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**Commissioners**

Edward Rodgers, Chair

Manuel Farach, Vice Chair

Robin N. Fiore

Ronald E. Harbison

Bruce E. Reinhart

**Executive Director**

Alan S. Johnson

**Staff Counsel**

Megan C. Rogers

**Administrative Assistant**

Gina A. Levesque

**Investigator**

Mark E. Bannon

# *Agenda*

July 7, 2011 – 3:00 p.m.

Governmental Center,

301 North Olive Avenue, 6<sup>th</sup> Floor

Commissioners Chambers

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from May 5 and June 2, 2011
- V. Public Comments
- VI. Public Comment Revision to By-Laws
- VII. Amendment to Rules of Procedure
  - a. Withdraw of Advisory Opinion Requests
- VIII. Vendor Database Update
- IX. Commission on Ethics Second Request for Advisory Opinion from Attorney General's Office
- X. Processed Advisory Opinions (Consent Agenda)
  - a. RQO 11-032
  - b. RQO 11-036
  - c. RQO 11-045
- XI. Items Pulled from Consent Agenda
  - a.
- XII. Proposed Advisory Opinions
  - a. RQO 11-022 (Revised)
  - b. RQO 11-027
  - c. RQO 11-028
  - d. RQO 11-029
  - e. RQO 11-030
  - f. RQO 11-031-OE
  - g. RQO 11-033
  - h. RQO 11-034
  - i. RQO 11-037
  - j. RQO 11-038
- XIII. National Association of Counties Achievement Award
- XIV. Executive Director Comments
- XV. Public Comments
- XVI. Adjournment

**MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS (COE)**

**I. CALL TO ORDER:** May 5, 2011, at 3:03 p.m., in the Commission Chambers, 6th Floor, Governmental Center, West Palm Beach, Florida.

**II. ROLL CALL**

MEMBERS:

Judge Edward Rodgers, Chair  
Manuel Farach, Esq., Vice Chair – Arrived later  
Dr. Robin Fiore  
Ronald Harbison – Absent  
Bruce Reinhart, Esq.

STAFF:

Alan Johnson, Esq., COE Executive Director  
Gina Levesque, COE Administrative Assistant  
Megan Rogers, COE Staff Attorney  
Sydone Thompson, Deputy Clerk, Clerk & Comptroller's Office

**III. INTRODUCTORY REMARKS**

Judge Edward Rodgers asked audience members to silence their cell phones and submit public comment cards to staff, and to indicate the agenda item they intended to address. He said that public comment would be limited to a maximum of three minutes per speaker and that comments should be relevant to the item discussed. He added that the commission's process should be respected.

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

**IV. APPROVAL OF MINUTES FROM APRIL 7, 2011**

Manuel Farach suggested that changes be made to the April 7, 2011, meeting minutes. He said that on page 3, the first filled bullet point, the word "deposed" should be changed to "sworn."

Judge Rodgers asked that the proper corrections be made to the minutes.

#### IV. – CONTINUED

Alan Johnson, Esq., Commission on Ethics (COE) Executive Director (ED), stated that he agreed that the suggested change was more appropriate, and he added that he would need to review the recording from the April 7, 2011, COE meeting because he could have used the word “deposed.” He said that as a part of the discovery process, the due process rights of a respondent was to depose witnesses; therefore, he could not say with certainty that he did not use the word “sworn,” which would have also been appropriate. He recommended that staff review the recording from the previous COE meeting and correct the minutes with the proviso that if the minutes needed to be corrected, it would not be necessary to bring the matter back to the COE for approval.

Mr. Farach stated that on page 5, the second “CLERK’S NOTE” which read, At the attempt of disorderly conduct, the chair asked that the security officer be summoned to maintain decorum, should be corrected to read, At the threat of disorderly conduct, the chair asked that the security officer be summoned to maintain decorum.

Dr. Robin Fiore said that she seconded the changes to the minutes’ language as recommended.

Mr. Johnson stated that he agreed with the recommended corrections.

Judge Rodgers said that the changes as discussed would be made to the minutes.

Mr. Farach stated that:

- On page 16, the vote which read, UPON POLLING THE COMMITTEE, the motion CARRIED 3-1. Ronald Harbison and Bruce Reinhart opposed, and Edward Rodgers abstained, should be verified upon reviewing the recording from the April 7, 2011, meeting since the votes carried were mathematically incorrect.
- There could be a typographical error with the votes, but since he was not able to review the recording himself, he asked that the vote be reviewed.

Bruce Reinhart stated that since he made the motion he would not have voted against the item. He said that he recalled the vote as 3-1 with Ronald Harbison opposed. Mr. Farach stated that Mr. Reinhart’s explanation would clarify the discrepancy.

#### IV. – CONTINUED

Mr. Johnson asked that a provisional vote be made so that a review of the recording from the COE's April meeting could be conducted during today's meeting. He asked that the matter be tabled until the end of the meeting.

Judge Rodgers stated that the corrections to page 16 would be tabled until the end of the meeting by acclamation and without a vote from the commission.

(CLERK'S NOTE: See page 24 for further discussion on item IV.)

Mr. Farach suggested additional changes as follows:

- On page 21, first bullet, the word, he, should be stricken, and the sentence should read: Initially, the need to hire additional staff was circumvented because the workload did not require it.
- On page 24, first paragraph, second sentence that read, He said that the people's work was overshadowed, should be changed to, He said that the people's work was being overshadowed.
- On page 25, the fourth bullet point lacked clarity unless it was a clause or a portion of a sentence. The language stated, Line 370 of the Code addressed whether personal gifts carveouts would exist. It read, Giving a gift in excess of \$100 who is a prospective vendor seeking to do business with the official or the employee's governmental entity.

Remainder of page left blank intentionally.

#### IV. – CONTINUED

Mr. Johnson read Section 2-444, line 337 of the current COE Code into the record as proposed. He said the language was appropriate where personal gift carveouts existed. The Code language was read as follows:

*“a. Personal Gifts.* All officials and employees who are not reporting individuals under state law are not required to report gifts in excess of one hundred dollars (\$100.00) so long as those gifts are given to the official or employee by a personal friend or co-worker and the circumstances demonstrate that the motivation for the gift was the personal or social relationship rather than an attempt to obtain the goodwill or otherwise influence the official or employee in the performance of his or her official duties. Factors to be considered in determining whether a gift was motivated by a personal or social relationship may include but shall not be limited to: whether the relationship began before or after the official or employee obtained his or her office or position; the prior history of gift giving between the individuals; whether the gift was given in connection with a holiday or other special occasion; whether the donor personally paid for the gift or sought a tax deduction or business reimbursement; and whether the donor gave similar gifts to other officials or employees at or near the same time. If the personal friend or co-worker is a vendor, lobbyist or principal or employer of a lobbyist that lobbies the county or municipality as applicable, then the official or employee shall not accept a gift in excess of \$100.00 in accordance with subsections (a)(1) and (b)(1).”

Mr. Farach asked Mr. Johnson whether the entire language he read should be added to clarify the record. Mr. Johnson replied that in the abundance of caution, the entire provision should be added to the April 7, 2011, meeting minutes.

**MOTION to approve the April 7, 2010, meeting minutes as amended, with the corrections identified by Manuel Farach, and subject to the review of the meeting recording for the proposed corrections to page 16, that were tabled earlier at today’s meeting. Motion by Manuel Farach, seconded by Bruce Reinhart, and carried 4-0. Ronald Harbison absent.**

## V. PUBLIC COMMENT REVISION TO BY-LAWS

Mr. Johnson stated that:

- Staff recommended that Section 10 of the COE by-laws be created for public comment. The language would read as follows:

“Public comment is permitted on all agenda items with the exception of probable cause proceedings and the adjudicatory portion of final hearings involving complaints before the commission. The chairperson may establish and enforce rules pertaining to the orderly conduct of public comment, including time, manner, and decorum.”

- The staff analysis concluded that:
  - Significant due-process concerns existed regarding the executive session probable-cause hearing and the guilt phase in the final hearing.
  - Valid concerns included members of the audience making irrelevant, prejudicial, or inadmissible statements, which the respondent was not privy to in advance; or witnesses the respondent did not have the opportunity to depose.
  - The constitutional rights of respondents should outweigh the rights of public commentators until the trial phase concluded.
- Public comment could be permitted after the final hearing if the COE ruled that a respondent had violated the Code and an appropriate sanction or fine was imposed.

Dr. Fiore stated that public comment should not be permitted during final hearings, but comments could be permitted after the COE made its ruling.

Mr. Reinhart said that he agreed with Dr. Fiore. He suggested that members of the public communicate with the advocate to convey their information as opposed to allowing the public to make opinions on sentencing.

## V. – CONTINUED

Mr. Farach stated that:

- Although he understood the concerns of the commission, it was the public's right to comment on cases prior to the COE handing down a sentence.
- The public should be permitted to make comments irrespective of the COE's final sentence or punishment.
- He recognized the risk of turning the proceeding from one with decorum and professionalism to one without those elements. He was concerned that the public would not be allowed to voice opinions prior to the COE making a decision.
- Had it not been for the chair's ability to control the meeting's decorum, he would not have supported the notion of permitting public comment prior to the sentencing phase.

Dr. Fiore said that in the past, public comment had often been irrelevant to the items discussed. She stated that it was not the COE's role to permit public comment that subjected the respondent deemed guilty of a Code violation to be berated.

Mr. Johnson stated that he was not thinking that necessarily the public would be asking for a harsh sentence, but people may be speaking on behalf of the respondent.

Mr. Reinhart said that under the commission's current rules, the accused party had a right to offer witnesses in mitigation, just as the advocate, a party to the proceeding, had the right to offer witnesses in aggravation of sentence. He stated that if the matter was not funneled through to the individuals who were the official parties to the proceeding, then the case could be opened up to abuse. He added that by allowing the public's voice through the appointed advocate, the accused party could be safeguarded from unfair treatment.

**MOTION to approve the recommendation to exclude adjudicatory actions and hearings from public comment. Motion by Robin Fiore, and seconded by Bruce Reinhart.**

## **V. – CONTINUED**

Mr. Reinhart stated that the current by-laws draft stated that the chair could establish and enforce rules pertaining to orderly conduct. He expressed concern about the term, rules, which related to a standard set of procedures that would be applied across the board, or an inference could be drawn that the chair would have the discretion to control the commission's proceedings. He said it was foreseeable that members of the public or parties to a proceeding would voice opposition about impartiality or preferential treatment toward being permitted to speak at a meeting. He said that since the commission had no established rules in the by-laws, and if they were redrafted, then staff should consider that point.

Mr. Johnson asked for clarification since the type of rules envisioned by the new provision would be three minutes, or two minutes. He said that would be the type of rule the commission would then promulgate.

Mr. Reinhart suggested the following by-laws language, the chair shall have discretion to limit public comment as necessary to maintain decorum and save time. He cautioned the commission against enforcing a rule that the commission had not formally promulgated. He said that if staff redrafted the by-laws, then his proposed revision should be considered. Mr. Johnson said that the language could be vetted at today's meeting.

Mr. Reinhart stated that he preferred that a final decision be made when the entire commission was present, especially when there were competing opinions on the matter. He suggested that the matter be tabled until the next meeting.

**AMENDED MOTION to table item V., Public Comment Revisions to By-Laws, until the June 2, 2011, Commission on Ethics meeting. Motion by Bruce Reinhart, and seconded by Robin Fiore.**

Dr. Fiore asked how the commission would proceed if a hearing was scheduled for the COE's June 2011 meeting. Mr. Reinhart responded that the commission could use existing Code rules.

**UPON CALL FOR A VOTE, the motion carried 3-1. Edward Rodgers opposed and Ronald Harbison absent.**

## **VI. VOTING CONFLICTS**

### **VI.a. COMMISSION ON ETHICS REQUEST FOR ADVISORY OPINION FROM ATTORNEY GENERAL'S OFFICE (REQUESTED BY COMMISSIONER FARACH)**

Although no true voting conflict existed, Mr. Johnson asked that an illegal vote from the April 7, 2011, meeting be readdressed since there was an issue as to quorum, because there were only two commissioners physically present at the time of the vote and there needed to be three. He added that State Statute (Statute) 286.012 stipulated that abstention from voting was permissible only when a financial conflict of interest existed.

Dr. Fiore said that she had not voted because of insufficient information. She added that she had a right to abstain instead of being rushed to vote.

Judge Rodgers stated that he had abstained from voting because the case involved his daughter-in-law.

Mr. Johnson said that:

- He reviewed 28 attorney general (AG) letters and that there were 300 COE "mentions" that did not allow a non-financial exception, unless the nepotism statute was violated.
- None of the 300 mentioned allowed non-financial abstention except where by voting, the elected official would have violated that law. The nepotism statute stipulated that where there was not a financial interest, the vote would have violated the nepotism statute since the COE could not use §286.012 to violate the law.
- With regard to the adjudicatory and quasi-judicial functions of a hearing or probable cause determination, staff believed that if a bias against the respondent existed, constitutional issues could be raised that superseded Statute 286.012.
- The first issue was whether staff should send a letter to the Attorney General's Office (AGO) and request an advisory opinion regarding quasi-judicial COE hearings and the conflict that would be raised by a bias relating to due process conflicts within the Florida constitution and the United States Constitution.

## VI.a. – CONTINUED

- The second issue was whether carveouts existed for non-adjudicatory and non-quasi-judicial proceedings. After consulting Charles “Chris” Anderson, Florida COE attorney, both staff and Mr. Anderson shared the opinion that those proceedings were subject to Statute 286.012.
- The Florida COE stipulated that adjudicatory and quasi-judicial issues should be brought to the AG for review.

Judge Rodgers stated that it was unfortunate that committee members could not abstain from voting on an item because they handled a legal matter involving a respondent in a COE case. He said that the rule narrowed the commission’s ability to be fair.

Mr. Johnson stated that the District Court of Appeals (DCA) supported the AG. He said that in one case, there was a physical altercation between a board member and an applicant, and the board member was required to vote because the statute did not provide a leeway to abstain, even in the case of a bias. He added that he would research whether there was a process to go to the DCA after getting an opinion from the attorney general to direct the commission to vote, even if it violated the due process rights of the respondent.

Mr. Farach stated that:

- The COE was in the uncomfortable position of either following the statute and possibly creating an appearance of impropriety, or intentionally violating the statute in order to avoid the appearance of impropriety.
- Although the intent of Statute 286.012 was to prevent board members from purposely avoiding voting on agenda items, the COE was governed by different standards than most political bodies. As a non-political body, it was required to avoid the appearance of impropriety.
- The way that the COE ordinance and Statute 286.012 were written posed a problem.
- Unless and until he was instructed by the AG to vote on every agenda item, he would abstain from voting when there was an appearance of impropriety. To vote otherwise would diminish the integrity of the commission.

## VI.a. – CONTINUED

Judge Rodgers asked hypothetically, how a case would be handled if a senior partner of a commission member represented one of the parties in an advisory opinion.

Mr. Farach stated that an economic interest would then be present and he would not only abstain from voting, but he would file State form 8.B., to acknowledge the conflict of interest existed.

Mr. Johnson said there were copies of the State form on the COE website. He added that the form could not be filled-out unless a financial benefit existed, or if the parties that benefitted were identified.

Mr. Reinhart expressed concern about the nepotism statute's interpretation. He said that even if an actual conflict of interest existed, one could be compelled to vote if there was not a financial conflict. For example, he said, if it were common knowledge that he hated his neighbor, the act of presiding over a case involving his neighbor was inappropriate. He asked whether there was a Code provision that could preclude the commission from voting. He also asked whether the Code could be trumped by §286.012, or if there was a basis to vote under the local ordinance.

Mr. Johnson explained that:

- State law superseded local ordinances, and constitutional laws superseded State statutes.
- The AGO opined that the nepotism case discussed earlier in the meeting could not be used to violate another statute.
- There was no penalty for violating the statute although the statute had references to misfeasance.
- If a committee member opted not to vote, a misfeasance claim could be filed to remove the individual from the committee.

## VI.a. – CONTINUED

Dr. Fiore stated that she had not intended to trivialize one's conscience, but there were instances in which a board member simply could not vote on an agenda item if the reasons were valid and stemmed from professional, cultural, and personal values. She said ethics commissions should respect the reasoning associated with those principles. She added that her decision to abstain from voting for reasons of information would not waver although she had a better understanding of the statute.

Mr. Farach said that he made the request so that the commission could get some clarification on the matter. He said that he had no doubt that the issue had been extensively researched, but that there could be someone at the AG to shed more light on the issue.

Dr. Fiore proposed that all commission members should vote, even when a conflict existed. She said that the commissioners with the conflicts could vote with the commissioners that voted in the majority, and state that they were making the vote for purposes of procedure since their votes would not influence the motion's passage. She concluded that the dissenting commissioner's vote would be meaningless unless two or more board members made opposing votes, which would then create a procedural dilemma.

Mr. Farach said he had not intended to impose on the discretion of each commissioner when they voted. He reiterated that his concern was to get clarity from the AGO. He added that if the commission were directed to vote on an item even with an appearance of impropriety, he would follow the law.

Dr. Fiore said that she disagreed that following the statute took precedence. She said that the AG's view would not change her opinion. She added that there was no purpose for the request because the AG would likely direct the COE to follow the law. Mr. Farach responded that he could not presume the AG's response and that he wanted clarity on the issue.

**MOTION to send a letter to the Office of the Attorney General as set forth in agenda item VI.a., and seek an opinion as to the portions, times, or situations where State Statute 286.012 either would or would not apply to the Commission on Ethics. Motion by Manuel Farach, and seconded by Bruce Reinhart.**

## **VI.a. – CONTINUED**

Mr. Johnson stated that:

- The AG would not accept the commission's request unless a majority vote was reached by the commission.
- For clarification, there were two issues at hand, whether there was a distinction between quasi-legislative and quasi-administrative matters.
- The only quasi-judicial functions performed by the commission were code enforcement actions, probable cause hearings, and final hearings.
- There was a possibility that the AG would review the request in terms of the due process rights of the respondent, and the commission could receive a favorable ruling.

Mr. Reinhart said that he was hopeful that legislators would amend Statute 286.012 to excuse public officers with conflicts of interest from being required to vote.

**UPON CALL FOR A VOTE, the motion carried 3-1. Robin Fiore opposed and Ronald Harbison absent.**

## **VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)**

**VII.a. RQO 11-018**

**VII.b. RQO 11-019 – Pages 13-14**

(CLERK'S NOTE: Edward Rodgers passed the gavel to vice chair Manuel Farach.)

**MOTION to pull item VII.b. RQO 11-019 from the consent agenda. Motion by Edward Rodgers, seconded by Bruce Reinhart, and carried 4-0. Ronald Harbison absent.**

(CLERK'S NOTE: See page 14 for the consent agenda vote on item VII.)

