

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

DECEMBER 11, 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:

Solibel Rose, Minutes Clerk, Clerk & Comptroller's Office

- III. INTRODUCTORY REMARKS**

Chair Salesia Smith-Gordon said that all mobile telephones should be silenced.

- IV. APPROVAL OF MINUTES FROM OCTOBER 24, 2014 (Workshop)**

MOTION to approve the October 24, 2014, minutes. Motion by Clevis Headley, seconded by Carmine Priore, and carried 5-0.

(CLERK'S NOTE: Items V. and VI. were discussed in tandem.)

V. BY-LAWS – UPDATE AND APPROVAL

Intake Manager Gina Levesque said that the proposed changes to the by-laws were as follows:

- The COE's address needed to be changed from the Vista Center at 2633 Vista Parkway in West Palm Beach (WPB) to the Historic Palm Beach County Courthouse at 300 North Dixie Highway, Suite 450 in WPB.
- Public comment was added to article eight under section 10 on July 7, 2011.
- A table of contents would be added at the beginning of the document.

VI. RULES OF PROCEDURE – UPDATE AND APPROVAL

Ms. Levesque stated that the historical changes to the rules and procedures were as follows:

- On November 7, 2013, disclosures of conflicts were added to section one, under subsection 1.6.
- On September 2, 2010, there was an addition to subsection 2.4(f), indicating that an advisory opinion submission could not be withdrawn by the submitting party.
- On July 7, 2011, subsection 2.4(f) was expanded to state that an advisory opinion may be withdrawn by submitting a written request no later than 10 days before the meeting.
- On April 5, 2012, subsections 2.5(b) and 2.5(d) were amended to require that the executive director write or review draft opinions.
- Advisory opinions submitted to the COE were mandatory, not discretionary.

VI. – CONTINUED

- Section 2.5(c) was stricken because it made submissions discretionary.
- On April 5, 2012, the opinion processing portion of subsection 2.5(f) that referenced sections 2.7 and 2.5(c) was deleted.
- On April 5, 2012, subsection 2.5(d) was created to establish protocols for regular and consent agenda opinions.
 - Review and approval of the consent agenda opinions was required by the chair or vice chair.
 - If not approved, the opinion would be removed from the consent agenda and placed on the regular agenda for discussion.
- The advisory opinion letter form was amended to remove the signature requirements from the executive director and the chair or vice chair and add one signature from staff counsel.
- Due to the executive director's lack of independent authority for issuing opinions under section 2-260.9., subsection 2.7 was deleted on April 5, 2012.
- On October 4, 2012, subsection 2.9 was amended to remove the reference to redacting the requestor's name.
- The following changes were made to subsection 3.2(b)2. on September 1, 2011:
 - Municipality jurisdiction would commence on June 1, 2011.
 - County government jurisdiction remained the same as it was on May 1, 2010.
 - In anticipation of additional entities contracting for the services of the COE, the effective date would be the entity's contract date.
- On September 1, 2011, subsection 4.1(b) was revised to require notification to the respondent within 20 days of finding legal sufficiency.

VI. – CONTINUED

- On March 3, 2011, self-initiated complaints were added to subsections 4.1.1, 4.1.2 and 4.1.3.
- After a November 7, 2013 amendment, the executive director was now allowed to dismiss legally insufficient complaints without presentation to the COE.
- On September 1, 2011, the rules governing preliminary investigations and the settings of a final hearing were revised to require an automatic setting within 120 days of a probable cause determination.
- Language regarding referrals was added to subsection 4.6 on November 1 2012.
- Subsection 5.4 was amended on December 2, 2010 to replace the words “alleged violator” with “respondent”.
- The procedure for releasing public records upon probable cause determination was added to subsection 5.4.1. on December 2, 2010.
- On November 3, 2011, subsection 5.8’s request for public hearing was deleted. The language was inapplicable since cases were automatically set within 120 days of finding a probable cause.
- On September 1, 2011, subsection 6.4(a) was amended to change the word “may” in the first line to the word “shall”.
- Subsection 6.4(b) was amended on November 7, 2013 to clarify the commissioner disqualification terms and procedures.
- On September 1, 2011, subsection 8.1 was amended to reflect that public hearings were not discretionary and automatically scheduled upon a finding of probable cause.
- Subsection 8.2(a) was amended on September 1, 2011 to reflect the June 1, 2011 Code of Ethics (Code) revision.

