



**Palm Beach County
Commission on Ethics**
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News Release

For Immediate Release
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Summary of Palm Beach County Commission on Ethics Meeting Held on November 6, 2014

The Palm Beach County Commission on Ethics (COE) took the following actions at its monthly public meeting held on November 6, 2014.

One complaint, C14-010, was heard. All documents pertaining to C14-010 are published on the COE website at <http://www.palmbeachcountvethics.com/complaints.htm>.

C14-010: Respondent and advocate entered into a negotiated settlement wherein respondent admitted violating the *Gift law* section of the Code of Ethics for failure to timely report the acceptance of a non-prohibited gift valued at greater than \$100. The COE approved the negotiated settlement and dismissed the case with a Letter of Instruction finding that the violation was inadvertent and unintentional.

Six advisory opinions were approved. The full opinions are published and available at: <http://www.palmbeachcountvethics.com/opinions.htm>

ROO 14-029: A prospective advisory board member of the Palm Tran Service Board (PTSB), who works as a speaker and workshop facilitator in her personal capacity and who receives travel reimbursements from companies who hire her services, asked how she can avoid violating the travel expense reimbursement and the contractual relationship prohibitions of the Code of Ethics.

The COE opined as follows: To avoid violating the travel expense reimbursement prohibition, she would need to either incorporate her "travel expenses" into the negotiated speaking fee that she charges companies, rather than being reimbursed separately for travel afterwards, or have the Palm Beach County Board of County Commissioners (BCC) waive the prohibition of those fees for each entity that pays them if they are a PTSB vendor. Additionally, to avoid violating the contractual relationship prohibition, she must obtain an additional waiver from the BCC to enter into a contractual relationship for every entity that has a contract with the PTSB and wishes to engage her services.

ROO 14-030: The Village of Wellington village attorney asked if Councilwoman Anne Gerwig may participate in the selection process for the sale and development of a parcel of land known as K-Park, which is owned by the Acme Improvement District and the Village of Wellington, when HSQ, a customer or client of the councilwoman's outside business, Alan Gerwig and Associates, Inc., has been listed as a subcontractor on a proposal.

The COE opined as follows: Councilwoman Gerwig may not participate in the selection process for the sale and development of K-Park because a customer or client of her outside business is listed as a vendor or subcontractor on one of the proposals. Because Alan Gerwig and Associates, Inc. has supplied services in excess of \$10,000 over the previous 24 months to HSQ, HSQ is a customer or client of Councilwoman Gerwig's outside business. Here, the possibility of a financial benefit to HSQ would be direct and immediate if the proposal that includes work by HSQ is selected. Based upon the facts submitted, the relationship between the councilwoman's outside business and HSQ is that of a typical contractor/subcontractor. As such, since HSQ is listed in one of the proposals, participation by Councilwoman Gerwig in the selection of the proposal for the sale and development of the K-Park would constitute a violation of the code. In order to comply with the code, she will need to publicly disclose the nature of the conflict before the Village Council discusses the matter, abstain from participating and voting on the matter, and file a state voting conflict form (8B).

ROO 14-031: The executive director of the Delray Beach Community Redevelopment Agency (CRA) asked if a conflict of interest would exist if her husband serves on the board of the Delray Center for the Arts while she is the executive director of the CRA.

The COE opined as follows: A conflict of interest would exist if her husband serves on the board of the Delray Center for the Arts while she is the executive director of the CRA since the Delray Center for the Arts applies for funding from the CRA each year. As executive director of the CRA, she provides direction to CRA staff and supervises their actions. Based on the submitted information, even if she were not a member of the funding selection committee, she would still be involved in the selection process for the funding recommendations. A part of her responsibility as executive director is to review the written summaries that are presented to the CRA board and to approve them. Additionally, when questions arise about how to handle a particular issue or recommendation, she is involved in those discussions as well.