**VIII. ITEM PULLED FROM CONSENT AGENDA**

**VII.b. RQO 11-019**

Judge Rodgers said that:

- He disagreed with the remaining COE members' decision to disallow a complaint to be withdrawn at the request of the claimant.
- Penalties could be imposed for a complaint's withdrawal during certain stages of the proceedings.
- It was a violation of the complainant's rights to prosecute or issue an opinion on a case that the complainant withdrew.
- Withdrawn opinions could be placed into a closed file since the mere filing of a case could irreparably damage the claimant.

Mr. Johnson stated that the newly adopted Code permitted a claimant to withdraw an advisory opinion up to 10 days prior to a commission meeting. He said that this opinion was completed based on the prior Code and because of the commission's prior vote.

Judge Rodgers proposed that the opinion should be reconsidered and placed into the "never happened" file.

Mr. Johnson said that the opinion could have been withdrawn since the request to withdraw was made more than 10 days prior to the commission meeting.

Dr. Fiore asked about the claimant's basis for withdrawal.

Megan Rogers, COE Staff Counsel, stated that:

- Walt Smyser submitted an e-mail to the COE and in response, he was asked to provide additional information.
- In his second email, Mr. Smyser stated that he no longer wanted to pursue the matter and he asked that the request be withdrawn.
- An e-mail was sent to Mr. Smyser from staff informing him that the Code prohibited opinions from being withdrawn and an advisory opinion would be investigated and issued.

## VII.b. – CONTINUED

- The claimant was not advised on the matter, but he was asked whether he had knowledge that the company identified in the opinion contracted with the City of Lake Worth (Lake Worth).
- Mr. Smyser responded via e-mail that he did not know, and in a follow-up email from COE staff, he was asked to contact the city administrator to obtain that information.

Mr. Johnson stated that the rule for withdrawals could be amended by the COE. Mr. Reinhart added that a Florida Sunshine Law conflict could arise if the commission proceeded with voting on items that were not noticed on the meeting agenda. He suggested that the matter be discussed at a future meeting.

Dr. Fiore asked whether the 10-day withdrawal rule could be adopted sooner rather than later, since the new Code reflected the 10-day rule. She suggested that the commission's procedures be amended at the next COE meeting if due notice was given.

Mr. Reinhart stated that the response letter was consistent with the COE's currently existing rules of procedure.

**MOTION to approve the opinion on item VII.b., RQO 11-019, as written, and readdress the matter at the next Commission on Ethics meeting on June 2, 2011, upon reconsideration of the Rules of Procedure. Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 3-1. Edward Rodgers opposed and Ronald Harbison absent.**

Mr. Farach noted that in the fourth paragraph of the response letter for RQO 11-019, the word, principle, should be changed to, principal. Mr. Johnson stated that the correction would be made.

(CLERK'S NOTE: Judge Rodgers resumed as chair. The agenda was taken out of sequence and item VII. was voted on at this time.)

**MOTION to approve the consent agenda, pulling item VII.b., RQO 11-019. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Ronald Harbison absent.**

(CLERK'S NOTE: The numerical sequence of the agenda was restored.)

**IX. PROPOSED ADVISORY OPINIONS**

**IX.a. RQO 11-009 (Resubmitted from April 7, 2011)**

Mr. Johnson stated that:

- Opinion RQO 11-009 was resubmitted from the April 7, 2011, COE meeting because the vote was flawed since only two commissioners were present when the vote was cast, and no quorum existed.
- Sarah Alsofrom, a non-County employee, had asked if she could accept an awards banquet ticket valued at \$125 from a friend who was employed by a lobbyist.
- The lobbying entity for whom her friend worked had not lobbied the County advisory board on which she served, or the County department under the committee's authority.
- Staff reviewed Code Section 2-444(b), which did not prohibit gifts of this nature for volunteer advisory board members. However, the gift was reportable since its value exceeded \$100.
- The vote to accept the opinion was carried 3-0 with Mr. Farach and Mr. Harbison abstaining since they served on boards with Ms. Alsofrom.
- The 3-0 vote was pulled because of the two abstentions, and since Dr. Fiore was not physically present at the time of vote.

Mr. Farach stated that he would continue to abstain from voting on items with conflicts of interest until the AG ruling was handed down. He added that he would be abstaining from voting for the reasons indicated at the April 7, 2011, COE meeting.

**MOTION to approve RQO 11-009. Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 3-0. Manuel Farach abstained and Ronald Harbison absent.**

**IX.b. RQO 11-013 (Resubmitted from April 7, 2011)**

Mr. Johnson stated that:

- Advisory opinion RQO 11-013 involved David Schwartz, Project Coordinator for the County's Department of Housing and Community Development (HCD). He had asked whether it was appropriate to offer loan assistance to a grant applicant who was related to the vice-mayor of the municipality having jurisdiction over the application process and post-project code inspection.
- Initially, staff had opined in the proposed advisory letter that there was no Code violation because the scope of its investigation was limited to the County's involvement.
- The commission opined that since it had no jurisdiction over the municipality, it would have been inappropriate to advise the County official as to the appropriateness of the transaction.
- Staff redrafted the response letter for the commission's review to reflect that the COE could not opine with regard to the Code since the opinion was tabled at the April 7, 2011, meeting.

**MOTION to approve RQO 11-013 as rewritten by staff. Motion by Manuel Farach, seconded by Bruce Reinhart, and carried 4-0. Ronald Harbison absent.**

**IX.c. RQO 11-015 (Resubmitted from April 7, 2011)**

Mr. Johnson asked the board to rescind the initial advisory opinion for RQO 11-015. He said that:

- The proposed letter was adopted by the commission at the last meeting on April 7, 2011.
- A member of a charitable advisory board had asked whether public employees as board members could solicit sponsors and participants for a fundraising event.
- Although the advisory board was not connected to the County or municipality, several committee members were also government employees.

### IX.c. – CONTINUED

- The COE voted to make significant changes to the opinion that was submitted by staff regarding indirect solicitation.
- The commission had opined that:
  - Public officials, subject to the jurisdiction of the Code, and serving charitable boards, were prohibited from directly or indirectly soliciting sponsorships or participant donations valued at more than \$100 from persons or entities known to be lobbyists, principals, or employers of a lobbyists, if that person or entity lobbied the governmental body whom they served as an employee.
  - The prohibition extended to solicitations made by other parties, and not on behalf of the individual, but on behalf of the charitable organizations that they served.
- Staff expressed concern that the commission's interpretation could eliminate officials from serving on boards, charitable, or religious organizations that participated in fundraisers.
- The COE further opined that employees or officials who requested that their names should not be used to solicit for the charitable committees they served on were still liable since the term, indirect, applied to anyone involved in the fundraiser, or to anyone who solicited on behalf of the entire committee.

Dr. Fiore said that:

- Employees were not prohibited from serving on boards, but they were prohibited from soliciting.
- Alternatives to the issue of soliciting existed, such as opting for a leave of absence during the solicitation process, or forming sub-committees that made sponsorship requests.

Judge Rodgers stated that committees could also omit members' official titles and not attract attention to them. He said that depriving officials from serving on boards was rigid as long as the official or employee would not solicit in their official capacities. He concluded that officials should be permitted to solicit without using their titles.

## IX.c. – CONTINUED

Mr. Johnson said that the issue raised by Judge Rodgers was different from a previous advisory opinion involving County Commissioner Burt Aaronson, who was asked by his synagogue to be a dinner honoree. Mr. Aaronson requested the commission's direction because the issue was whether officials could serve on a board of directors if they were making solicitations from lobbyists, principals, or employers of lobbyists.

Dr. Fiore stated that committees whose members included elected public officials could not solicit. She said that corporate entities were held to the same standards, prohibited its employees from soliciting, and required adherence to gift laws.

Mr. Johnson said that:

- He would follow the direction of the commission, but he wanted the opinion's response to reflect the will of the commission.
- His understanding of the issue from the last COE meeting was that officials would be required to leave the board in order to hold fundraisers involving lobbyists, principals, or employers of lobbyists.

Judge Rodgers suggested that officials serving on boards should not use their official titles. He said that it was dangerous if public officials either used, or allowed their official titles to be used to solicit funds for the committee they served.

Mr. Johnson read the following proposed language for the advisory opinion:

If an official served on a board for a non-profit organization and fundraising was being held, then that official could not solicit; could not allow anyone to solicit on their behalf; and, could not permit their name to be used in connection with the solicitation, if that solicitation involved lobbyists, principals, or employers of lobbyists for gifts valued more than \$100.

Mr. Johnson said that the newly adopted Code permitted transparent and documented direct solicitation.

Dr. Fiore proposed adding language stating that officials could not participate in any form of solicitation such as creating lists or making introductions.

**IX.c. – CONTINUED**

Judge Rodgers commented that violating such conduct was actionable to the point of removing solicited funds.

Mr. Johnson asked the commission for direction on drafting the opinion.

**MOTION to direct staff to rewrite proposed opinion RQO 11-015 to reflect and explain that under the Code of Ethics there shall be no direct or indirect solicitation, and no use of the County official, employee, or covered person's title. The covered person should not be involved in the act of direct fundraising. Motion by Manuel Farach, seconded by Bruce Reinhart, and carried 4-0. Ronald Harbison absent.**

Mr. Farach asked that the word, advertizing be changed to, advertising on the second page, first paragraph of the opinion letter. He added that on the third page, second full paragraph, the language, be not prohibited, should be changed to, are not prohibited.

Mr. Johnson stated that the vote taken on agenda item RQO 11-015 at the April 7, 2011, COE meeting should be rescinded by the commission.

**MOTION to rescind the April 7, 2011, vote made by the Commission on Ethics for advisory opinion RQO 11-015. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 4-0. Ronald Harbison absent.**

**IX.d. RQO 11-020**

Mr. Johnson said that:

- Proposed advisory opinion RQO 11-020 involved Clark Bennett, a County vendor, who also served on a non-profit organization's board of directors. He asked whether a conflict of interest existed since he served on a board that applied to and received grant funding from the County.
- Staff had prepared a response letter only in relation to the Code, which had no prohibitions against vendors entering into contracts or transactions with the County through more than one private entity.
- Staff recommended that vendors' inquiries should be directly related to the Code based on Section 2-448 and Section 2-260.9.

**IX.d. – CONTINUED**

**MOTION to approve staff's recommendation on RQO 11-020 as written. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 4-0. Ronald Harbison absent.**

**X. CLARIFICATION OF INFORMATION PROVIDED TO THE PALM BEACH POST BY THE CITY OF RIVIERA BEACH (REQUESTED BY COMMISSIONER RODGERS)**

Mr. Johnson said that:

- City of Riviera Beach (Riviera Beach) Attorney Pamala Ryan had contacted him regarding funds that its city council had received from a contracted vendor for use as a discretionary fund.
- He had responded that the COE had no jurisdiction over Riviera Beach and that he could not opine as to whether a violation of the Code had occurred.
- He had forwarded Ms. Ryan relevant pages of the 2009 grand jury report regarding discretionary funds and suggested that she review the document.
- He told Ms. Ryan that the issues contained in her inquiry were Code-related and could become an issue once Riviera Beach came under the jurisdiction of the Code.
- Approximately one month later, an article was published in the *Palm Beach Post* indicating that the ED had advised Ms. Ryan extensively about the policy.
- The press was contacted, and he believed that the matter would be publicly clarified since he asked that the facts be corrected in a follow-up article.

Judge Rodgers stated that:

- In the *Palm Beach Post* article, Ms. Ryan gave the appearance that Mr. Johnson and the COE had agreed with, provided information relating to, and authorized Riviera Beach's use of its slush fund.

## X. – CONTINUED

- The article's depiction could cause other municipalities to follow suit by using the publication to justify their actions.
- The reporter was contacted about publishing the ED's statement, and he stated that the publication's content was satisfactory.
- Randy Schultz from the *Palm Beach Post* editorial board was contacted to aid in clarifying the point that the commission would not condone slush funds.

Mr. Johnson said that:

- Staff drafted a letter for the commission's approval and eventual dissemination to Mr. Schultz.
- Prior to speaking with Judge Rodgers about the issue, he e-mailed Ms. Ryan about clarifying the matter at the next Riviera Beach city council meeting.
- He had not followed up with Ms. Ryan to confirm that she had clarified the matter.

Dr. Fiore said that this scenario exemplified why withdrawals should not be permitted because the commission had no control over how information provided by staff would be interpreted or reproduced.

Mr. Reinhart stated that the issue was in a gray area since the commission's multi-part mission was to educate and interpret the ordinance. He said that it was foreseeable that a municipality could make an inquiry and not ask whether their concern was consistent with the ordinance. He expressed concern that the public record was not clarified, and he asked whether a general public statement would be released to the press and Mr. Schultz, who could choose not to publish the press release.

**MOTION to authorize staff to send the letter as drafted by Edward Rodgers and Alan Johnson to Randy Schultz, and to recommend that the letter be issued as a public statement from the Commission on Ethics. Motion by Bruce Reinhart, and seconded by Robin Fiore.**

Mr. Farach suggested that the letter also be forwarded to Riviera Beach in the event the letter was not printed or published by the *Palm Beach Post*.

## **X. – CONTINUED**

Judge Rodgers reiterated that the record needed to be clarified so that the municipalities were not misinformed about the commission's position about slush funds.

**UPON CALL FOR A VOTE, the motion carried 4-0. Ronald Harbison absent.**

### **XI. REVISED CODE OF ETHICS AND COMMISSION ON ETHICS ORDINANCES**

**XI.a. BCC Agenda Item 4.H.1.**

**XI.b. BCC Agenda Item 4.H.2.**

Mr. Johnson stated that:

- The City of West Palm Beach had recommended several carveouts to the Code.
- The COE drafting committee voted to permit direct solicitation by employees and officials. To promote transparency, it was required that a logbook be created to document the date, official, and contribution.
- The log should be submitted to the COE within 30 days of the event, or within 30 days of the solicitation. The information would then be posted on the COE Website.

Judge Rodgers suggested that more efforts would be taken to set the COE apart from the Inspector General (IG) since members of the public often confused each entity as one and the same.

Mr. Johnson said that at speaking engagements throughout the county, he addressed the separation of functions of the IG, whose powers were to probe and issue reports, versus the COE whose powers were to act on ethics violations.

Dr. Fiore stated that:

- Although the funds in the Riviera Beach account were ultimately given to charities, the corrupt potential still existed.

## XI – CONTINUED

- She was writing professionally about the purification of funds given to charities, and in the near future, a critique of the subject would be published in a journal of business ethics.

Mr. Johnson stated that:

- Any commission amendments to the Code should be submitted in the proper protocol through the referendum.
- The issue of the Code's effective date had not been settled, and he believed that on June 1, 2011, the COE ordinance should be enacted. The League of Cities had suggested October 1, 2011.
- The commission could indicate two proposed dates for the amended Code's enactment so they could be presented to the BCC.
- The IG ordinance enactment date was June 1, 2011. The County had agreed to advance reimbursable funds to that office through fiscal year 2011.

Mr. Reinhart said that he would not support Mr. Johnson's suggestions because the COE was not an elected body.

Judge Rodgers stated that the COE should indicate the ordinance's effective date since approximately one year was dedicated to its adoption. He said that if the COE allowed further procrastination then an issue of credibility could be created. He added that additional revisions to the Code could be made as the commission proceeded with its duties.

Mr. Farach stated that although it was imperative to enact the Code, the commission was a non-elected, non-political body that should not inject itself into the political process, which could tarnish the COE's integrity.

Mr. Johnson said that he wanted to advocate for a process by which a drafting committee was used to vet amendments to the Code.

Dr. Fiore stated that although she had no objections to Mr. Johnson's proposal about the drafting committee, she did not believe it was the COE's role to instruct the BCC in that regard.

**XI- CONTINUED**

Mr. Farach said the COE's lack of last minute lobbying stemmed from its intent to interpret the ordinance as drafted.

**XII. EXECUTIVE DIRECTOR COMMENTS**

**XII.a.**

Mr. Johnson said that once the amended Code was ratified, 20,000 pocket-sized ordinance guides would be printed and released to every County employee and official.

**IV. APPROVAL OF MINUTES FROM APRIL 7, 2011 – CONTINUED**

(CLERK'S NOTE: See pages 1-4 for earlier discussion on item IV.)

Administrative Assistant Gina Levesque stated that on page 16 of the April 7, 2011, minutes, the motion carried 3-1 with Ronald Harbison opposed, Edward Rodgers abstained, and Mr. Reinhart voted in favor.

Mr. Johnson stated that the minutes were officially clarified.

**XIII. PUBLIC COMMENTS – None**

**XIV. ADJOURNMENT**

**At 5:15 p.m., the chair declared the meeting adjourned.**

APPROVED:

\_\_\_\_\_  
Chair/Vice Chair

**MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS (COE)**

- I. CALL TO ORDER:** June 2, 2011, at 3:10 p.m., in the Commission Chambers, 6<sup>th</sup> Floor, Governmental Center, West Palm Beach, Florida.

Manuel Farach stated that he would be today's acting chair due to Judge Edward Rodger's absence.

**II. ROLL CALL**

MEMBERS:

Judge Edward Rodgers, Chair - Absent  
Manuel Farach, Esq., Vice Chair  
Dr. Robin N. Fiore  
Ronald E. Harbison  
Bruce E. Reinhart, Esq. - Absent

STAFF:

Mark E. Bannon, COE Investigator  
Alan S. Johnson, Esq., COE Executive Director  
Gina A. Levesque, COE Administrative Assistant  
Megan C. Rogers, COE Staff Counsel  
Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

Alan Johnson, Esq., COE Executive Director, stated that there was a quorum.

**III. INTRODUCTORY REMARKS**

Mr. Farach requested that cellular phones and other electronic devices be turned off. He added that comment cards were available for anyone wanting to speak, and the cards should be filed with the clerk prior to speaking.

**IV. APPROVAL OF MINUTES FROM MAY 5, 2011**

Mr. Johnson stated that:

- A procedure was instituted where staff would review the minutes with the recorded meeting for accuracy.
- The procedure would take place only if staff received the minutes the Friday before the next scheduled meeting.

#### IV. – CONTINUED

- Staff had reviewed the May 5, 2011, minutes within the last 48 hours, and the COE members were provided with a revised section.
- A copy of the minutes and the tabbed amendments would need to be filed.
- The minutes clerk was aware of the proposed changes and was making corrections subject to the COE's approval.
- Due to the last-minute submission, the COE could table the May 5, 2011, minutes approval and approve two sets of minutes at the July 2011 meeting.

Mr. Farach suggested that comments regarding the May 5, 2011, minutes could be taken at this time.

Ronald Harbison stated that he had noticed that some matters were postponed until all COE members were in attendance.

