designate a panel of three commissioners only to hear a case.

Chair Smith-Gordon requested discussion as to whether a respondent should have an opportunity to select another hearing officer other than a commissioner who heard the probable cause issue and later ruled on it as a trial function. Concerns to be resolved were the criteria set for any particular individual to hear allegations, and whether the individual should be a paid volunteer or not.

Mr. Berger said that:

- The County maintained a pool of hearing officers experienced in applying facts to administrative law and procedure. He said that they were familiar with matters ranging from fire code issues and nuisance abatement to groundwater resources.

VII.A. – CONTINUED

- The County paid the officers an hourly rate and impartiality was assured.
- The ordinance could be amended to employ County hearing officers, who were regularly rotated and were immediately available.

Commissioner Priore said that the COE should first establish probable cause, and if the respondent did not agree, he or she would choose a hearing before a hearing officer.

Commissioner Headley commented that the respondent may prefer the option of a COE hearing instead of a hearing officer.

Mr. Cullen said that for those who were critical of the existing system, the goal was for the COE to provide options to respondents.

Chair Smith-Gordon pointed out that individuals retained options in a civil court setting, and that hearing officers should be considered, as well as an ordinance language change. She said that she favored the options currently in place because procedural rules included all the variables from the hearing to the discovery process to the final disposition.

Legislative Affairs Director Todd Bonlarron said that a system that allowed individuals to choose a procedure met the spirit of the OPPAGA's observations.

Mr. Cullen said that the agenda materials contained a draft of suggested language concerning public hearing procedures and the choice of a hearing officer. The COE would decide whether to recommend an ordinance change to the BCC, he added.

Mr. Berger said that:

- Hearing officers underwent ethics training just as other County officials and employees did, so they understood the Code.

VII.A. – CONTINUED

- At the next regular meeting, he would provide Code sections listing the hearing officers' required qualifications.

(CLERK'S NOTE: Chair Smith-Gordon requested public comments at this time.)

VII.A.1. Public Comment

DISCUSSED: Hearing Officers.

Norman Ostrau, City of West Palm Beach Ethics Officer, asked whether a hearing officer's order would be a recommended order.

Mr. Berger said that:

- It would be a final order that could be appealed and would not come back to the COE.
- Hearing officers would follow the same civil rules of procedure for appeals.
- A language draft would be brought to the next meeting as an agenda item.
- A drafting committee could refine the language ting before presentation to the BCC. A preliminary reading and a public hearing would require two BCC meetings prior to adoption in March 2015.

Chair Smith-Gordon said that Sen. Abruzzo requested that the COE take a statewide lead in ethics reform by collaborating with other ethics commissions to provide minimum standards for ongoing legislative efforts.

VII.A.2.

DISCUSSED: Ethics Complaint Process.

Shreya Kuntawala, Sen. Abruzzo's assistant, said that Sen. Abruzzo supported the COE's cooperative work with other municipalities statewide. She said that he extended his appreciation for the COE's review of expedited complaint processes and options for respondents.

VII.B. Senator Abruzzo's "Ethics Summit"

VII.B.1.

Mr. Cullen reported that he attended a planning session for an "Ethics Summit" suggested by Sen. Abruzzo. He said that the date selected for a statewide meeting on the benefits of local ethics commissions would be announced later.

Ms. Kuntawala said that she recalled that the "Ethics Summit" planning session members agreed to delay setting a date for a statewide summit until minimum-standards language was agreed upon for the upcoming legislative session. She recommended creating interim "skeleton language" until various issues were resolved.

(CLERK'S NOTE: Chair Smith-Gordon requested additional public comments at this time.)

VII.B.2. Public Comment

DISCUSSED: Ethics Summit.

Nancy Hogan said that any delay in scheduling a statewide ethics summit provided additional time for minimum standards language to be discussed and for the public to attend those discussions.

VII.C. Establishment of COE Standards Book

Mr. Cullen stated that:

- In a planning meeting with Sen. Abruzzo, the need was identified for universal principles or standards that local ethics commissions could reference.
 - Agencies within law enforcement, the OIG, and other offices routinely referenced accreditation boards' minimum standards.
 - The agenda materials contained the draft of "Principles and Standards for Local Ethics Commissions." It was drawn from the COE's existing standards and from national materials available for public consumption.
- Sen. Abruzzo intended to present a condensed version of the COE's draft document, or another similar document, for incorporation into legislation and distribution to local ethics commissions.
- The COE met all standards with the exception of the separate trial function. Its public hearing process was the only area targeted for revision.

Chair Smith-Gordon clarified that the "Principles and Standards for Local Ethics Commissions" was maintained as a County guide and accessed by other jurisdictions around the State for their own applications.

VIII. REVIEW OF PROPOSED CHANGES TO COE RULES AND BYLAWS

Mr. Baker said that proposed changes to the COE rules and bylaws were contained in the agenda materials.

Mr. Cullen commented that the rules covered many pages and that if the ordinance were changed, further changes would be needed.

VIII. – CONTINUED

Chair Smith-Gordon recommended that a very general discussion be held now and additional discussion be deferred until later.

Mr. Cullen stated that:

- The current bylaws provided that BCC meetings were conducted according to “Robert’s Rules of Order” (Robert’s Rules).
- Previous COE meetings entertained discussions on the applicability of Robert’s Rules in a particular situation because they were difficult to follow.
 - It was suggested that a more comprehensive set of rules for governing the meetings could be incorporated into either the bylaws or the rules of procedure.
 - The document incorporated by staff was a set of rules that the BCC used in meetings. They were based on Robert’s Rules and removed any doubt as to which rules applied.
 - The proposed revisions could be condensed and details about language insertions would be discussed.

Commissioner Priore said that general rules were beneficial for common understanding. He said that the BCC’s procedural rules were efficient and effective, and could be applied to municipalities as well.

Commissioner Kridel commented that rules changes concerning notification of intake procedures needed further discussion.

Mr. Cullen remarked that any confusion would be cleared up when the matter came back for discussion.

IX. REVIEW OF PROPOSED CHANGES TO COE ORDINANCES – None

Mr. Baker stated that another public comment would be taken.

(CLERK'S NOTE: Item XII. was taken up at this time.)

XII. Public Comments

XII.1.

DISCUSSED: Public Education.

Mr. Radcliffe said that public education about the COE's activities was positive as demonstrated by reduced numbers of ethics complaints.

XII.2.

DISCUSSED: Political Manipulation.

Mr. Radcliffe commented that the Code contained provisions for anyone who used the COE for political purposes. He said that a person could be charged, as evidenced by the advisory opinion issued concerning the Keith James matter, which could be referenced in any future Code changes.

(CLERK'S NOTE: The agenda order was restored.)

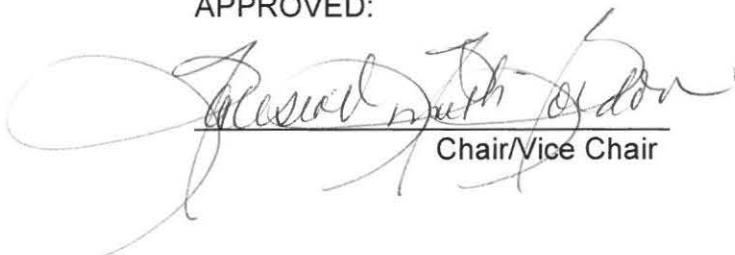
X. EXECUTIVE DIRECTOR COMMENTS – None

XI. COMMISSION COMMENTS – None

XIII. ADJOURNMENT

At 12:38 p.m., the chair declared the meeting adjourned.

APPROVED:


Chair/Vice Chair