VI. – CONTINUED

- On October 6, 2011, subsection 8.2(a) was amended to remove the appearance of two separate standards of proofs.
- Section one and two needed updated ordinance numbers.

MOTION to approve the administrative changes that were recited and made in the by-laws and in the procedure rules. Motion by Carmine Priore and seconded by Clevis Headley, and carried 5-0.

SECOND MOTION to approve the acceptance of both documents, the by-laws and the procedure rules, as presented and finalized. Motion by Carmine Priore and seconded by Clevis Headley, and carried 5-0.

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VII.a RQO 14-035

VII.b RQO 14-036

Steven Cullen, COE Executive Director, said that there was additional language added to item RQO 14-036.

Chair Smith-Gordon pulled item RQO 14-036 from the consent agenda.

MOTION to approve the consent agenda as amended. Motion by Carmine Priore, seconded by Clevis Headley, and carried 5-0.

VIII. ITEMS PULLED FROM CONSENT AGENDA

VIII.a Request for Opinion (RQO) 14-036

Mr. Cullen stated that:

- Village of Wellington Councilman Howard Coates explained to staff that he was not presented with details concerning the precise amount of land within a Planned Unit Development and that he was concerned about the requests' broad language.
- Staff added more details and clarified the opinion.

VIII.a. – CONTINUED

MOTION to approve processed advisory opinion letter RQO 14-036. Motion by Michael Kridel, seconded by Clevis Headley, and carried 5-0.

IX. PROPOSED ADVISORY OPINIONS

IX.a RQO 14-037

Staff Counsel Christie Kelley said that:

- A county employee asked if his outside business or employer could compete for county contracts.
- Staff submitted that:
 - The Code prohibited an employee from entering into any contract between his public employer and his outside employer or business.
 - A business of which a member of his household had at least five percent ownership was prohibited from contracting with his public employer.
 - The Code provided exceptions to the contractual relations prohibition which could apply to his situation. The exceptions were:
 - The sealed and low bid system which may be utilized if the employee did not participate in the determination of bid specifications or did not use his official position to influence his public employer. A statement must be filed with the Supervisor of Elections and the COE disclosing the individual's interest in the business prior to submitting the bid.
 - If the outside employer or business was the sole source of the services within the County, a sole source exception may be used.
 - The Code provided an exception for contract or transactions totaling less than \$500 per calendar year.

IX.a – CONTINUED

- Unless one of the exceptions to the contractual relation prohibition applied, the employee's outside business or employer may not enter into a contract for services with the County.

MOTION to approve processed advisory opinion letter RQO 14-037. Motion by Michael Kridel, seconded by Clevis Headley, and carried 5-0.

IX.b. RQO 14-038

Mr. Cullen stated that:

- The director of Human Resources for the City of Belle Glade asked if city employees may participate as a team in the American Cancer Society's Relay for Life of the Glades Walk for Cancer.
- The Code did not prohibit the participation of city employees in a charitable event providing that there was no quid pro quo or other special considerations, including any direct or indirect special financial benefit to the official or employee being solicited.
- Should the employees desire to solicit from vendors, lobbyists, bidders, principals or employers of lobbyists, they would need to disclose those solicitations in a solicitation log.

MOTION to approve processed advisory opinion letter RQO 14-038. Motion by Carmine Priore, seconded by Michael Loffredo, and carried 5-0.

X. CONTINUED DISCUSSION OF AMENDMENT TO ORDINANCE

Chair Smith-Gordon said that:

- The ordinance that was voted on at the previous meeting gave citizens the choice of having an independent hearing officer at a trial function.
- There were discussions with the Board of County Commissioners (BCC) concerning the pool from which lawyers or judges would be selected.
- She recommended tabling the advancement to the BCC until after the meeting between staff and Patience Burns, the Executive Director of the Palm Beach County Bar Association (Bar).