Mr. Farach responded that those postponed matters may need discussion as they arose during the meeting. He added that:

- Page 8, item VI.a., the first sentence contained the words, voting conflicts.
  - His recollection of the April 7, 2011, meeting was that the votes were not conflicts so much as COE members who decided not to vote due to an appearance of some potential connection.
  - If the word, conflict, was being used throughout the minutes as the technical phrase under Florida Statute, Section 286.012, he did not want the minutes incorrectly reflecting that there were conflicts.
  - He was unaware that any COE member had a true voting conflict at the April 7, 2011, meeting.

Mr. Johnson commented that:

- The matter involving voting conflicts appeared in the April 7, 2011, meeting where abstentions were made under advisory opinions.
- If he had stated the words, voting conflicts, it meant that voting conflicts were presented in terms of abstentions being taken.

## VI.a. – CONTINUED

- He recalled that Mr. Farach and Mr. Harbison had abstained from one of the April 7, 2011, advisory opinions, the vote had lacked a quorum, and the item needed to be brought back at the next meeting.

Mr. Farach requested that the sentence be amended to reflect that the April 7, 2011, advisory opinion had no true conflicts, rather, it was a quorum issue.

Mr. Johnson said that a more accurate statement would be that there were abstentions at the April 7, 2011, meeting, and Mr. Farach agreed.

Mr. Harbison commented that the term, conflict, would then become a technical term based on its definition within the Florida Statute itself, and the COE members should be careful not to use the word.

Mr. Farach stated that:

- He probably could have better stated the following sentence on Page 9, item VI.a.: The COE was in the uncomfortable position of either following or intentionally violating the statute. The sentence should read:

The COE was in the uncomfortable position of either following the statute and possibly creating an appearance of impropriety or intentionally violating the statute in order to avoid the appearance of impropriety.

- In the last sentence on page 9, item VI.a., he may have said the word, denigrate, but he meant to use the word, diminish.
- On page 10, second full paragraph, third line that began, extensively researched, the words, at the AG, should be inserted between the word, someone, and the word, who.

**MOTION to table approval of the May 5, 2011, minutes until the next scheduled COE meeting. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 3-0. Bruce Reinhart and Judge Edward Rodgers absent.**

## **V. PUBLIC COMMENT REVISION TO BY-LAWS**

Mr. Johnson said that:

- He believed that item V. had been previously tabled until all five COE members were present, and he suggested tabling it again until the July meeting.
- Staff's recommendation on the backup document titled, *Agenda Item V Public Comment Revision to COE By-laws*, was the only recommendation regarding item V.

**MOTION to table item V. Motion by Ronald Harbison, seconded by Dr. Robin Fiore, and carried 3-0. Bruce Reinhart and Judge Edward Rodgers absent.**

## **VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)**

### **VI.a. REQUEST FOR OPINION (RQO) 11-025**

Mr. Johnson stated that:

- Ralph DiGiacomo was a municipal software support analyst who asked whether he could maintain an outside business repairing computers.
- Some of his clients were co-workers; however, he maintained no contracts or transactions with the municipality where he worked.
- His computer repair work was performed during off-duty hours.
- Based on the Code of Ethics (Code), staff concluded that as long as he was not a vendor, bidder, proposer, or service provider for the municipality, Subsection 2-443 on contractual relationships did not apply.
- The advisory opinion stated that Mr. DiGiacomo should be careful not to use his official position to obtain a special financial benefit for himself, his outside business, or for a customer or a client.

**MOTION to approve the processed advisory opinion letter RQO 11-025 on the Consent Agenda. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 3-0. Bruce Reinhart and Judge Edward Rodgers absent.**

**VII. ITEMS PULLED FROM CONSENT AGENDA – None**

**VIII. PROPOSED ADVISORY OPINIONS**

**VIII.a. RQO 11-007**

Mr. Johnson stated that:

- The Town of Palm Beach (Town) Manager Peter Elwell had asked whether public safety employees and town officials could attend an annual appreciation event hosted by a local country club where they would receive lunch and complimentary use of the golf and tennis facilities.
- The host country club was not a vendor, lobbyist, principal, or employer of lobbyists within the Town.
- If no special treatment was given or other quid pro quo was exchanged in return for attending the event, the Code did not prohibit attendance; however, if the meal value and use of the facilities was greater than \$100, it would be a reportable gift. The manner of determining the gift value was contained in the County's Code, Section 2-444(g), which referred, in turn, to Florida Statute, Section 112.3148. Section 112.3148 had various valuation matrixes, one of which was 1) the meal's value was the total cost to the donor divided by the number of guests, and 2) the value of the facilities.

Mr. Harbison stated that if sundry items were handed out or if a raffle was promoted, the source of the items and the raffle should be disclosed if they were lobbyists or other vendors.

Dr. Fiore suggested that staff research whether the annual appreciation event was sponsored. She added that it was reasonable to say in the letter that the guidance did not take into account any sponsorship by any entity other than the golf club.

Mr. Johnson said that a sentence could be added in the summary stating that the advisory opinion letter did not address sponsors or other entities that were donating gifts.

### **VIII.a. – CONTINUED**

COE Investigator Mark Bannon clarified that:

- He had spoken to Mr. Elwell and the individual who ran the golf course, and the board or the members of the golf course or the country club itself supported the event.
- People invited to the event were the Town's police officers and fire rescue employees, but elected officials such as the Town's commissioners, mayor, manager, and some support staff were also invited.

Manuel Farach stated his concern that someone under the Town council's jurisdiction who was invited to the event could attempt to influence favor.

Mr. Johnson clarified that should the Town's council members attempt to curry favor, they were not vendors or lobbyists, and there was no prohibition as long as it was transparent and any gift valued at more than \$100 was reported.

**MOTION to approve the proposed advisory opinion letter RQO 11-007. Motion by Dr. Ronald Harbison, seconded by Dr. Robin Fiore, and carried 3-0. Bruce Reinhart and Judge Edward Rodgers absent.**

### **VIII.b. RQO 11-021**

Mr. Johnson stated that:

- The advisory opinion involved the County's Community Rating System coordinator, whose position required the organization of public expositions that involved the County's Floodplain Management Program.
- The employee had asked whether she could participate in the annual Flood and Hurricane Awareness Exposition (Expo), which included public and private sector exhibitors, subject matter experts from various federal agencies, media, nonprofit, and emergency management organizations.
- Organizing the event involved the solicitation and acceptance of donations from nonprofit organizations and community businesses that may be vendors with the County or that may transact business with the County or with local municipalities.

### **VIII.b. – CONTINUED**

- The purpose of the donated gifts was to promote public attendance at the Expo. No County or municipal employee or their families, household members, or relatives involved in the solicitation would be eligible to receive solicited prizes.
- The Code's gift law exception stated that:

Gifts solicited or accepted by County or municipal officials or employees, as applicable, on behalf of the County or municipality in the performance of their official duties for use solely by the County or municipality for a public purpose.
- Staff recommended that if special financial benefit was received by the County employee or related persons or entities, the prohibitions against solicitation or acceptance of the vendors' gifts did not apply under the specific circumstances.

**MOTION to approve the proposed advisory opinion letter RQO 11-021. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 3-0. Bruce Reinhart and Judge Edward Rodgers absent.**

### **VIII.c. RQO 11-022**

Mr. Johnson stated that:

- The advisory opinion involved a County Department of Airports assistant airport properties manager who was married to an airline pilot.
- The individual's husband was employed by AirTran Airways, a Palm Beach International Airport tenant, and she had asked whether certain benefits received by her husband were prohibited under the Code.
- Due to a Southwest Airlines merger, the benefit package included that family members could attend a Southwest Airlines' employee orientation conference and the employee's family could fly for free on standby.
- The question arose whether airlines were considered County vendors because they were tenants of a County facility.
- Staff's initial advisory opinion letter stated that the airlines were considered vendors; therefore, certain restrictions may apply.

### VIII.c. – CONTINUED

- On closer statute inspection, the term, vendor, was someone who vended, sold, rented, or leased to the County.
- Staff moved to withdraw the first advisory opinion letter.
- The free flights were not considered a separate gift and did not need to be reported because they were part of a compensation package.
- The orientation conference was not part of a compensation package; therefore, hotel accommodations, meals, or gifts provided at the orientation conference would be reportable gifts if they exceeded \$100.
- The advisory opinion letter cautioned the County employee that when dealing with the tenant, she must ensure that she did not benefit in any way.

Mr. Harbison said that if the County employee was any other County employee or a County airport employee and she accompanied her spouse on a convention where the spouse's company or industry essentially picked up the tab, including hotel rooms and meals, he was troubled that that was beyond the point of reasonableness because he was unsure how that process could be abused.

Dr. Fiore stated that the County employee's supervisor should be responsible for acknowledging the employee's sensitivity in dealing with tenant leases, for reviewing the gift reports, and for determining the employee's involvement in certain department activities.

Mr. Johnson commented that the State's administrative codes had interpreted that it would not be a gift when both spouses who worked for a governmental entity were independently invited to a function.

### **MOTION to approve the revised proposed advisory opinion RQO 11-022. Motion by Dr. Robin Fiore, and seconded by Ronald Harbison.**

Mr. Farach requested clarification whether, in using the valuation formula set forth by Mr. Johnson, any gift over \$100 needed to be refunded by the requesting party to Southwest Airlines.

### **VIII.c. – CONTINUED**

Mr. Johnson responded that:

- The language referred to by Mr. Farach was contained in the first advisory opinion.
- The revised advisory opinion letter had determined that it was not considered a gift, and a refund was unnecessary.

Mr. Johnson read the following summary from the missing page of the distributed revised proposed advisory opinion:

In summary, based on the facts and circumstances you have submitted, the Palm Beach County Code of Ethics does not prohibit you from attending the Southwest Airlines conference. Southwest Airlines has contracts with the County, but is not a County vendor. A vendor is defined as a person or entity that leases or sells property to the County. Here, Southwest leases property from the County. You must report any gift in excess of \$100 received from Southwest on your annual gift reporting form. Flight privileges obtained through your husband's employment contract are not gifts for purposes of the Code of Ethics and may be accepted in accordance with the terms of his contract. You must take great care not to give Southwest or AirTran a special financial benefit. Finally, you may not accept anything of value because of an official action taken or duty performed.

Dr. Fiore asked whether anything regarding the trip to the Southwest orientation was considered a gift for the County employee.

Mr. Johnson responded that the flight was not considered a gift, and because the flight was part of the compensation package, the County employee could go anywhere as part of her spouse's contract.

**UPON CALL FOR A VOTE, the motion carried 3-0. Bruce Reinhart and Judge Edward Rodgers absent.**

**VIII.d. RQO 11-023**

Mr. Johnson stated that:

- Commissioner Aaronson had submitted a letter asking whether he could raise funds for a political party without violating the Code.
- Political contributions specifically authorized by state or federal law were exempt from the gift definition within the Code.
- The Code did not prohibit a County official from soliciting or accepting campaign contributions as long as Commissioner Aaronson did not use his official position to obtain a special financial benefit within the meaning of the Code or otherwise corruptly misuse his office as set forth in Section 2-443(a)(b).

Mr. Farach asked whether there were State and federal laws that prohibited solicitation while in an official capacity, meaning, a County employee could not call potential donors from his or her office in the County commission chambers.

Mr. Johnson responded that when working for government, an employee could not pick up a governmental phone and solicit from a governmental building. He added that it could be a felony if willfully done.

Mr. Farach suggested that a clarification could be inserted into the advisory opinion letter saying that State and federal laws prohibited solicitation while an individual served in an official capacity.

Mr. Johnson stated that he would add Mr. Farach's suggested language to the advisory opinion letter before its release, along with the State election law statute that prohibited use of County facilities or property to campaign.

Dr. Fiore asked how someone in an official position, who was taking an active role in a campaign, was not using their public office.

Mr. Johnson responded that the Code's laws stated that anyone in an official position could not use their office to give someone a specific benefit or could not corruptly use their office. He added that:

- The Code's laws clarified that there was a State and federal constitutional right to campaign or solicit campaign contributions.

**VIII.d. – CONTINUED**

- Any manner of solicitation on public property was all right as long as someone did not use their staff, public phones or public computers.
- It was a matter of free speech, and someone could state who they were.

**MOTION to approve the proposed opinion letter RQO 11-023 as amended to include Alan Johnson’s revision as discussed. Motion by Ronald Harbison, and seconded by Dr. Robin Fiore.**

Dr. Fiore clarified that her affirmative vote indicated that she believed Mr. Johnson had correctly interpreted the statutes; not an affirmative vote that she approved Commissioner Aaronson’s use of his position.

**UPON CALL FOR A VOTE, the motion carried 3-0. Bruce Reinhart and Judge Edward Rodgers absent.**

**VIII.e. RQO 11-024**

Mr. Johnson stated that:

- Commissioner Aaronson had submitted an additional letter asking whether he could accept tickets to a charitable event where he would be an invited guest speaker.
- The tickets’ value was \$400, and the event’s sponsor was a nonprofit association that did not employ County lobbyists. The tickets were offered by the charitable event’s chairman who was not a vendor or an employer of lobbyists within the County.
- The newly revised Code contained a specific exception in Section 2-444(g)(1)i. where Commissioner Aaronson would not be prohibited from accepting the tickets and attending the event. Whether or not the nonprofit association sponsor was a County vendor, it could not employ a lobbyist pursuant to the exception in Section 2-444(g)(1)i.

Dr. Fiore clarified that the advisory opinion letter referenced Section 2-444(f)(1); Mr. Johnson stated that he would review Dr. Fiore’s clarification.

### VIII.e. – CONTINUED

Mr. Bannon said that:

- The Seminole Region Club Managers Association (SRCMA) was an organization of club managers.
- The SRCMA was part of the Club Managers Association of America who managed golf and yacht clubs.
- The SRCMA covered the counties of Miami-Dade, Broward, and Palm Beach.
- The charity golf tournament was the sponsor and was annually registered with the State as a nonprofit, charity organization.
- The SRCMA was not a County vendor and did not hire County lobbyists.

Mr. Johnson stated that:

- For transparency purposes, the tickets would be considered a gift; therefore, the \$300 in tickets, which would be in excess of the \$100 gift law, was reportable.
- The COE Drafting Committee discussed at length these types of charitable events and whether it was a public purpose to allow public officials at these events.
- A specific carve out stated that if the event was a charitable, transparent event being run by a nonprofit organization and if the tickets were for public admission, as long as the tickets were given to a public official or employee by a nonvendor, nonlobbyist, or a nonemployer of a lobbyist on behalf of the charitable organization or the event itself, the tickets were permissible but reportable.

Dr. Fiore said that the charity itself was zero until someone contributed money to the charity.

Mr. Bannon clarified that the SRCMA Charity Golf Tournament's 2011 executive director was also a member of the SRCMA and a manager of the Boca West Golf Club.

### VIII.e. – CONTINUED

Dr. Fiore stated that it was important to know who paid for the tickets because it would be considered money laundering if the tickets did not come from the charity but from whoever contributed to the charity.

Mr. Johnson responded that:

- Dr. Fiore's assumption would be correct if the entity that distributed the tickets also raised the funds and contributed to the charity.
- The Code interpreted that separation was necessary between any contributor who could be a vendor, lobbyist, or the principal of a lobbyist, and the organization itself.

Dr. Fiore said that the advisory opinion letter should not state that the tickets came from the SRCMA Charity Golf Tournament's chairman as indicated in the last sentence on page one.

Mr. Johnson stated that:

- The language was included to establish who physically gave the tickets to the charity.
- The following sentence could be added to the end of page 1:

Notwithstanding the fact that funds solicited or accepted by the charitable organization may have come from vendors, lobbyists, principals, or employers of lobbyists, the tickets given in this manner are not a violation or prohibited by the Code of Ethics.

Dr. Fiore stated that she agreed with Mr. Johnson's suggested sentence.

Mr. Farach said that the advisory opinion may need to reflect that no evidence was provided whether the tickets were actually given by lobbyists or vendors.

Mr. Johnson clarified that the Code only required that County employees or officials who solicited, or indirectly allowed someone else to solicit on their behalf, needed to retain a log regarding those solicitations.

Mr. Farach suggested that proposed advisory opinion letter RQO 11-024 could be rewritten and brought back at the next scheduled COE meeting.

### **VIII.e. – CONTINUED**

Mr. Harbison commented that if the proposed advisory opinion letter was issued and a complaint with accompanying fact patterns and supporting investigations was later filed showing that the event was a ruse, that would not preclude the COE from pursuing an ethics code violation.

Mr. Johnson said that the charitable event would take place June 12, 2011, so the advisory opinion letter could not be tabled.

Mr. Farach stated that Dr. Fiore's concerns could be addressed by using the following model language:

We can't investigate, nor have you disclose to us the source of the funds that drive or fund this charity. And please keep in mind that, as with all gifts, as with anything having to do with the Code, there's an overriding quid pro quo element to that. Even though you may meet the technical requirements of the Code, if there is corrupt intent or a quid pro quo plan or scheme in place, that will not meet the requirements of the Code.

Mr. Johnson suggested using the language from advisory opinion letter RQO 11-022 that stated in effect: You may not accept anything of value because of an official action taken or duty performed, and be mindful that this does not eliminate your obligation that you not give something in return for this benefit. He said that he would also include language that the source of the funds was unknown and should be taken into consideration.

Dr. Fiore reiterated including language that although it was a charitable event, it did not preclude requiring someone from being careful about quid pro quo.

Mr. Farach suggested a five-minute break to formulate the language with staff.

### **RECESS**

**At 4:39 p.m., the vice chair declared a recess.**

## RECONVENE

**At 4:54 p.m., the meeting reconvened with Manuel Farach, Dr. Robin Fiore, and Ronald Harbison present.**

### VIII.e. – CONTINUED

Mr. Johnson requested that Assistant County Attorney Leonard Berger discuss how the State handled straw man, nonprofit situations similar to advisory opinion RQO 11-024.

Mr. Berger stated that:

- The COE Drafting Committee attempted to create a carve out where individuals could attend functions as long as the function ticket was not handed to the official by a lobbyist or a vendor. The concept was that when a lobbyist or vendor handed a ticket to the official, that was when good will was generated, and that was when the improper influence someone was trying to avoid happened.
- The State's administrative code contained helpful examples.
- The County's Code said that, When in doubt, you can feel free to count on the examples and the rules in Florida's administrative code in interpreting issues of gift valuation whether you have a gift or not.
- A State Code example was that a lobbyist or the principal of a lobbyist could not channel gifts through a "straw man" to bypass the law.
- County staff attempted to combine and balance the State's rules with the County's laws.
- The language in RQO 11-024 was consistent with the County Code's language.
- Regardless of how the language was carved, if quid pro quo existed, the State's and the County's laws were being violated.