ROO 14-032: The attorney for the Town of Highland Beach Board of Adjustment and Appeals (Board) asked:

1. Are three members of the board prohibited by the code from voting on a variance application, submitted by a property owner to increase the maximum height from 35 feet to 209 feet in order to construct a 16-story high-rise building, when they all reside in a condominium development immediately adjacent to the proposed project?
2. Would it violate the code or be an appearance of impropriety for a member of the board who has made statements at a public meeting about the pending variance application to the effect that concerned citizens should appear before the board to voice any concerns, that the zoning will not be changed and that the board will uphold the statute so that nothing over 35 feet will be built, to vote on the variance application?

The COE opined as follows:

1. Although two of the board members live immediately adjacent to the proposed variance site and one member lives approximately 500 feet away, the facts submitted do not establish a basis to differentiate among their interests. Rather, the facts establish that the three board members live in proximity to the site. The fact that Toscana has filed a motion to intervene in the proceedings establishes only that the group of homeowners, by virtue of their individual ownership of units and the association's ownership of common property, is seemingly opposed to the variance. This is distinguished from a situation where a single homeowner lives immediately adjacent to a proposed development site and has voiced personal opposition to the project because it would cause personal financial loss. Based upon the size of the class affected and the other facts submitted, the economic benefit or loss affects a class large enough so as to remove any prohibited financial benefit. Therefore, the board members may participate in and vote on the matter.
2. Based upon the facts submitted, the board member's comments would not violate the code or prohibit him from voting on the matter. Comments made by a board member at a public meeting about how he, or the board, may view the pending application do not give him or her a special financial benefit. The code does not regulate speech or comments which a board member may make under these circumstances. Similarly, while "the appearance of impropriety" is a guiding principle underlying the code and should be avoided, it is not a stated offense under the code. However, other laws, rules or regulations outside of COE jurisdiction may be involved.

ROO 14-033: The Chief Assistant County Attorney asked if LRP, a company listed on the county's vendor registry as an "active vendor," meets the definition of a "vendor" for purposes of the gift law of the code, where the company does not have a pending bid proposal, does not have an offer to sell goods or services, is not currently selling goods or services, and where the last sale of goods was for \$169.50 over four years ago.

The COE opined as follows: Based upon the facts submitted, LRP is not a vendor of the county and the gift in question is not prohibited by Sec. 2-444(a)(1). LRP does not have a pending bid proposal, does not have an offer to sell goods or services, and is not currently selling goods to the county. The fact that the county maintains a vendor database gives the commissioner an additional source of information in making this determination. That source, however, is not infallible and has limitations based upon the facts submitted. The fact that the county maintains a vendor registry, to facilitate the procurement process, does not automatically mean that a listed company is a vendor under the gift law. Rather, where the only nexus between the company and the county is a prior sale of goods over four years ago, this is not a sufficient enough relationship to establish it as a vendor within the meaning of Sec. 2-442.

ROO 14-034: The Chief Assistant County Attorney asked if the Emergency Medical Services Advisory Council (the council) members who are also hospital employees are allowed to participate in the certificates of public convenience and necessity (COPCN) selection process when their hospital-employers have ongoing and prospective relationships with the COPCN applicants.

The COE opined as follows: The council members, who are also hospital employees, may participate in the COPCN selection process because it would not result in a special financial benefit to their outside employer or to a customer or client of their outside employer. Under the facts provided, a vote to recommend any or all of the COPCN applicants would not provide a special financial benefit to a council member's hospital-employer. The COPCN only provides a license to the ambulance service provider, which then allows the provider to contract with hospitals for use of its services. As such, the council's recommendation vote would not result in a special financial benefit to any council member's hospital-employer. Likewise, voting to recommend any or all of the COPCN applicants would not provide a special financial benefit to a customer or client of a council member's hospital-employer. Although each ambulance service provider who receives a COPCN would receive a financial benefit (the license), the ambulance service providers are not customers or clients of the hospitals. The hospitals are the recipients of the services provided. Thus, the hospitals are the customers or clients of the ambulance service provider. As a result, a voting conflict would not exist for the council members who are also hospital employees because the vote would not result in a special financial benefit to a customer or client of their outside employers.

A detailed explanation of all agenda items is available at <http://www.palmbeachcountyethics.com/meetings.htm>.

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