X. – CONTINUED

Chief Assistant County Attorney Leonard Berger stated that the criteria for individuals to qualify for the pool were:

- Florida Bar Association (Bar) membership;
- expertise and experience with various aspects of administrative law; and,
- no conflict of interest with the governing body that hired them.

Chair Smith-Gordon suggested that the COE allow staff and Ms. Burns to determine the qualified lawyers or retired judges.

Commissioner Carmine Priore said that the County offered the use of magistrates, who were currently employed, as hearing officers.

Chair Smith-Gordon said that:

- There was no charge to the taxpayers for having the pool of hearing officers.
- The trier of fact should have significant training and background in ethics.

Commissioner Priore stated that the trier of fact should be able to determine whether or not an individual violated the Code and had probable cause.

Mr. Cullen said that there had not been a final trial in the County since the COE began.

Commissioner Priore stated that the COE's responsibility was to determine whether or not an individual had probable cause and anything beyond that fell outside the commission's purview.

Vice Chair Michael Kridel said that he believed that there was no formal ethics training for attorneys who were in the pool.

Mr. Berger stated that there were between seven to 12 individuals in the pool who were paid by the County.

Commissioner Michael Loffredo suggested conducting a training session for the current pool.

X. – CONTINUED

Chair Smith-Gordon directed staff to determine trial options with the Bar and report back on how the selection of the trier of fact would be handled.

Mr. Cullen said that staff would work with County Administration to address the proposal to the BCC.

Commissioner Priore stated that whether an individual charged with a violation should be able to elect to have a public hearing conducted by the COE, a three-person panel designated by the COE chair, or a hearing officer.

MOTION to direct staff to determine the criteria and the qualifications for the hearing officers. Motion by Clevis Headley, seconded by Vice Chair Michael Kridel and carried 5-0.

XI. EXECUTIVE DIRECTOR COMMENTS

XI.1.

DISCUSSED: Annual Commission On Ethics Report.

Mr. Cullen said that the annual report would be available at the January 7, 2015 meeting.

XI.2.

DISCUSSED: Conference on Government Ethics Laws.

Mr. Cullen stated that he attended the Conference on Government Ethics Laws with COE Investigator Anthony Bennett. He said that they learned more about problems the COE encountered and ways to resolve them.

XI.3.

DISCUSSED: Letters.

Mr. Cullen said that letters were sent to constituents about specific laws concerning charitable solicitation and housing rent.

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

XIII. PUBLIC COMMENTS

XIII.1.

DISCUSSED: Office of Program Policy Analysis and Government Accountability (OPPAGA) and Due Process.

Senator Joseph Abruzzo said that he submitted a request for an OPPAGA review rather than a local audit. He expressed concerns with the existing due process and believed that the COE would provide an option to move forward with a trial if needed.

Chair Smith-Gordon stated that she believed that staff's efforts to educate the public on ethics and ethics reform would result in a citizen not needing a first, second or third choice for a hearing officer.

XIII.2.

DISCUSSED: Proposed Drafting Committee, the OPPAGA review and the Hearing Officers Pool.

League of Cities Executive Director Richard Radcliffe requested a timeline on when the recommendation for a drafting committee would be submitted to the BCC.

Chair Smith-Gordon stated that the drafting committee idea had to be considered by the COE and could possibly be scheduled for February 2015.

Mr. Radcliffe said that the League of Cities supported the OPPAGA review. He added that the individuals selected for the pool should be familiar with the 370 advisory opinions that were processed.

XIII.3.

DISCUSSED: Public's Trust Concern.

Bart Novack stated that a member of the COE was found guilty of nepotism. He said that it was a breach of the public's trust and that the individual should resign or be removed from the commission.

Chair Smith-Gordon stated that COE commissioners were vetted before their appointments and she thanked all the commissioners for the service they provided to the community.

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

XII. COMMISSION COMMENTS – None

XIII. Page 10

XIV. ADJOURNMENT

At 2:43 p.m., the chair declared the meeting adjourned.

APPROVED:



Chair/Vice Chair