**VIII.e. – CONTINUED**

Dr. Fiore stated that the proposed advisory opinion letter's first sentence sounded more like permitting rather than discouraging, and there was no caution added. She suggested that Mr. Johnson's proposed, sentence that began, Notwithstanding, could read:

Funds solicited or accepted by the charitable organization may have come from vendors, lobbyists, principals, or employers of lobbyists. While the Code of Ethics does not prohibit such a gift, you must take great care not to...

**MOTION to approve the proposed advisory opinion letter RQO 11-024 as amended to include the sentence read by Dr. Robin Fiore, and to include the restated summary language as discussed. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 3-0. Bruce Reinhart and Judge Edward Rodgers absent.**

**VIII.f. RQO 11-026**

Mr. Johnson stated that:

- The advisory opinion involved the City of Greenacres (Greenacres) Leisure Services Department director who oversaw Greenacres' management of facility rentals and usage.
- The municipal employee asked whether a conflict arose when a local college where she was also a part-time instructor utilized a Greenacres' classroom facility.
- Greenacres' policy was to not charge other agencies for use of their facilities; however, the use was during nonbusiness hours. The college, therefore, was charged a fee for staffing the classroom.
- All facility rental and facility agreements were coordinated and maintained by other Greenacres' personnel. The director was not involved with those staffing issues, nor did she receive additional compensation from Greenacres or from the college for using the Greenacres facility as a classroom.

### **VIII.e. – CONTINUED**

- Staff recommended holding that the Code exempted all governmental entities from the outside employment definition; therefore, the college or State facility was not an outside employer of the municipal employee, and there was no prohibited, contractual relationship involved with her employment.
- Since the municipal employee did not use her official position to gain a special financial benefit from the arrangement with the college, the public college's use of the Greenacres' facility did not violate the Code, even with her dual employment with Greenacres and the college.

**MOTION to approve proposed advisory letter RQO 11-026. Motion by Ronald Harbison, seconded by Dr. Robin Fiore, and carried 3-0. Bruce Reinhart and Judge Edward Rodgers absent.**

### **IX. ANNUAL REPORT**

Mr. Johnson stated that he was proud of his staff for completing the COE's first annual report. He added that:

- Although there was no statutory requirement to issue annual reports, COE staff felt that it was important to inform the public of the COE's status.
- The COE's 2010-2011 Annual Report would be distributed within the county and to every ethics program in the country.
- The COE staff found that Miami-Dade County's 2006 Annual Report was very instructive and helpful.
- There were no costs involved in producing the annual report because the County handled the printing.
- The annual report would be available on the COE's website in PDF format.

Mr. Farach requested that the annual report be electronically distributed to save funds.

## IX. – CONTINUED

Mr. Johnson stated that:

- The COE had a unique opportunity to partner with some of the local colleges.
- In 2012, Palm Beach State College would include the COE in its 200-hour graphic design internship program.
- A November 2011 ethics awareness day proclamation would be going before the Board of County Commissioners.

**MOTION to approve the Palm Beach County Commission on Ethics 2010-2011 Annual Report as an official document. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 3-0. Bruce Reinhart and Judge Edward Rodgers absent.**

## X. SOCIAL MEDIA OUTREACH EFFORTS

Mr. Johnson stated that:

- When performing overviews and training municipalities/civic groups, one key part of the presentation was discussing the important function of training and outreach.
- Averting a Code violation was not only positive, it also raised the County's accountability level.
- With COE approval today, COE staff would be launching the new technology program, Twitter, as part of its outreach function.

The COE staff counsel, Megan Rogers, stated that Twitter was an information network used by millions of people around the world where messages of up to 140 characters could be written, read, and shared. She added that:

- Twitter was a mixture of social networking, messaging, and microblogging.
- While Twitter initially gained publicity through use by celebrities and other media figures, it was regularly used by governmental organizations and businesses to promote a variety of items.

## X. – CONTINUED

- One unique feature of the COE’s Twitter feed was that its Twitter followers would receive automatic COE updates on their mobile phones, computers, and in their email accounts.
- The COE’s Twitter feed would be titled, “@pbcethics.”
- The COE did not have a social media policy in place.
- Only COE tweets would be posted. Individuals would be unable to post inappropriate tweets.

Mr. Farach requested that:

- The COE’s social media outreach include Facebook and LinkedIn.
- The COE staff draft and implement a media policy before the Twitter feed went live.

Ms. Rogers clarified that only individuals who could log into the COE’s Twitter feed could post tweets.

Dr. Fiore expressed concern that interns would be permitted to post to the COE’s Twitter feed. Mr. Farach suggested that the concern could be addressed in the COE’s media policy.

Ms. Rogers said that:

- The COE Twitter feed could follow Twitter models such as the Department of Justice and the Federal Bureau of Investigation.
- Initially, the COE Twitter feed would post about COE meetings, new information to the COE website, available training, and anything new that would normally be seen on the COE website.
- Going forward, the COE staff could develop a policy to link to articles from other Commissions on Ethics, including the State’s Commission.

Mr. Farach suggested that it would be advisable to consider placing someone in charge of the COE’s social media.

## **X. – CONTINUED**

Mr. Johnson said that:

- Several months ago, Ms. Rogers had volunteered to handle the COE's social media.
- The COE staff recommended tabling the item to develop and bring back COE Twitter feed procedures at the July COE meeting. The Twitter feed would then go live at that point.

Dr. Fiore requested that the COE staff continue to post on the simulated COE Twitter feed.

Ms. Rogers stated that she would create another simulated COE Twitter feed and add the COE members as followers.

## **XI. EXECUTIVE DIRECTOR COMMENTS**

### **XI.A.**

**DISCUSSED:** Abstention Opinions.

Mr. Johnson commented that:

- The COE staff was still waiting for the abstention opinions from the State's COE and attorney general.
- A second letter had been sent to the State's COE regarding nonadjudicatory legislative and administrative matters.
- The State's attorney general would be reviewing the due process issues.

### **XI.B.**

**DISCUSSED:** Vendor Database.

Mr. Johnson stated that a database was needed to access the list of County and municipal vendors. He added that:

- Only two or three County municipalities possessed a full vendor database that was accessible to the public; one or two other municipalities had vendor databases, but they were difficult to navigate.

## **XI.B. – CONTINUED**

- The County had 11,000 qualified vendors on its three-year vendor list.
- The COE staff needed to work with County staff in creating a manageable public vendor database.
- The intent was to have a working vendor database within the next 12 months.
- The COE ultimately would be tasked with maintaining the vendor database.

Dr. Fiore stated that the day-to-day vendor database updating responsibility should be a County function because it would be a County database.

Mr. Johnson responded that either way, maintenance was necessary. He added that he preferred to link the County vendors' database with the municipalities.

Mr. Farach said that a better approach would be to perform a business case analysis.

Mr. Johnson suggested hiring a data entry person if funds were available in the COE's budget and the hourly cost was nominal.

Dr. Fiore expressed concern regarding quality control issues when hiring an hourly data entry person, and Mr. Johnson said that he would bring back his findings regarding a vendor database.

## **XII. PUBLIC COMMENTS – None**

(This space intentionally left blank.)

**XIII. ADJOURNMENT**

**MOTION to adjourn the meeting. Motion by Ronald Harbison, seconded by Dr. Robin Fiore, and carried 3-0. Bruce Reinhart and Judge Edward Rodgers absent.**

**At 5:38 p.m., the vice chair declared the meeting adjourned.**

APPROVED:

---

Chair/Vice Chair

## PUBLIC COMMENT REVIEW-Legal analysis

### (From April 7, 2011 agenda)

Pursuant to COE directive at the meeting of March 2, 2011, staff has completed a legislative, judicial and executive review regarding the issue of public comment within commission meetings. (The matter was heard and continued on May, 5, 2001 and June 2, 2011).

#### Staff legal Analysis:

§ 286.011, Florida Statutes (the sunshine law) does not specifically require that public meetings allow for public comment. There are a number of Florida Statutes relating to specific boards and commissions requiring that public testimony or comment be allowed. These statutes pertain to legislative matters or executive functions where due process issues are involved such as the right of a party to be heard in a quasi-judicial hearing before a special master or where a local government entity conducts a duly noticed public hearing. §163.3215, Florida Statutes.

Florida courts have extended the concept of public meetings to being “a marketplace of ideas, so that the governmental agency may have sufficient input from the citizen who are going to be affected by the subsequent action of the [public agency]”, referring to the “citizen input factor” and stating that public input was an important aspect of public meetings. **Town of Palm Beach v. Gradison, 296 So.2d 473 (Fla. 1974), Krause v. Reno, 366 So.2d 1244 (3<sup>rd</sup> DCA 1979).**

However, while the right to meaningful public comment is secure within legislative matters, it has not been extended to executive functions. For example, while determining that a public university academic search committee, whose function was to screen and recommend candidates for dean, was a sunshine committee with respect to the open meeting requirements of § 286.011, the court rejected the public’s right to comment or participate. “...nothing in this decision gives the public the right to be more than spectators. The public has no authority to participate in or to interfere with the decision-making process.” **Wood v. Marston, 442 So.2d 934 (Fla. 1983)**

Attorney General Opinions have consistently stated that public participation in open meetings is required only when public comment is either specifically mandated by statute or when the meeting involves a legislative function. “...this office has recognized that when certain committees are carrying out certain executive functions that traditionally have been conducted without public input, the public has the right to attend but may not have the authority to participate. On the other hand, if a committee or board is carrying out legislative functions, this office has advised that the public should be afforded a meaningful opportunity to participate at each stage of the decision-making process.” **AGO Inf. Op. To Honorable John Thrasher, Jan. 27, 1994, AGO Inf. Op. To David G. Conn, May 7, 1987.**

Additionally, notwithstanding the right to public comment in specified public hearings or other legislative matters, “...reasonable rules and policies which ensure the orderly conduct of a public meeting and which require orderly behavior on the part of those persons attending the meeting may be adopted by the board or commission.” **AGO Inf. Op. To Joseph P. Caetano, July 2, 1996.** Several AGO informal opinions quoted a federal appellate court case recognizing that “to deny the presiding officer the authority to regulate irrelevant debate and disruptive behavior at a public meeting would cause such meetings to drag on interminably, and deny others the opportunity to voice their opinions.” **Jones v.**

**Heyman, 888 F. 2d 1328 (11<sup>th</sup> Cir. 1989).** The **Jones** court acknowledged that the city commission chair's actions to confine the speaker to the agenda, and to have the speaker removed when his behavior became disruptive constituted a reasonable time, place and manner regulation and did not violate the speaker's first amendment rights.

Several attorneys representing municipalities were canvassed on this issue. All opined that public comment was statutorily required only during noticed public hearings on legislative and quasi-judicial matters of a legislative nature (sworn testimony). Executive functions of a board or commission did not require public hearing. However, even when not required, the board or commission may allow public comment on non-legislative matters at their discretion. In a search of listed county advisory boards and commissions, of the 10 boards with posted agendas or minutes, 5 provided no public comment and 5 provided for public comment at the conclusion of the meeting. A number of advisory boards invite public comment on listed agenda items without noting this on the agenda or providing a formal public comment section.

This matter has been continued forward from June 2, 2011 to July 7, 2011 for further consideration by the entire commission.

## **AGENDA ITEM VI PUBLIC COMMENT REVISION TO COE BY-LAWS**

Pursuant to COE directive at the meeting of April 7, 2011, and again on May 5, 2011 and June 2, 2011, staff is submitting a proposed change to the Commission on Ethics bylaws, Article VIII-Meetings by adding Section 10: Public Comment.

### **Staff Analysis:**

At the COE meeting of April 7, 2011, staff submitted a Public Comment Review of statutory, executive and judicial authority regarding the appropriateness of public comment during advisory and code enforcement board meetings (attached for reference). On May 5, 2011 the COE discussed the issue and directed staff to revise and re-submit its proposed by-laws changes. On June 2, 2011, the COE continued the matter for consideration before the entire COE.

### **Staff Recommendation:**

Staff recommends that the commission revise its by-laws to add Article VIII, section 10 to read as follows:

Section 10: Public Comment

*Public comment is permitted on all agenda items with the exception of probable cause proceedings and final hearings involving complaints before the commission. The chairperson shall have the discretion to limit public comment as necessary, based upon time, manner and decorum considerations.*

## VII. AMENDMENT TO RULES OF PROCEDURE/ ADVISORY OPINIONS

### Staff Analysis:

Commission on Ethics Rule of Procedure states as follows:

#### 2.4 Advisory Opinion Intake

f) Once submitted, an advisory opinion request may not be withdrawn by the submitting party.

Effective June 1, 2011, the Palm Beach County Commission on Ethics Ordinance was amended as follows:

#### Sec. 2-260.9 Advisory Opinion.

Any person within the jurisdiction of the commission on ethics, when in doubt about the applicability or interpretation of any provision within the commission on ethics' jurisdiction to himself or herself in a particular context, may submit in writing the facts of the situation to the commission on ethics with a request for an advisory opinion to establish the standard of public duty, if any. *A person requesting an advisory opinion may withdraw the request at any time up to ten days before the commission on ethics convenes a public meeting to consider the request.* An advisory opinion shall be rendered by the commission on ethics on a timely basis, and each such opinion shall be numbered, dated and published. (emphasis added)

### Staff Recommendation:

That the Commission on Ethics amend its Rules of Procedure to reflect the revised ordinance as follows:

#### 2.4 Advisory Opinion Intake

f) An advisory opinion request may be withdrawn by the submitting party in writing no later than ten days prior to the public meeting wherein the commission on ethics is to consider the request.

# UPDATE ON VENDOR DATABASE



### Employee Self Services

- Leave Request
- Tuition Reimbursement
- Universal Password System
- Active Vendors Search



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PBC Inside Calendars

#### Employee Self Services

- Leave Request
- Tuition Reimbursement
- Universal Password System
- Active Vendors Search

#### Employee Info System

- Compensation and Records
- eGuide
- HRIS
- Little Black Book
- MyBenefits
- TED

#### Upcoming Events

- Financial Workshops
- Retirement Seminars
- HR Training

#### Communities

- PBC Leadership Community
- PBC Technology Planning

#### County Discounts

- Get a 15% Discount on Cell Phone Services
- Take Advantage of Dell and HP Employee Discounts

#### Items For Sale

- BCC County Store
- PBC Classified Ads



County Administrator  
*Bob Weisman*

- Pet of the Week: Chulo Needs a Home!
- Welcome New Hires
- Daisy Finds a New Home through ACC E-Newsletter
- Retirement Tip: Second Election
- Dike Breach Exercise Keeps Emergency Personnel Sharp
- Upcoming Retirement/Financial Workshops
- County Staff Celebrates South Lake Worth Inlet Project Completion
- Off the Clock – Palm Tran Employees Stay on the Go
- ERM Launches Memorial Bench Donation Program
- ERM Needs Natural Area Cleanup Volunteers
- 34th Annual Bon Festival at the Morkami
- Dear Dr. Marcy: Completely Stressed Out
- App Available for the County Library System
- What's Happening
- Employees Can Now View Paychecks from Home

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Commission on Ethics



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# Palm Beach County

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- 07-06-11 Pet of the Week: Chulo Needs a Loving Home
- 07-01-11 BCC to Hold Budget Workshop July 11 to Set Millage Rates
- 06-29-11 DOSS Announces USDA Child and Adult Care Food Program
- 06-29-11 County's Ethics Initiative Earns NACo Achievement Award
- 06-29-11 ERM Needs Natural Area Cleanup Volunteers
- 06-24-11 App Available for the County Library System
- 06-24-11 EDO Celebrates Completion of Circle S Pharmacy Downtown Pahokee Revitalization Project
- 06-24-11 County Commissioners Approve Memorial Benches for Natural Areas
- 06-16-11 What's Happening
- 06-10-11 Summer Fun at County Pools and Waterparks

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# Palm Beach County

## Registered Vendors

### Registered Vendors

Name

Total Number of Records: 10601

Legal Name	DBA Name	Street	City	State	Zip	Contact Name	Phone/Fax	Email	Click to View
07-12690 Inc.	SCS Interactive, Inc.	12000 East 47th Avenue Suite #400	Denver	CO	80239	Ron Helmuth	Phone: 303-539-8533 Fax: 303-539-8599	info@scsinteractive.com	<a href="#">Services</a>
1 Stop Electronics Center, Inc.	1 Stop Camera 'n Electronics	1100 Coney Island Avenue	Brooklyn	NY	11230	Albert Fouerti	Phone: 718-249-1211 Fax: 718-724-1498	albert.f@1stopcamera.com	<a href="#">Services</a>
10-18 Public Safety Equipment, LLC		4505 SE Commerce Avenue	Stuart	FL	34997	Donna Rueth	Phone: 772-419-2011 Fax: 772-419-2012	drueth@10-18pse.com	
11400 Inc.		2551 Horseshoe Road	Lancaster	PA	17601	Vicky Stephens	Phone: 717-392-7363 Fax: 717-392-8133	vstephens@11400inc.com	<a href="#">Services</a>
123 Happy Feet, Inc.		9123 North Military Trail, Suite #216	Palm Beach Gardens	FL	33410	Dahila Jones	Phone: 561-856-1231 Fax: 561-630-1549	djpalmbeach@yahoo.com	
1Fiber Optis Inc		51 Peters Canyon Road	Irvine	CA	92606	Nihar Bhatt	Phone: 714-665-9796 Fax: 714-665-9757	nihar@1fiberoptix.com	<a href="#">Services</a>
1ST NATIONAL OUTSOURCING PROPERTY MAINTENANCE SERVICE I		P O Box 540683	Lake Worth	FL	33454	Freds Bertrand	Phone: 561-723-7954 Fax: 561-432-2569	FFB005@AOL.COM	<a href="#">Services</a>
1st Fire & Security Inc.		1410 SW Old Dixie Highway	Vero Beach	FL	32962	Lena Andrews	Phone: 772-794-2220 Fax: 772-794-2204	Lena@1stfire.com	<a href="#">Services</a>
1st National Outsourcing Property Maintenance Services Inc		P O Box 540683	Lake Worth	FL	33454	Freds Bertrand	Phone: 561-723-7954 Fax: 561-432-2569	FFB005@aol.com	<a href="#">Services</a>
1st On Scene Fire & Emergency Services, Inc.		312 Jansen Avenue Suite 300	Johnstown	NY	12095	Walter Boynton	Phone: 518-762-6355 Fax: 518-762-0259	wboynton@1onscene.com	<a href="#">Services</a>
2 HSD		217 Ne 4th Street	Delray Beach	FL	33444-3828	Deactivate: Purvnia 07/02/2002	Phone: 407-276-7684 Fax:		
2 New Beginnings Inc		681 SW 14th Street	Boca Raton	FL	33486	Jason Williamson	Phone: 561-613-5958 Fax: 561-544-6024	jwilliamson2fa@yahoo.com	
208 Enterprises of South Florida, Inc.	208 Enterprises of South Florida, Inc.	11144 Winding Pearl Way	Wellington	FL	33414	Robert K. Purser	Phone: 561-601-6900 Fax: 561-753-8722	hp1320@comcast.net	<a href="#">Services</a>
211 Palm Beach/Treasure Coast, Inc.		415 Gator Drive	Lantana	FL	33462	Mindy Gonzalez	Phone: 561-533-1096 Fax: 561-547-8639	mindy.gonzalez@211pbtc.org	<a href="#">Services</a>
21ST CENTURY PHOTO SUPPLIES, INC.		4700 Williamsburg Lane Ste 306	La Mesa	CA	91942	Tisha Weston	Phone: 888-714-3456 Fax: 619-644-2568	centurytw@att.net	<a href="#">Services</a>

1 2 3 4 5 6 7 8 9 10 ...

Total Number of Records: 10601



# Palm Beach County

Registered Vendors

## Registered Vendors

Name

Total Number of Records: 4

Legal Name	DBA Name	Street	City	State	Zip	Contact Name	Phone/Fax	Email	Click to View
HOME DEPOT #6330		1550 Palm Beach Lakes Blvd	West Palm Beach	FL	33401		Phone: 561-683-7221 Fax: 561-242-1572		<a href="#">Services</a>
MOBILE HOME DEPOT INC		2453 North Military Trail	West Palm Beach	FL	33409	Richard Guzman	Phone: 561-689-7260 Fax: 561-689-1603		<a href="#">Services</a>
Mobile Home Depot		2453 North Military Trail	West Palm Beach	FL	33409	Lorraine Ridolfo	Phone: 561-689-7260 Fax: 561-689-1603		<a href="#">Services</a>
THE HOME DEPOT		6800 Okeechobee Blvd	West Palm Beach	FL	33411		Phone: 561-478-0783 Fax: 561-712-5892		<a href="#">Services</a>

Total Number of Records: 4

# CURRENTLY UNDER CONSTRUCTION FOR FY 2012/2013

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## **Vendor Self-Service (VSS) module**

- Advantage Financial System to collect information on prospective vendors who are not included in the list of registered vendors
- Includes vendors who are proposing or bidding on County procurement solicitations



## **IX. SECOND REQUEST TO ATTORNEY GENERAL FOR CONFLICT OF INTEREST ADVISORY OPINION**

Staff analysis:

Pursuant to COE request for advisory opinion regarding the applicability of § 286.012, Florida Statutes, to conflict of interest issues confronting the Commission on Ethics, responses were received from both the State Commission on Ethics and the Florida Attorney General staff (attached).

The State Commission on Ethics advised that, in quasi-legislative or administrative matters, ethics commissioners may not abstain due to conflicts of a non-financial nature. The Attorney General response adopted the State COE position. However, the question posed to the Attorney General involved non-financial abstentions in quasi-judicial matters involving due process rights of individuals accused of ethical violations. The “informal” Attorney General response did not address this distinction. Based upon State Commission on Ethics precedent, the Florida COE will not consider quasi-judicial matters as they relate to interpretation of § 286.012, Florida Statutes.

Staff recommendation:

That the COE re-submit a specific request for a formal opinion from the Attorney General regarding the application of § 286.012 to non-financial bias and prejudice abstentions in quasi-judicial proceedings.



OFFICE OF THE ATTORNEY GENERAL  
Opinions Division

STATE OF FLORIDA

PAM BONDI  
ATTORNEY GENERAL

PL 01 The Capitol  
Tallahassee, Florida 32399-1050  
Telephone (850) 245-0158  
Fax (850) 922-3969

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June 9, 2011

Mr. Edward Rodgers  
Chairman, Palm Beach County  
Commission on Ethics  
2633 Vista Parkway  
West Palm Beach, Florida 33411

Dear Mr. Rodgers:

On behalf of a majority of members of the Palm Beach County Commission on Ethics, you have requested our assistance in determining whether a member of a local commission on ethics who is present at a meeting of the board may abstain from voting on a measure to avoid creating an appearance of impropriety. Attorney General Bondi has asked me to respond to your letter.

Initially, I must advise you that this office is limited by section 16.01(3), Florida Statutes, to providing legal opinions on questions of state law. Thus, the discussion herein is based on an examination of statutes and case law involving section 286.012, Florida Statutes. This office has no authority to comment on the procedures established by local ordinance for the conduct of meetings or hearings of the Palm Beach County Commission on Ethics. You may wish to discuss your concerns with the county attorney who can more fully explore any procedures established in the ordinance or charter provision creating the commission and describing its procedures.

Section 286.012, Florida Statutes, provides:

Voting requirement at meetings of governmental bodies.—No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a

Mr. Edward Rodgers  
Page Two

possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases, said member shall comply with the disclosure requirements of s. 112.3143.

Thus, the Legislature has determined that a member of a county board or commission may only abstain from voting "when, with respect to any such member there is, or appears to be, a possible conflict of interest under the provisions of" sections 112.311, 112.313, or 112.3143, Florida Statutes. It is a rule of statutory construction that express exceptions in a statute provide a strong inference that no other exceptions were intended.<sup>1</sup> The phrase "conflict of interest" as used in sections 112.311, 112.313, and 112.3143, Florida Statutes, means "a situation in which regard for a private interest tends to lead to disregard of a public duty or interest."<sup>2</sup> However, as this office has advised on a number of occasions, any question as to what fact situations may constitute a "conflict of interest" under this statutory definition must be directed to the Florida Commission on Ethics.<sup>3</sup>

An opinion of the Ethics Commission, citing opinions of this office, stated that "it is clear that, when adopting the Code of Ethics (which contains the statutes referenced in section 286.012), the Legislature was concerned primarily with the effect of a public official's economic interests and relationships upon the performance of his public duties. . . ." <sup>4</sup> This opinion was cited by the court in *Izaak Walton League of America v. Monroe County*,<sup>5</sup> in its holding that section 286.012, Florida Statutes, did not permit disqualification from voting of a county commissioner on the grounds of predisposition amounting to bias and prejudice.

I would note that other boards and commissions, including quasi-judicial administrative bodies, conduct quasi-judicial proceedings under section 286.012, Florida Statutes. In Attorney General Opinion 88-62, this office was asked to consider under what circumstances a member of a municipal code enforcement board could recuse himself. Once created, the board was required to adopt rules relating to the conduct of meetings, but the opinion points out that any such rules adopted by the board would be required to conform to section 286.012, Florida Statutes. The opinion reviewed the provisions of Chapter 162, Florida Statutes, for the creation of these quasi-judicial administrative boards and noted that nothing in that chapter provided for the disqualification of a member or members of the code enforcement board from consideration of matters coming before the board. Thus, the opinion concludes that a member of the code enforcement board may not disqualify himself from considering a matter before the board and that, as provided in section 286.012, Florida Statutes, a member who is present at a meeting must vote unless a conflict or interest exists or appears to exist.

Mr. Edward Rodgers  
Page Three

While the Commission on Ethics has no jurisdiction to administer section 286.012, Florida Statutes, it has interpreted the "appears to be a possible conflict" language of that statute. As the Commission advised in its letter to Mr. Farach of June 2, 2011, "non-economic bias or prejudice on the part of a public officer toward someone affected by a measure would not constitute a basis for a valid abstention pursuant to Section 286.012."<sup>6</sup> This office would concur in the Commission's analysis and conclusion.

Thank you for considering the Florida Attorney General's Office as a source for assistance in this matter. I trust that these informal comments will be helpful to you. This informal advisory opinion is provided in an effort to be of assistance. The comments expressed herein are those of the writer and do not constitute a formal Opinion of the Florida Attorney General.

Sincerely,



Gerry Hammond  
Senior Assistant Attorney General

GH/tsh

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<sup>1</sup> See *Biddle v. State Beverage Department*, 187 So. 2d 65 (Fla. 4th DCA 1966); and *State Road Department v. Levato*, 192 So. 2d 35 (Fla. 4th DCA 1966), *cert. discharged*, 199 So. 2d 714 (Fla. 1967).

<sup>2</sup> Section 112.312(8), Fla. Stat.

<sup>3</sup> See e.g., Op. Att'y Gen. Fla. 87-17 (1987), 86-61 (1986), and 85-40 (1985); and see s. 112.322(3), Fla. Stat., providing that public officers seeking interpretations of the Code of Ethics or the applicability of these statutes may request an advisory opinion of the Commission on Ethics.

<sup>4</sup> See CEO 79-14, dated March 22, 1979.

<sup>5</sup> 448 So. 2d 1170 (Fla. 3d DCA 1984).

<sup>6</sup> Letter to Manual Farach from Virindia Doss, Florida Commission on Ethics, dated June 2, 2011.

Roy Rogers  
*Chair*  
Robert J. Sniffen  
*Vice Chair*  
Morgan R. Bentley  
Cheryl Forchilli  
I. Martin Ford  
Jean M. Larsen  
Susan Horovitz Maurer  
Linda McKee Robison  
Edwin Scales III



State of Florida  
COMMISSION ON ETHICS  
P.O. Drawer 15709  
Tallahassee, FL 32317-5709

3600 Maclay Blvd., South, Suite 201  
Tallahassee, FL 32312

Philip Claypool  
*Executive Director*

Virindia Doss  
*Deputy Executive  
Director*

(850) 488-7864 Phone  
(850) 488-3077 (FAX)  
[www.ethics.state.fl.us](http://www.ethics.state.fl.us)

June 2, 2011

Manual Farach  
Palm Beach County Commission on Ethics  
2633 Vista Parkway  
West Palm Beach, FL 33411

Re: Request for opinion; voting conflict of interest

Dear Mr. Farach:

This is in response to your request for an opinion as to whether Section 286.012, Florida Statutes, would permit you to abstain from a vote based upon your professional relationship with a party coming before your board.

Through your correspondence you advise you are a member of the Palm Beach County Commission on Ethics. You advise that at a recent meeting, a matter came before your Commission involving an advisory opinion request. The requestor, you relate, was a county advisory board member with whom you serve on the board of directors of the Forum Club of the Palm Beaches. You advise that the two of you have "an extensive, public and well-documented professional relationship."

Section 112.3143(3)(a), Florida Statutes, states:

VOTING CONFLICTS.--No county, municipal, or other local public officer shall vote in an official capacity upon any measure which inures to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(3); or

which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

Section 112.3143 prohibits an official from voting whenever the matter under consideration would work to his own special gain or loss or that of a relative, employer, principal, or business associate. Nothing in your letter indicates that you stood to gain or lose as a result of the vote, or that the individual making the request occupies any of the enumerated positions. Your inquiry is not directed at whether you have a voting conflict of interest under Section 112.3143; rather, your question is whether *absent* such a conflict, you would still be permitted to abstain pursuant to Section 286.012, Florida Statutes.

Section 286.012 states:

No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases, said member shall comply with the disclosure requirements of s. 112.3143.

The Commission has no jurisdiction to administer Section 286.012. However, in a number of opinions it has interpreted the "appears to be a possible conflict" language. The Commission has said in the past that non-economic bias or prejudice on the part of a public officer toward someone affected by a measure would not constitute a basis for a valid abstention pursuant to Section 286.012. See, CEO 88-18 and CEO 79-14. The Commission discussed Section 286.012 at length in CEO 08-11, where a city council member who had made a criminal complaint against a lawyer asked whether he could abstain from voting on measures affecting the lawyer or her clients. The Commission said:

We view the member's situation as analogous to several of our opinions finding that abstention would not be permitted under Section 286.012. See, for example, CEO 79-14 (vote on bank application where city council member previously had physical

altercation with officer of the bank), CEO 86-57 (county commissioner faced with vote on concealed weapons license where license applicant had previously sued commissioner), and CEO 88-18 (hospital board member voting on staff membership and lawsuit of physician suing board). Further, the vast majority of our decisions finding a permitted abstention under the statute have involved situations similar to required voting abstentions under Section 112.3143, Florida Statutes, situations in which the gain or loss inuring directly from the vote/measure went to the voting official himself or to persons or entities who held a statutorily enumerated relationship (or similar relationship) to the official. For example, in CEO 83-42 we found that a city mayor could validly abstain under Section 286.012 from voting on settlement of a lawsuit between the city and his landlord, the landlord-tenant relationship, although not enumerated within Section 112.3143, being like the economic/financial principal-agent relationship enumerated in Section 112.3143. Also, see CEO 98-17 in which we countenanced abstention under Section 286.012 where a city council member was faced with voting on approvals for developers, including annexations, where the council member had done business with the developers in the past and might do business with them in the future, but where they were not principals by whom he was retained at the time of the votes. *Like the situations present in our prior decisions, your inquiry does not indicate that any economic or financial interest of the member is connected to the attorney or her clients; rather, the inquiry indicates the revelation of personal, confidential information regarding the member and the member's complaining to criminal authorities about the revelation, a situation more akin to the lawsuit, physical confrontation, and similar matters where we have not endorsed abstention under Section 286.012. [Emphasis supplied.]*

You suggest that a member of a commission on ethics may be said to occupy a position of special trust, thereby requiring a different rule. But while Section 112.3143 does distinguish between certain positions or boards with respect to the action to be taken in the event of a voting conflict—for example, state officers must disclose but need not abstain, local appointed officials must disclose and abstain, etc.,—with respect to the issue of whether a voting conflict of interest exists in the first instance, the law makes no distinction based on type of office held or composition of board. Therefore, I do not believe that the fact that an official sits on an ethics commission, as opposed to, for example, a zoning board, makes any material difference.

The Commission has said that, "when adopting the Code of Ethics, the Legislature was concerned primarily with the effect of a public official's economic interests and relationships

Manuel Farach

June 2, 2011

Page 4

upon the performance of his public duties, rather than the effect of his personal preferences or animosities." CEO 79-14. Based on the cited opinions and absent any suggestion that you have any economic interest which might have been affected by the measure, it does not seem that the Commission would conclude that you would be permitted to abstain under Section 286.012.

The cited opinions and statutes may be found on our website at: [www.ethics.state.fl.us](http://www.ethics.state.fl.us). Please be aware that this letter reflects only my analysis based upon the facts you have provided and prior decisions of the Ethics Commission, and is not a formal opinion of the Commission itself. If you have any additional questions, please let me know.

Sincerely,



Virlindia Doss  
Deputy Executive Director

July 8, 2011

Pam Bondi, Attorney General  
Department of Legal Affairs  
The Capitol PL01  
Tallahassee, Florida 32399-1050

Re: Second Request for an Advisory Opinion

Dear Ms. Bondi,

On May 6, 2011, on behalf of the members of the Palm Beach County Commission on Ethics, I submitted a request for a legal opinion on the following issue:

Notwithstanding §286.012, Florida Statutes, in a quasi-judicial hearing before a Commission on Ethics, under circumstances giving rise to bias, prejudice or affinity concerns, non financial in nature, may an ethics commissioner abstain from voting, or in the alternative, disqualify him or herself to avoid violating the due process rights of a respondent? (May 6 submission attached)

On June 9, 2011 I received an informal advisory opinion from Senior Assistant Attorney General Gerry Hammond. Thank you for your response to my inquiry, however, my specific question involved a circumstance where “a vote, notwithstanding demonstrated bias, prejudice or affinity on the part of a commissioner, may conflict with due process requirements of both the Florida and United States constitutions.”

Mr. Hammond referenced a separate inquiry sent to the Florida Commission on Ethics, and its response dated June 2, 2011, stating that “non-economic bias or prejudice on the part of a public officer toward someone affected by a measure would not constitute a basis for a valid abstention pursuant to Section 286.012.” The inquiry sent to the Florida Commission on Ethics referred to general concerns of an appearance of impropriety in non-economic conflicts involving quasi-legislative and administrative issues and not due process considerations in quasi-judicial proceedings.

Previously, the Florida Commission on Ethics has opined that an official may abstain from voting, notwithstanding the fact that the conflict was non-economic, where such a vote would violate another statute.<sup>1</sup> However, the commission will not consider conflict matters involving quasi-judicial disqualification. The due process/recusal issue was specifically sent to you in light of a prior Commission

<sup>1</sup> In re Mitchell Kinzer 90-163 (Fla. Comm.Ethics1990)(nepotism)

on Ethics opinion declining jurisdiction. The Commission suggested that referral of quasi-judicial/due process disqualification issues be made to your office.<sup>2</sup>

As stated in my previous request, courts have determined that an official may not abstain from voting simply because they have expressed an opinion, have a prior personal relationship or demonstrated dislike of a person or cause. *George v. City of Cocoa, Fla.*, 78 F.3d 494 (11<sup>th</sup> Cir. 1996). Yet, in *Florida Water Services Corporation v. Robinson*, the court reasoned that while it is not necessary for quasi-judicial hearings to mirror the judicial model, an impartial decision maker is a basic component of the fairness requirements of due process and there may be times where disqualification is appropriate. *Florida Water Services Corporation v. Robinson*, 856 So. 2d 1035 (Fla. 5<sup>th</sup> DCA 2003).

In a probable cause or final hearing involving a respondent alleged to have violated our code of ethics, commissioners are now in the position of violating F.S. 286.012 or, through bias, prejudice or affinity, violating the due process rights of an accused. Violators may be subject to a fine, public reprimand, dismissal, rescission of contracts and assessed restitution if the matter involves unjust enrichment. Willful violators may be referred to the State Attorney for prosecution.

In light of the above, with regard to non-economic bias, prejudice or affinity, I respectfully request a formal opinion from your office as to whether due process concerns permit abstention or recusal in quasi-judicial probable cause and final hearings involving code of ethics violations.

Sincerely,

Edward Rodgers, Chairman  
Palm Beach County Commission on Ethics

Enclosure

ER/gl

<sup>2</sup> Op.Fla.Comm.Ethics 08-11 (2008) "It is not within our jurisdiction to determine whether bias or prejudice exists on the part of the member toward the attorney or her clients for the purposes of disqualification ("recusal") of the member from consideration of Council matters involving the attorney or his clients, based on due process/quasi-judicial grounds. In this regard, the member may wish to review caselaw or consult the Attorney General."

## **X. SYNOPSIS OF PROCESSED ADVISORY OPINIONS (consent agenda)**

### **RQO 11-032 Chuck Elder**

The Film Commissioner for the Palm Beach County Film and Television Commission (FTC), a registered non-profit corporation funded partially by public funds whose purpose is the support and expansion of the film, television, and still photography industry in Palm Beach County, asked whether complementary tickets could be given to county commissioners and staff to attend events hosted by FTC and, additionally, whether FTC officers, directors or employees are permitted to participate in fundraising events connected to the 6<sup>th</sup> Annual Film Florida Conference, hosted by FTC.

First, the code of ethics specifically excludes “expenditures made in connection with an event sponsored by a nonprofit organization funded in whole or in part with public funds whose primary purpose is to encourage and attract tourism or other business opportunities for the benefit of Palm Beach County” from gift limit prohibitions provided that the sponsor organization does not employ a lobbyist and that the invitation to the event is made by a representative of the nonprofit sponsor who is not otherwise a vendor, lobbyist, principal or employer of a lobbyist. Therefore, tickets given within these guidelines are allowable. If the value of the tickets exceeds \$100 they must be reported.

Second, the code of ethics does not apply to fundraising activities conducted by FTC directors, officers or employees provided they are not otherwise public officials or employees of the county or municipalities within the county.

### **RQO 11-036 Richard Gathright**

A Deputy Building Director for Palm Beach County asked if doing volunteer work with Habitat for Humanity of Palm Beach County (HFH) or their Family Support Committee violated the code of ethics. Neither the Deputy Director nor his spouse is an officer or director of HFH. The official duties of the Deputy Director include supervision of personnel in building, plan review, inspection activities, and enforcement of building codes. Volunteer activities with HFH include helping to build homes, partnering with prospective families, screening prospective homeowners and providing mentoring to HFH clients. HFH is not a county vendor. It must comply with municipal and/or county building code requirements.

Since the Deputy Director is not an officer or director of HFH, there is no prohibited financial conflict of interest created under the code, however, the Deputy Director may not use his official position corruptly to secure a special benefit for HFH or their prospective clients. Corruptly means done with a wrongful intent and for the purpose of obtaining a benefit for anyone in a manner inconsistent with the proper performance of his or her public duties.

### **RQO 11-045 Craig Spatara**

A county employee asked whether he was required to file an outside employment waiver if his outside employer was a municipal government agency, the West Palm Beach Police Department. The Code of Ethics specifically exempts all government entities from the definition of outside employment. As such, he is not prohibited from accepting part-time employment with the municipal government and is not required to complete an outside part-time employment conflict of interest waiver.



# Palm Beach County Commission on Ethics

**Commissioners**

Edward Rodgers, *Chair*  
Manuel Farach, *Vice Chair*  
Robin N. Fiore  
Ronald E. Harbison  
Bruce E. Reinhart

**Executive Director**

Alan S. Johnson

June 24, 2011

Chuck Elder, Film Commissioner  
Palm Beach County Film & Television Commission  
1555 Palm Beach Lakes Blvd., Suite 900  
West Palm Beach, FL 33401

Re: RQO 11-032  
Gift Law

Dear Mr. Elder,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows.

YOU ASKED in your email dated June 3, 2011 whether complementary tickets may be given to County Commissioners and staff to attend the "Legends Awards" portion of the 6<sup>th</sup> Annual Film Florida Conference, hosted by the Palm Beach County Film and Television Commission (FTC) at Lynn University, when these complimentary tickets are supplied directly by FTC. In addition, you also asked whether FTC officers, directors or employees are permitted to participate in fundraising events connected with the conference. You provided additional information in emails to COE staff on June 7, 2011, and in follow-up telephone conversations.

IN SUM under the facts you submitted, giving or accepting complementary tickets in connection with public events, appearances or ceremonies furnished by a nonprofit sponsor organization as well as expenditures made in connection with events sponsored by a nonprofit organization funded with public funds whose primary purpose is to encourage tourism or other economic activity within Palm Beach County is not prohibited, even if the sponsor nonprofit organization is a vendor of the county and the value of the ticket exceeds \$100 provided that the sponsor organization does not employ a lobbyist and the representative who furnishes the tickets is not otherwise a vendor, lobbyist, principal or employer of a lobbyist. The public official or employee may not use his or her official position to offer a benefit to the organization or any sponsor of the event in exchange for the tickets. If the value of the tickets exceeds \$100, the official or employee will need to report the gift pursuant to Section 2-444 of the code, or as required under §112.3148, Florida Statutes.

While the code of ethics does not prohibit the giving or acceptance of the tickets, great care must be taken that nothing of value is exchanged because of an "official action taken" or "duty performed" which would result in a quid pro quo in exchange for the tickets.

Regarding fundraising activities, because FTC is a private non-profit corporation, the Code of Ethics does not apply to FTC or its officers, employees or board members who are not otherwise officials or public employees within the jurisdiction of the Code of Ethics.

THE FACTS as we understand them are as follows:

You are the Film Commissioner for the Palm Beach County Film and Television Commission (FTC), a registered non-profit corporation funded partially by public funds, and organized in 1989 for the purpose of supporting and cultivating the expansion of the film, television, and still photography industry in Palm Beach County, and marketing Palm Beach County as a viable film, television and still photography destination and cost effective alternative location.<sup>1</sup> FTC is sponsoring the 6<sup>th</sup> Annual Film Florida Conference at Lynn University and the Boca Resort and Club from June 29 – July 1, 2011. FTC is a vendor of Palm Beach County, but is not a lobbyist, principal or employer of a lobbyist. "Film Florida" is also a non-profit Florida corporation that provides a leadership role in Florida's film and entertainment industries and is not a county or municipal vendor, lobbyist, principal or employer of a lobbyist in any jurisdiction within Palm Beach County.

As part of this conference, you are holding a Legends Awards ceremony, where certain persons who have made a significant contribution to Florida's film and entertainment industry will be honored. In an effort to recognize the importance of the film and television industry for Palm Beach County, you wish to give County Commissioners and certain county staff complementary tickets to attend the Legends Awards ceremony. The cost of tickets to attend the Legends Awards ceremony portion of the 6<sup>th</sup> Annual Film Florida Conference is \$50 each.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics:

Sec. 2-444. Gift law.

- (a) (1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, *shall knowingly solicit or accept* directly or indirectly, *any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.* (Emphasis added)
- (2) No lobbyist, *vendor* or principal or employer of a lobbyist that lobbies the county or a municipality *shall knowingly give, directly or indirectly, any gift with a value greater than one hundred dollars (\$100) in the aggregate for the calendar year to a person who the vendor, lobbyist, or principal knows is an official or employee of that county or municipality.* (Emphasis added)
- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) *shall report that gift* in accordance with this section. (Emphasis added)

<sup>1</sup> Palm Beach County Film & Television Commission website, ([www.pbfilm.com](http://www.pbfilm.com))

(1) *Gift reports for officials and employees identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. A copy of each report shall be filed with the county commission on ethics.

(2) *All other officials and employees who are not reporting individuals under state law.*

(b) *All other gifts.* All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics.

(g) For the purposes of this section, "*gift*" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, *entertainment, hospitality*, item or promise, or in any other form, without adequate and lawful consideration. (Emphasis added)

(1) Exceptions. The provisions of subsection (g) shall not apply to:

(i) Expenditures made in connection with an event *sponsored by a nonprofit organization funded in whole or in part with public funds whose primary function is to encourage and attract tourism or other business opportunities* for the benefit of Palm Beach County or the municipalities as applicable, *provided the sponsor organization does not employ a lobbyist*, and further *provided that the invitation to the event is made by a representative of the sponsor organization and the representative is not otherwise a vendor, lobbyist, principal or employer of a lobbyist.* Notwithstanding the exception as provided in this subsection, the expenditure must be disclosed in accordance with the gift law reporting requirements of subsections 2-444(f)(1) and (f)(2). (Emphasis added)

RATIONALE: Under section 2-444(g)(1)(i) and (j) of the code of ethics, complementary attendance at nonprofit sponsored public ticketed events, appearances or ceremonies related to official county or municipal business or events where expenditures are made by sponsored nonprofit organizations funded in whole or in part with public funds whose primary function is to encourage and attract tourism or other business opportunities for the benefit of Palm Beach County or the municipalities is not prohibited, provided the sponsor organization does not employ a lobbyist and the invitation to the event is made by a representative of the sponsor organization who is not otherwise a vendor, lobbyist, principal or employer of a lobbyist.

The 6<sup>th</sup> Annual Film Florida Conference, and its Legends Awards celebration, fit within this exception to general gift prohibitions. According to the facts you have submitted, FTP does not employ a lobbyist. COE staff has verified this by consulting the Palm Beach County lobbyist registration database. Further, as the representative of FTC who will be providing the tickets, you advised that you are not otherwise a vendor, lobbyist, principal or employer of a lobbyist. Should the value of the tickets given to an individual commissioner or public employee be greater than \$100, they may be required to report these tickets as gifts under the Code of Ethics and/or Florida law.

IN SUMMARY, based on the facts submitted, the Palm Beach County Code of Ethics does not prohibit Palm Beach County Commissioners or county staff from accepting complementary tickets to the Legends

Awards portion of the 6<sup>th</sup> Annual Film Florida Conference from the Palm Beach County Film & Television Commission (FTC), if given by a representative of FTC who is not otherwise a vendor, lobbyist, principal or employer of a lobbyist. Should the value of tickets given to any individual commissioner or employee be greater than \$100, they may be required to report these tickets as gifts under the Code of Ethics and/or state law. Keep in mind that a ticket may not be given or accepted as a quid pro quo in exchange for an "official action taken" or "duty performed."

Further, the Code of Ethics does not apply to fundraising activities conducted by FTC directors, officers or employees provided they are not otherwise public officials or employees of the county or municipalities within the county.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson  
Executive Director  
Commission on Ethics

ASJ/meb/gal



# Palm Beach County Commission on Ethics

## Commissioners

Edward Rodgers, *Chair*  
Manuel Farach, *Vice Chair*  
Robin N. Fiore  
Ronald E. Harbison  
Bruce E. Reinhart

## Executive Director

Alan S. Johnson

June 24, 2011

Richard Gathright, Deputy Building Official  
Palm Beach County Building Department  
2300 North Jog Road  
West Palm Beach, FL 33411

Re: RQO 11-036  
Conflict of Interest/Misuse of Office

Dear Mr. Gathright,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion. The opinion rendered is as follows.

YOU ASKED in your letter dated June 15, 2011, whether your employment as a Deputy Building Official for the Palm Beach County Building Department, and your volunteer work with Habitat for Humanity of Palm Beach County or their Family Support Committee causes a prohibited conflict of interest under the Code of Ethics. You provided additional information to COE staff by email on June 17, 2011, including a job description of your county duties.

IN SUM, there is no prohibited conflict of interest created under the Code of Ethics if you, as a Deputy Building Official for Palm Beach County, choose to volunteer during non-working hours with Habitat for Humanity of Palm Beach County (HFH) or their Family Support Committee, so long as you do not corruptly misuse your official position to benefit yourself, or HFH.

THE FACTS as we understand them are as follows:

You are a Deputy Building Official for Palm Beach County. Your duties as Deputy Building Official include supervision of personnel in building plan review, inspection activities, and enforcement of building codes, according to the job description you provided.

You have volunteered your time with Habitat for Humanity of Palm Beach County (HFH) for the past several years helping to build homes. HFH partners with families in need to build affordable homes together. Each HFH partner family is required to invest a minimum of 500 sweat equity hours of their own labor into the construction of homes before being eligible to purchase their home utilizing a 30-year, no-profit, no-interest loan. Because of your extended volunteer service, HFH has asked you to join their Family Support Committee, which helps

screen prospective homeowners, and provides mentorship to their clients, as needed. Neither you, nor any member of your household is an officer or member of the board of directors of HFH. HFH is a 501(c)(3) non-profit corporation that is not a county vendor. However, like all builders, they must comply with applicable building codes, including those applicable to residential builders working in unincorporated Palm Beach County.

THE LEGAL BASIS for this opinion is found in the following relevant section of the revised Palm Beach County Code of Ethics:

Sec. 2-443. Prohibited conduct.

(b) *Corrupt misuse of official position.* An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. (Emphasis added)

Because you are not an officer or director of Habitat for Humanity of Palm Beach, only Sub-Section 2-443(b) of the Prohibited Conduct section applies to you under the facts you have presented. This sub-section prohibits you from corruptly using your official position with Palm Beach County to secure or attempt to secure any special privilege, benefit, or exemption for Habitat for Humanity of Palm Beach County, or any other person or entity.

IN SUMMARY, based on the facts you have submitted, there is no prohibited conflict of interest created under the code, based on your position as a PBC Deputy Building Official and your volunteer work with Habitat for Humanity of Palm Beach County. However, you are prohibited under the code from using your official position to corruptly secure any special benefit for HFH, or for any other person or entity.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson  
Executive Director  
Commission on Ethics

ASJ/meb



# Palm Beach County Commission on Ethics

## **Commissioners**

Edward Rodgers, *Chair*  
Manuel Farach, *Vice Chair*  
Robin N. Fiore  
Ronald E. Harbison  
Bruce E. Reinhart

## **Executive Director**

Alan S. Johnson

July 7, 2011

Mr. Craig Spatara, RESTORE Initiative Program Manager  
Palm Beach County Criminal Justice Commission  
301 N. Olive Avenue  
West Palm Beach, Florida 33401

Re: RQO 11-045  
Outside Employment/Contractual Relationships

Dear Mr. Spatara,

Your request for an advisory opinion from the Palm Beach County Commission on Ethics has been received and reviewed. The opinion rendered is as follows.

YOU ASKED in your email dated June 28, 2011 whether you, as a Palm Beach County employee need to file an outside employment waiver when your outside part-time employer is the City of West Palm Beach, another governmental entity.

IN SUM, based on the facts you have submitted, as long as your outside part-time employer is another governmental entity, you do not have to obtain and file an outside employment waiver.

THE FACTS you submitted are as follows:

For thirteen years, you worked for the City of West Palm Beach Police Department as the Coordinator of its Weed and Seed Safe Haven program. In March of 2011, you joined the county staff as the RESTORE program manager within the Criminal Justice Commission (CJC). You have been offered part-time employment as a grant writer/consultant for the West Palm Beach Police Department and in anticipation of accepting the position, obtained merit rule approval from your county supervisor. In this position, you would be paid by the City of West Palm Beach, serve under the supervision of the Chief of Police, and complete all work during non-County time.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics:

Section 2-442. Definitions

*Outside employer or business includes:*

- (1) Any entity *other than the county, the state, or any other federal regional, local, or municipal government entity* of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced. (emphasis added)

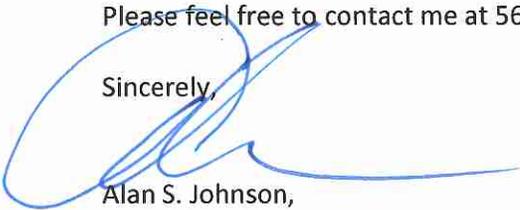
The definition of *outside employer or business*, specifically excludes "county, state, or any other federal regional, local or municipal government entity." The City of West Palm Beach is a municipal government entity. Therefore you are not prohibited from accepting employment with West Palm Beach, nor are you required to apply for a part-time employment waiver. As a county employee you have complied with the county merit rule system and have obtained supervisor approval. While this is not a prohibited contractual relationship, please keep in mind that as a public employee, you may not use either position to obtain a special financial benefit "not shared with similarly situated members of the general public" for certain persons or entities or otherwise corruptly misuse either position.

IN SUMMARY, because the City of West Palm Beach is a governmental entity and is not considered an outside employer as defined by the code of ethics, you are not prohibited from accepting part-time employment with West Palm Beach, nor are you required to complete a conflict of interest waiver.

This opinion construes the Palm Beach County Code of Ethics ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-233-0724 if I can be of any further assistance in this matter.

Sincerely,



Alan S. Johnson,  
Executive Director

ASJ/mr/gal

## **XII. SYNOPSIS OF PROPOSED ADVISORY OPINIONS**

### **RQO 11- 022 Martha LaVerghetta (Revised)**

An Assistant Airport Director asked whether she could accept airline tickets, accommodations and meals at a conference hosted by her husband's employer airline. The COE previously opined that the family flight privileges were a negotiated for compensation benefit of her husband's employment and therefore not a gift from the airline. The COE further opined that accommodations and meals at a conference provided to the county employee by the airline, who is not a county vendor, are not prohibited but would be a reportable gift if in excess of \$100.

This advisory opinion is being re-submitted to the COE. In determining the nature and value of gifts, the revised code of ethics specifically refers to §112.3148(7) and The Florida Administrative Code (FAC). The FAC specifically refers to expenses paid for a spouse to attend a function relating to his or her partner's private employment, when totally unrelated to the spouse's public employment, as a gift from the spouse and not the private company. A gift from a spouse is exempt from the gift law provisions. Therefore, conference expenses are not reportable gifts.

### **RQO 11-027 Mark Joyce**

A municipal employee who is the president of a local non-profit asked whether he could use a municipal email system to solicit volunteers for an upcoming charity event. He may not use his official position, including municipal resources such as email, to give a special financial benefit to a charity of which he is an officer.

### **RQO 11-028 Leonard Rubin**

A municipal village attorney asked whether employees of a municipal golf course could accept tips in the normal course of their employment. The municipality owns and operates a country club which includes a golf course, tennis facility, pool, restaurant and lounge and banquet facility. Tips are a contemplated part of servers, golf attendants and tennis and golf professionals overall compensation package as documented by the job descriptions and compensation agreements between the municipality and these employees. In addition, these service jobs contemplate tipping as a means of compensation by custom and practice.

The COE opined as follows: The Code of Ethics does not prohibit a municipal service employee from accepting tips and gratuities for providing standard and customary services, where tips and gratuities are an official contemplated basis for the employee's overall compensation.

### **RQO 11-029 City Commissioner Kimberly Mitchell**

A West Palm Beach City Commissioner asked whether, as an elected official, she could serve on the board of directors of a local non-profit organization and if she could continue to fundraise on behalf of the organization.

The COE opined as follows: The commissioner may not use her elected office to give a special financial benefit to a non-profit organization while serving as an officer or director of the charity. She may not vote or participate in the decision-making process if a matter that would specially financially benefit the charity comes before the West Palm Beach City Commission. When soliciting donations on behalf of the

charity she must keep a detailed log of her contact including the amount solicited and pledged by those donors. The log must be submitted to the COE within 30 days of the charitable event, or if not associated with an event, within 30 days of the solicitation. Lastly, she may not solicit a donation in exchange for any special consideration on her part as a city commissioner.

#### **RQO 11-030 Edward Lowery**

A county department director asked whether a conflict of interest existed if a county employee who volunteers as an officer (treasurer) of a local non-profit land trust is involved in matters where the county provides financial assistance to purchasers of foreclosed homes from that land trust. In some instances, the non-profit land trust purchases and resells foreclosed properties to the county subsidized purchasers. Although the county employee's official position does not involve the actual grant decision-making, it does require her to initially screen applicants to determine whether they are eligible for financial assistance from the county, including potential clients of the non-profit whom she serves as a corporate officer.

The COE opined as follows: There is an inherent conflict of interest between the county employee's duties and her position as an officer and board member of the non-profit land trust.

#### **RQO 11-031 Vice-Mayor Suzanne Mulvehill**

A Lake Worth City Commissioner asked whether a conflict of interest existed were she to accept employment with a local college that has contracts with her municipality. In the course of her college employment, she would provide counseling to small to medium sized businesses and recruit companies for the college's growth acceleration program. All counseling services are provided without cost to the participating business and college staff positions are funded in part by federal grants.

The COE opined as follows: The Code of Ethics specifically exempts all government entities from the definition of outside employment. Therefore, the college, a state facility, is not an outside employer of the city commissioner and the prohibited contractual relationship section of the code does not apply. Furthermore, because the services provided by the college are free to the public, businesses advised by the city commissioner are not customers or clients as defined by the code. So long as she does not use her official position for personal financial benefit, or otherwise corruptly use her position inconsistently with the proper performance of her public duties, employment with the college would not violate the code.

#### **RQO 11-033 Vice-Mayor Suzanne Mulvehill**

A Lake Worth City Commissioner asked whether she was permitted to use the remaining funds in her campaign account to pay for a trip to an event held as part of a municipal "sister city" program. Political contributions are not regulated by the Code of Ethics and are subject to specific regulation under state and federal law. Notwithstanding, she may not use her official position to obtain a special financial benefit or otherwise corruptly misuse her public office as set forth in sec. 2-443(a) and (b).

**RQO 11-034 Thomas Cairnes**

A local businessperson asked whether he or his employer were prohibited from providing complementary lunches to municipal officials or employees or from inviting them to attend charity events within the municipality. The business is neither a vendor nor does it employ lobbyists within the municipality.

The COE opined as follows: So long as the business is not a vendor, or a lobbyist, principal or employer of a lobbyist who sells, leases or lobbies the municipality, and there is no “quid pro quo” or special treatment or other privilege obtained by the business or any of its employees in exchange for lunches or tickets to charitable events, the Code of Ethics does not prohibit these gifts. Gifts in excess of \$100 must be reported by the official or employee pursuant to the code, or Florida Statute for those who are state reporting individuals.

**RQO 11-037 Peter Elwell**

A municipal town manager asked whether a prohibited conflict of interest would arise if a town building official was required to review and give final approval to work completed by his brother whose company has been hired to perform the work of a Resident Inspector. Resident Inspectors are hired by private construction projects to ensure that all work is done properly and in accordance with town building codes. Resident Inspectors file weekly reports with the town building official. At the conclusion of the project, the town building official completes a final inspection of the work and, if appropriate, issues a certificate of completion or occupancy as applicable for the project.

The COE opined as follows: While there is no prohibited conflict of interest under the code based solely on a sibling relationship between a municipal employee charged with overseeing the work of a private contractor, the municipal employee may not use his official position to benefit his brother, his brother’s company, or the landowner employing his brother’s company, by giving a special financial benefit not shared by similarly situated residents. The COE cannot opine as to the policy or potential appearances of allowing such a relationship to exist. Notwithstanding, while the relationship itself may not violate the code per se, the potential appearance of impropriety may necessitate steps by the town to diminish this potential conflict.

**RQO 11-038 Jim Kuretski**

A municipal councilman asked whether being employed by a publicly regulated utility presented an inherent conflict of interest where customers of the utility appear before the town council in most, if not all decision-making matters. Based upon a franchise agreement with the town, all businesses and residential property owners within the municipality who use electrical power supply services, purchase those services from the councilman’s outside employer, Florida Power and Light. The public utility has similar if not identical contracts with the county and most municipalities within the county.

The COE opined as follows: Because all residents and businesses appearing before the town council are required to purchase their power from the official’s outside employer, a regulated public utility, they are similarly situated and there is no inherent conflict merely because a person or entity is a customer or client of that utility. Additionally, the utility is the sole source of electric supply within the town and therefore the official’s employment with the utility company would not constitute a prohibited contractual relationship under the “sole source” exception to the prohibition. Notwithstanding, he must be careful not to use his official position to obtain a special financial benefit for himself or his outside employer.

July 8, 2011

Martha LaVerghetta  
Assistant Airport Properties Manager  
Palm Beach County Department of Airports  
846 Palm Beach International Airport  
West Palm Beach, FL 33406

Re: RQO 11-022 (Revised)  
Gift Law

Dear Ms. LaVerghetta,

The Palm Beach County Commission on Ethics has considered your request for an advisory opinion, and rendered a revised opinion at a public meeting on July 7, 2011.

YOU ASKED in your letter dated May 17, 2011 whether in your position as an Assistant Airport Properties Manager of the Palm Beach County Department of Airports you could accept certain benefits you may receive as a result of your husband's employment. Your husband is a pilot for AirTran Airways, which was recently purchased by Southwest Airlines. Both Southwest and AirTran lease space from the Palm Beach County Department of Airports. Specifically, you inquired as to whether you could accept airfare, accommodations and meals at a conference for new employees and their families hosted by Southwest Airlines and, as an immediate family member of an airline employee, whether you could accept flight privileges to destinations served by Southwest and AirTran.

IN SUM, AirTran and Southwest are not vendors of Palm Beach County. Family flight privileges are a negotiated for benefit of your husband's employment and are not gifts. Based upon the information you provided, accommodations and meals at a conference hosted by Southwest Airlines are a "gift" to you from your husband, not Southwest Airlines. In any event, you may not accept anything of value because of an "official action taken" or "duty performed." Nor may you use your official position to financially benefit your husband's current employer, AirTran Airways, or his future employer, Southwest.

THE FACTS as we understand them are as follows:

You are currently employed as an Assistant Airport Properties Manager with the Palm Beach County Department of Airports. Your job entails assisting in the development, preparation and monitoring of contracts, leases, and permits at the county's four airports. Moreover, you serve as a point of contact for existing airport tenants and aid in preparing agreements, amendments and resolutions on behalf of the county. You indicated that while you have extensive contact with current and future tenants, you do not have any authority or delegated authority to sign agreements with these tenants on behalf of the county.

Your husband is a pilot for AirTran Airways. AirTran was purchased by Southwest in May of 2011 and both AirTran and Southwest are tenants at the Palm Beach International Airport. As part of the merger between Southwest and AirTran, Southwest will be holding an indoctrination conference for all former AirTran employees and their families in Texas. At this time, you do not have any information on the

dates or location of the conference. Southwest will provide flights, hotel accommodations, and meals to all new employees and their families.

In addition, as is standard across the industry, immediate family members of airline employees are entitled to fly free of charge to any destination serviced by the airline. In a follow up phone call on May 23, 2011, you informed commission staff that this benefit is part of employee compensation as negotiated by the collective bargaining association that represents your husband and his co-workers.

THE LEGAL BASIS for this opinion relies on the following sections of the Palm Beach County Code of Ethics.

#### Sec. 2-444. Gift law

The code defines "gift" in section 2-444 (g)

- (g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, *without adequate and lawful consideration*. Food and beverages consumed at a single setting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift may consult, among other sources section §112.3148, Florida statutes and the Florida Administrative Code as may be amended. (emphasis added)

(1) Exceptions. The provisions of subsection (g) shall not apply to:

- b. Gifts from *relatives*, domestic partners, and dependents named on the official's or employee's latest federal income tax return, or one's household member. (emphasis added)

According to the information you have provided, flight privileges, allowing immediate family members of airline employees to fly for free, space permitting, to any destination serviced by the airline, are a bargained for benefit of your husband's employment contract with AirTran and now, Southwest Airlines. In the context of this situation, flight privileges are part of an airline employees benefit package as much as health insurance or vacation days. Accordingly, free flights on either airline, as accepted in accordance with the terms and conditions as outlined in your husband's employment contract, are not a gift for the purposes of the code of ethics; they are an item of economic value given for adequate and lawful consideration.

Similarly, your attendance at the employee conference in Texas is not a gift, but for another reason. Subsection g(1)b of the gift law exempts gifts from relatives from the definition of a gift. In the context of the gift law "Relative" is broadly defined.

#### Sec. 2-442. Definitions

*Relative* unless otherwise specified in this ordinance, means an individual who is related to an official or employee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-

law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to the official or employee or who otherwise holds himself or herself out as or is generally known as the person whom the official or employee intends to marry or with whom the official or employee intends to form a household, or any other natural person having the same legal residence as the official or employee.

As of June 1, 2011, the revised code of ethics specifically references §112.3148 in §2-444(f) Gift reports. In regard to gifts, Florida Statute §112.3148 references the state of Florida administrative code section 34-13.310 (6), Indirect Gifts. Section 34-13.310 (6)(a) states:

Where a gift is provided to a person other than the reporting individual...by a lobbyist who lobbies the agency of the reporting individual, and where the gift or benefit of the gift ultimately is received by the reporting individual, such gift will be considered an indirect gift to the reporting individual.

For example, a county employee and their spouse arrange to take a trip together. A county vendor contacts the employee's spouse and offers to pay for the spouse's travel expenses. The spouse and the vendor only know one another through the county employee. Payment of a spouse's travel expenses in that situation would constitute an indirect gift. Alternatively, the administrative code gives the following example of when a gift to the spouse of a county employee does *not* constitute an indirect gift. A law firm who lobbies the agency of a public employee invites all of its attorneys to attend a weekend retreat. The attorneys are encouraged to bring their spouses or significant others at the firm's expense. The public employee is married to an attorney in the firm and has been asked by her spouse to attend the retreat. The lodging provided to the public employee for the retreat would be considered a gift to her from her spouse and thus not prohibited, because the firm's invitation was extended to the public employee's spouse by virtue of his employment with the firm.

Likewise, Southwest has invited all of its employees to attend a weekend conference in Texas. Employees are encouraged to bring their spouses at Southwest's expense and you have been asked by your spouse, a Southwest employee to attend. The lodging and meals provided to you by Southwest are a gift to you from your spouse and are not reportable, because the invitation to attend the conference was extended to your husband by virtue of his employment with Southwest.

Finally, because you have regular, direct contact in your official position with your husband's employer, an additional section of the code is implicated.

#### Sec. 2-243. Prohibited Conduct.

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
  - (2) His or her spouse or domestic partner, household member or persons claimed as dependants on the official or employee's latest individual federal income tax return, *or the employer or business of any of these people.* (emphasis added)

You must be very careful not to use your position as Assistant Airport Properties Manager to financially benefit your spouse's employer. This provision of the code is of special importance because your county position requires you to have ongoing contact with PBI leasees, AirTran and Southwest. For example, if Southwest or AirTran were to renegotiate their leases at PBI, any use of your official position or office, any action that you make take or influence you may exert that would financially benefit either airline in a manner "not shared with similarly situated members of the general public" would violate the misuse of office section of the code.

IN SUMMARY, based on the facts and circumstances you have submitted, the Palm Beach County Code of Ethics does not prohibit you from attending the Southwest Airlines conference. Flight privileges obtained through your husband's employment contract are not gifts for purposes of the code of ethics; nor are conference expenses related to your husband's employment. You must take great care not to give Southwest or AirTran a special financial benefit. Finally, you may not accept anything of value because of an "official action taken" or "duty performed."

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any questions in this matter.

Sincerely,

Alan S. Johnson  
Executive Director

ASJ/mcr/gal

June 17, 2011

Mark Joyce, Firefighter  
Palm Beach Gardens Fire Rescue  
10500 North Military Trail  
Palm Beach Gardens, FL 33410

Re: RQO 11-027  
Misuse of Office

Dear Mr. Joyce,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on July 7, 2011.

YOU ASKED in your email of May 25, 2011 whether, as a municipal employee who serves on the board of trustees for the Palm Beach Gardens Firefighters' Pension Fund and as president of Firefighters to the Rescue, a 501c3 non-profit organization, you could obtain and use an official database to email other employees and officials in Palm Beach Gardens and ask them to volunteer at an upcoming event.

IN SUM, as a public employee you are prohibited from using your official position to give a special financial benefit to a non-profit organization of which you are an officer or director.

THE FACTS as we understand them are as follows:

You are a firefighter with the City of Palm Beach Gardens and president of a non-profit 501c3 charity organization called Firefighters to the Rescue, Inc. Firefighters to the Rescue helps public servants pay their medical bills and are planning to host a summer fundraising event. To recruit volunteers to staff the event, you would like to use an official city database to email other Palm Beach Gardens' employees and ask them to volunteer their time.

THE LEGAL BASIS for this opinion is found in the following relevant section of the revised Palm Beach County Code of Ethics, which took effect June 1, 2011.

**Sec. 2-443 Prohibited Conduct**

(a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:

(7) a civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

As a Palm Beach Gardens employee you may not use your employment to obtain a special financial benefit for a charity of which you are an officer. Therefore, because you are the president of Firefighters

to the Rescue, you may not personally use city resources, such as city email, to ask city employees to volunteer for your event.

THE RATIONALE for restricting a public employee's use of public resources to benefit a charity of which they are an officer or director is as follows. If all charities in the area had access to the same method for requesting volunteers – a city employee sending out an open request for employees' time – there is no special benefit. However, in this instance, because you are both a director of Firefighters to the Rescue and a public employee, you would be using your public employment to secure a special benefit on behalf of your charity not shared with "similarly situated members of the general public" – other area charities.

IN SUM, you may not use your official position as a Palm Beach Gardens firefighter to give a special benefit to Firefighters to the Rescue, a charity of which you are an officer.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson  
Executive Director  
Commission on Ethics

ASJ/mr/gal

Leonard G. Rubin, P.A.  
Northpoint Corporate Center  
701 Northpoint Parkway, suite 209  
West Palm Beach, FL 33407

Re: RQO 11-028  
Village of North Palm Beach Country Club Employee Tips

Dear Mr. Rubin,

The Commission on Ethics has considered your request for an advisory opinion, and rendered its opinion at a public meeting held on July 7, 2011.

YOU ASKED in your correspondence dated May 31, 2011 whether employees of the Village of North Palm Beach Country Club, a municipal golf course, may accept tips in the normal course of their employment without violating the Palm Beach County Code of Ethics. Additional information was submitted by e-mail on June 6 including "Personnel action forms", "job descriptions" and "conditional offers of employment" referencing compensation to include hourly salary plus tips.

IN SUM, based on the information you provided, the Ethics Commission opined that city employees specifically hired for service related jobs where the negotiated compensation includes salary or hourly wages plus tips, where such arrangements also reflect standard compensation practices within the service industry, may continue to accept service tips without violating section 2-444(e) of the Palm Beach County Code of Ethics.

THE FACTS as we understand them are as follows:

You are the Village Attorney for the Village of North Palm Beach (The Village). The Village owns and operates the Village of North Palm Beach Country Club (Country Club), which includes a golf course, tennis facility, pool, restaurant and lounge, and banquet facility. In reviewing the Palm Beach County Code of Ethics, as amended to apply to municipalities, The Village had concerns regarding the application of the code to employees who customarily receive tips for services rendered at the Country Club.

The Village does not have a standard employment contract with service employees at the Country Club; however, by custom and practice, tips have been a contemplated part of their overall compensation package. You provided samples of official personnel documents which specifically reference hourly salary plus tips for "servers" at the Country Club. The sample documents referenced job title, pay grade and employment status. For example, a part-time server was offered employment at the Country Club at a pay rate of "\$4.23/Hourly + tips." You also indicated that "new hire paperwork for the outside golf attendants and the tennis/golf professionals do not specifically indicate the receipt of tips, although tips

are customary for these positions. The Village will, however, begin to specifically reference tips on all future paperwork.”

THE LEGAL BASIS for this opinion may be found in the following relevant code sections:

Sec. 2-442 Definitions.

*Official or employee* means any official or employee of the county or the municipalities located within the county, whether paid or unpaid.

Sec. 2-444(e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:

- (1) An official public action taken or to be taken, or which could be taken;
- (2) A legal duty performed or to be performed or which could be performed; or
- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

THE RATIONALE for allowing gratuities as part of the compensation package for Country Club employees is grounded in a reasonable interpretation of what constitutes an “official public action” or “legal duty” on the part of a public employee under these circumstances. First, the underlying basis for compensation of service providers within the context of a restaurant, golf course or country club contemplates a low hourly salary plus gratuities for service. The commission acknowledges the common place fact that gratuities are a normal and customary means of compensation for service industry employees, whether public or private.

Previously, this commission was asked by a county employee whether he could accept two tickets (unsolicited) to a play in appreciation for his helping the playwright understand the Everglades and archaeological procedures in Palm Beach County.<sup>1</sup> The Commission opined that the employee was not permitted to accept the theater tickets as this constituted a gratuity tied to an official act in helping the playwright obtain information. We note that such a gratuity was neither a contemplated part of the employee’s compensation package nor was it an industry standard or otherwise customary in this context. Gratuities for restaurant or country club service providers, on the other hand, are a customary form of compensation, and as such may be distinguishable from the earlier opinion. In addition, The Village clearly contemplates tips and gratuities to be a significant and accepted part of the service provider’s compensation package.

IN SUMMARY under the facts submitted, the Code of Ethics does not prohibit a service employee, employed by a municipality, to accept tips and gratuities for providing standard and customary services at a municipal country club, where tips and gratuities are an officially contemplated basis for the employee’s overall compensation.

<sup>1</sup> RQO 10-031

This opinion construes the Palm Beach County Code of Ethics and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Sincerely,

Alan S. Johnson  
Executive Director

ASJ/gal

PROPOSED

July 8, 2011

Kimberly Mitchell , City Commissioner  
City of West Palm Beach  
401 Clematis Street  
West Palm Beach, FL 33401

Re: RQO 11-029  
Misuse of Office/Gift Law

Dear Commissioner Mitchell,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on July 7, 2011.

YOU ASKED in your email dated June 1, 2011, whether serving on the board of directors of West Palm Beach Family Zone, a local non-profit organization created a conflict of interest with your service to the City of West Palm Beach as a City Commissioner, and additionally, whether you could continue to fundraise on behalf of West Palm Beach Family Zone.

IN SUM, as an elected official you are prohibited from using your official position as a city commissioner to give a special financial benefit to a non-profit organization of which you are an officer or director. You may continue to solicit donations on behalf of the West Palm Beach Family Zone, but if you solicit donations in excess of \$100 from a vendor, lobbyist, or principal or employer of a lobbyist of West Palm Beach you must maintain a record of those solicitations and submit a log to the Palm Beach County Commission on Ethics within 30 days of the event, or if no event, within 30 days of the solicitation.

THE FACTS as we understand them are as follows:

You are a West Palm Beach City Commissioner and serve on the board of the West Palm Beach Family Zone (WPBFZ). You were a founding member of Mission Sandbox, now WPBFZ, and have actively served on its board of directors since 1998. WPBFZ works to implement anti-poverty measures in high-risk neighborhoods, specifically a 50 block span in North West Palm Beach. WPBFZ has adopted and promoted the use of the Harlem Children's Zone model, which has been used to alleviate the cycle of poverty in Harlem, New York. As a city commissioner, you have publically advocated for the adoption of this model- using public private partnerships to end the cycle of poverty in low income neighborhoods.

While WPBFZ may apply for funding from the City of West Palm Beach, the majority of its funding comes from private donations. Over the years, you have been active in soliciting these private funds. Currently, WPBFZ is attempting to obtain matching grants from the federal government.

THE LEGAL BASIS for this opinion is found in the following relevant section of the revised Palm Beach County Code of Ethics, which took effect June 1, 2011.

## Sec. 2-443 Prohibited Conduct

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (7) a civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.
- (b) *Disclosure of voting conflicts.* County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above.

As an elected official serving the City of West Palm Beach, you may not use your official position to give a special financial benefit to a non-profit organization of which you are an officer or director. Any attempt to use your official position to influence your fellow commissioners or any city department on behalf of WPBFZ, in a manner not shared with similarly situated charitable organizations within West Palm Beach, may violate the misuse of office section of the code.

Similarly, as an officer or director of WPBFZ, if any matter that would result in a special financial benefit to WPBFZ comes before the city commission, you must abstain from voting and may not participate in the discussion surrounding the issue.

Section 2-444 of the Palm Beach County Code of Ethics addresses solicitation of vendors, lobbyists, or principals or employers of lobbyists.

## Sec. 2-444. Gift Law.

- (a) (1) No county commissioner, member of a local government body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies sells or leases to the county or municipality as applicable.
- (h) Solicitations of Contributions on Behalf of a Non-profit Charitable Organization.
- (1) Notwithstanding the prohibition on gifts as outlined in subsection 2-444(a) and (b), the solicitation of funds by a county or municipal official or employee for a non-profit charitable organization, as defined under the Internal Revenue Code, is permissible so long as there is no quid pro quo or other special consideration,

including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited. The solicitation by an official or employee as contemplated herein, is expressly prohibited if made to any person or entity with a pending application for approval or award of any nature before the county or municipality as applicable.

- (2) To promote the full and complete transparency of any such solicitation, officials and employees shall disclose, on a form provided by the Commission on Ethics, the name of the charitable organization, the event for which the funds were solicited, the name of any person or entity that was contacted regarding a solicitation or pledge by the official or employee, and the amount of the funds solicited or pledged if known. The form shall be completed legibly and shall be filed with the commission on Ethics. The form shall be filed within 30 days from the occurrence of the event for which the solicitation was made, or if no event, within 30 days from the occurrence of the solicitations.
- (3) Officials and employees may not use county or municipal staff or other county or municipal resources in the solicitations of charitable contributions described in this subsection.

The Palm Beach County Code of Ethics allows elected officials, advisory board members and employees to solicit anyone on behalf of non-profit or charitable organizations. However, you may not use West Palm Beach staff or other municipal resources to solicit donations. Moreover, if you intend to solicit donations on behalf of WPBFZ from vendors, lobbyists, or principals or employers of lobbyists who lobby, sell or lease to West Palm Beach you must keep a detailed record of those solicitations. A *charitable solicitation log* can be found on our website at [www.palmbeachcountyethics.com/Forms](http://www.palmbeachcountyethics.com/Forms) and should include the following information:

- 1) Name of the charitable organization for which you are soliciting; and
- 2) Name of the person and entity that was solicited; and
- 3) The event, if any, for which the funds were solicited; and
- 4) Amount of funds solicited and pledged.

You must file this form with the Commission on Ethics office within 30 days of the charitable event or within 30 days of the solicitation if not related to an event. You may not solicit any person or entity who has a pending application before West Palm Beach. Most importantly, you must take great care that solicitations accepted on behalf of WPBFZ do not result in a *quid pro quo* for your “official action” as city commissioner.

THE RATIONALE for limiting the manner of solicitations and donations is grounded in the desire to avoid the appearance that these solicitations and donations are being made to obtain access to or otherwise ingratiate the donor to the elected official. Similarly, by prohibiting officials and employees from using their public office to give a special financial benefit to a charity of which they are an officer or director,

the code further attempts to limit potential misuse of a public duty to treat all citizens and entities on an equal footing.

IN SUMMARY, you may not use your elected office to give WPBFZ a special financial benefit while serving as an officer or director of the charity. If matters that would specially financially benefit WPBFZ come before the West Palm Beach City Commission, you must publicly declare your conflict, abstain from voting, and may not participate in the decision-making process in any way. Finally, while you may solicit donations on behalf of WPBFZ, any solicitation of donations from vendors or lobbyists of West Palm Beach must be transparent in that you must keep a detailed log of your contact with those donors and submit a copy to the Palm Beach County Commission on Ethics. Lastly, you may not solicit any gift on behalf of WPBFZ in exchange for any special consideration on your part as a city commissioner.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson  
Executive Director

ASJ/mr/gal

July 8, 2011

Mr. Edward Lowery, Director  
PBC Housing and Community Development  
100 Australian Ave., 5<sup>th</sup> Floor  
West Palm Beach, FL 33406

Re: RQO 11-030  
Conflict of Interest, Misuse of Office

Dear Mr. Lowery,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on July 7, 2011.

YOU ASKED in your email dated May 31, 2011 whether it would be a prohibited conflict of interest under the Palm Beach County Code of Ethics for Wanda Gadson, a temporary employee in the Mortgage and Housing Assistance Section (MHA), within the PBC Division of Housing and Community Development (HCD), to be involved in matters where MHA provides financial assistance to potential homebuyers of foreclosed properties, when those properties are purchased from the Palm Beach County Community Land Trust (PBCCLT). PBCCLT is an independent non-profit community organization. Ms. Gadson serves as an unpaid officer (treasurer) and volunteer member of its Board of Directors. You also asked if a potential conflict of interest could be avoided by prohibiting Ms. Gadson, in her role as a temporary county employee with MHA, from working on any matters involving MHA assistance for purchases of residential property directly from PBCCLT. You provided additional information in two e-mails received by commission staff on June 6, 2011.

IN SUM, Ms. Gadson's county employment requires her to directly assess the eligibility of applicants for county housing assistance funds. These applicants include potential clients of the PBCCLT, on which she serves as an officer (Treasurer) and member of the Board of Directors. Based on the facts submitted, there is an inherent conflict between Ms. Gadson's temporary county employment and her position as a volunteer corporate officer and member of the PBCCLT Board of Directors.

THE FACTS as we understand them are as follows:

You are the Director of the Palm Beach County Division of Housing and Community Development (HCD). You recently hired Wanda Gadson as a temporary paid employee to work in the Mortgage and Housing Assistance Section (MHA) of HCD. MHA receives and assesses applications for housing assistance from applicants for both income verification purposes, and for sufficiency of information on these applications. Once MHA has completed these assessments, if approved by the MHA section Manager and HCD Director, MHA provides financial assistance to qualified first-time homebuyers. While Ms.

Gadson has no authority to approve an application, she does have the authority to determine within standard guidelines whether the applicant's income level meets the required criteria, and whether an application contains sufficient information to continue in the approval process.

Ms. Gadson is also an unpaid volunteer officer and member of the Board of Directors of the Palm Beach County Community Land Trust (PBCCLT), a registered Florida non-profit corporation. PBCCLT is a county-wide community housing corporation formed primarily to preserve the quality and affordability of housing for low and moderate income families. PBCCLT is sometimes the recipient of federal grant monies by way of Palm Beach County's Neighborhood Stabilization Programs, which are administered by HCD. These funds are used by PBCCLT to purchase foreclosed residential properties, which are either sold or rented to eligible families. When such grant funds are disbursed to PBCCLT, it enters into an agreement with Palm Beach County through another HCD section, the Capital, Real Estate and Inspection Services section (CRE). The MHA section, which employs Ms. Gadson, is not involved in the application review or approval process or otherwise involved in the disbursement of these grant funds to PBCCLT, or to any individual applicants.

While the MHA section has no involvement in the distribution of grant funds to PBCCLT, they do provide home buyer assistance to households who may want to purchase the foreclosed residential properties from PBCCLT. According to information you have provided COE staff, Ms. Gadson's role in this process is to verify income and determine whether all required information on an application being submitted is complete. Her decision making authority in the approval process is limited to these two areas within the process.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics:

**Sec. 2-442. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Official or employee* means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. (Emphasis added)

*Outside employer or business* includes:

Any entity, other than the county, the state, or any other federal regional, local, or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and *from which he or she receives compensation for services rendered or goods sold or produced*. For purposes of this definition, "compensation" does not include reimbursement for necessary expenses, including travel expenses. (Emphasis added)

**Sec. 2-443. Prohibited conduct.**

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities: (Emphasis added)
- (7) A civic group, union, social, charitable, or religious organization, or *other not for profit organization of which he or she* (or his or her spouse or domestic partner) *is an officer or director.* (Emphasis added)
- (b) *Corrupt misuse of official position.* An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, “corruptly” means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties. (Emphasis added)

THE RATIONALE for scrutinizing the public position of a county employee when that employee sits as an officer or director of a non-profit organization is grounded in the desire to avoid the appearance that in their official capacity, the employee may influence the process to financially benefit the organization in a way not shared by similarly situated members of the general public. The closer the official function is to the beneficial transaction, the greater the appearance becomes that the transaction can be so affected.

As a temporary employee of Palm Beach County, Ms. Gadson falls within the jurisdiction of the Code of Ethics under Section 2-442, for the length of her employment. PBCCLT is not considered her outside employer under the code, because she fills only an unpaid volunteer role as an officer and member of their board of directors. Therefore, PBCCLT clients are not the clients of her outside employer under the Code of Ethics, thus only the prohibitions found within Section 2-443(a)(7) and (b) apply to her in this instance.

The code of ethics prohibits Ms. Gadson from using her official position to take or fail to take any action, or to influence others to take or fail to take any action that would lead to a financial benefit for PBCCLT due to her position as an officer and/or member of the board of directors of PBCCLT. This includes any preference for the approval of housing assistance for clients of PBCCLT. Regardless of whether she has final authority over approval of applications for housing assistance from MHA, her assignment within MHA is to assess applications for housing assistance funds. This assignment by its very nature gives her a certain level of decision making authority regarding these applications, and is not therefore “ministerial” in nature.

IN SUMMARY, based on the facts submitted, there is an inherent conflict of interest between Ms. Gadson's assigned duties as a county employee with MHA, and her position as an officer and board member of PBCCLT under Section 2-443(a)(7) and (b). We believe that this prohibited conflict of interest cannot be cured while she remains in her current assignment within MHA, and also remains as an officer or member of the board of directors of PBCCLT.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson  
Executive Director  
Commission on Ethics

ASJ/meb/gal

July 8, 2011

Suzanne Mulvehill, Vice-Mayor  
City of Lake Worth  
7 North Dixie Highway  
Lake Worth, FL 33460-3787

Re: RQO 11-031-OE  
Outside Employment

Dear Vice-Mayor Mulvehill,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on July 7, 2011.

YOU ASKED in your email of June 2, 2011, whether as the Vice-Mayor of Lake Worth, you may serve as a Certified Business Analyst for the Small Business Development Center at Palm Beach State College (PBSC).

IN SUM, as a part of the Florida College System, Palm Beach State College (PBSC) is a state governmental entity. Governmental entities are not considered outside employers as this term is defined within the Code of Ethics. Therefore, even though Lake Worth maintains contracts or otherwise transacts business with PBSC you are not prohibited from accepting outside employment with PBSC. Notwithstanding, at all times you may not use your position as vice-mayor of the City of Lake Worth to obtain a "special financial benefit for yourself not shared with similarly situated members of the general public."

THE FACTS you submitted are as follows:

You are the vice-mayor of The City of Lake Worth and have been offered a position as a Small Business Development Consultant at Palm Beach State College (PBSC). Palm Beach State College is the host institution for the Small Business Development Center (SBDC), a governmental entity funded in part through a cooperative agreement with the U.S. Small Business Administration. The SBDC provides free counseling, advice and seminars to small business owners throughout the region. The SBDC at PBSC sets and provides your salary. Your position entails, among other things, providing one-on-one counseling to small or medium size enterprises (SME), contacting SME's in the region and recruiting SME's for the SBDC's growth acceleration program, and attending business events on behalf of the SBDC. From time to time, businesses that operate in Lake Worth, may come to the SBDC to request your advice and businesses that you have counseled may appear before you as a member of the City of Lake Worth Commission. Lake Worth employs a sealed, competitive bid process, at the completion of which staff presents the top five bids to the Commission including the low bid. The City Commission has discretion to select from among those bids.

THE LEGAL BASIS for this opinion relies on the following relevant sections of the Palm Beach County Code of Ethics.

Section 2-443. Prohibited conduct.

- (d) *Contractual relationships.* No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official *or employee's outside employer or business.* (emphasis added)

The Code of Ethics prohibits employees, officials, and the outside employer or business of an employee or official from contracting with the municipality they serve, unless an exemption or exception applies.

The code defines *outside employer* in sec. 2-442

*Outside employer or business* includes:

Any entity, *other than the county, the state, or any other federal regional, local, or municipal government entity*, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced. (emphasis added)

The definition of *outside employer or business*, specifically excludes “county, state, or any other federal regional, local or municipal government entity.” The Palm Beach County Commission on Ethics has previously addressed whether a state college or university is a government entity under the code.<sup>1</sup> §1001.60, Florida Statutes, establishes the Florida College system. As one of 28 public colleges in the State of Florida, PBSC is, therefore, considered a governmental entity. As a result, you are not prohibited from accepting employment with PBSC even though PBSC maintains contracts with Lake Worth.

While you may accept employment with PBSC, the college or clients of SBDC may come before you in your capacity as Vice-Mayor of Lake Worth.

The following section of the code addresses that potential conflict.

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
  - (2) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
  - (5) A customer or client of the official or employee’s outside employer or business;

<sup>1</sup> RQO 10-028-OE, RQO 10-037-OE, RQO 11-026

Neither the PBSC, nor SBDC clients fall under the prohibitions of the misuse of public position section of the code as an outside business, employer or customer or client. Not only is your employer a government entity and thus exempt from the definition of *outside employer*, but the services of SBDC are free to the public. Therefore, the businesses you contact or advise on behalf of the SBDC are not *customers* or *clients* as defined by the code of ethics. Notwithstanding these exemptions, you may not use your official position to gain a special financial benefit for yourself.

IN SUMMARY, you are not prohibited from accepting the growth acceleration program consultant position with the Small Business Development Center at Palm Beach State College. Because Palm Beach State College is a government entity, it is not an *outside employer* and under the code of ethics no conflict exists. Your duty to not use your official position for personal financial benefit is ongoing.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Sincerely,

Alan S. Johnson  
Executive Director

ASJ/mr/gal

July 8, 2011

Suzanne Mulvehill, Vice Mayor  
City of Lake Worth  
7 North Dixie Highway  
Lake Worth, FL 33460-3787

Re: RQO 11-033  
Misuse of Office

Dear Vice- Mayor Mulvehill,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on July 7, 2011.

YOU ASKED in your email dated June 7, 2011, whether it is a violation of the Palm Beach County Code of Ethics for you to use money left over from your campaign to help pay for a trip to Southend-on-Sea, England where you will represent the City of Lake Worth at a conference and street painting festival modeled after the Lake Worth Street Painting Festival.

IN SUM, the Code of Ethics does not regulate campaign contributions and expenditures. These issues are subject to regulation under state and federal law. Notwithstanding, you have an ongoing responsibility under the Code of Ethics not to use your official position to take or fail to take any action in a manner that constitutes a corrupt misuse of your office for a wrongful purpose as defined in the code.

THE FACTS as we understand them are as follows:

You are the Vice Mayor for the City of Lake Worth. Lake Worth has established a "sister-city" program that initiates, plans, sponsors, organizes and promotes cultural exchanges with cities abroad. In conjunction with this program you have been invited to Southend-on-Sea, a Lake Worth sister-city in England, to represent Lake Worth at an International Business and Tourism conference. Your participation in the event includes being a judge in Southend-on-Sea's first street painting festival modeled after Lake Worth's Street Painting Festival. While you used personal frequent flyer miles to cover the cost of your airline ticket, you intend to use \$220 from your office campaign account to pay for taxes on your airline ticket and use the remaining \$250 for accommodations, train tickets to and from Southend-on-Sea, and meals. You stated that you will use personal funds to pay whatever expenses are not covered by your office campaign account due to Lake Worth's budgetary restraints.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics

2-443. Prohibited conduct.

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public...

*Financial Benefit:* includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value. *This term does not include campaign contributions authorized by law.*

While elected officials, advisory board members and public employees may not use their official position to obtain a special financial benefit, campaign contributions are specifically exempted from the definition of financial benefit and are not subject to regulation by the Palm Beach County Commission on Ethics. As a former candidate for office and current elected official, you are authorized by §106.141, Florida Statutes, to dispose of surplus campaign funds as outlined in the state statute. By enacting §106.141, the State Legislature has made it clear that the Florida Division of Elections regulates campaign finance laws and how surplus campaign contributions are to be dealt with.

IN SUMMARY, based on the information you have submitted, the Code of Ethics does not prohibit you from using funds disbursed to your office campaign account as authorized by §106.141, Florida Statutes, to help defray the costs of attending an international business conference where your attendance is in your official capacity as a member of the Lake Worth Commission.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state ethics or campaign finance laws. Inquiries regarding possible conflicts under state campaign finance laws should be directed to the Florida Division of Elections.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson  
Executive Director  
Commission on Ethics

ASJ/mr/gal

July 8, 2011

Thomas P. Cairnes, Director of Construction  
The Forbes Company  
1555 Palm Beach Lakes Blvd., Suite 900  
West Palm Beach, FL 33401

Re: RQO 11-034  
Gift Law/Misuse of Official Position

Dear Mr. Cairnes,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on July 7, 2011.

YOU ASKED two (2) related questions in your letter of June 8, 2011. First, whether you or your employer, The Forbes Company (Forbes), owners and operators of The Gardens Mall, are prohibited by the Palm Beach County Code of Ethics from inviting officials and employees of the City of Palm Beach Gardens or Palm Beach County to attend various charity events as guests, where the cost of attendance is paid for by Forbes. Second, whether you are prohibited under the code from providing complementary lunches to various city employees at monthly meetings discuss a range of issues concerning the Gardens Mall and the PGA corridor area, including security and growth trends in the city.

IN SUM, public officials and employees may not accept anything of value because of “an official public action” or “a legal duty” performed or violated. Regarding gift limitations, since you are not a vendor, lobbyist, or principal or employer of a lobbyist in Palm Beach Gardens or Palm Beach County, there is no prohibition on the amount of a gift. So long as there is no “quid pro quo” or special treatment or other privilege given, or obtained by you or your employer, in exchange for tickets to charitable events or complimentary lunches, the Code of Ethics does not prohibit these gifts. However, a gift in excess of \$100 must be reported by the official or employee pursuant to the code, or Florida Statute for those who are state reporting individuals.

THE FACTS as we understand them are as follows:

You are the Director of Construction for The Forbes Company (Forbes). Forbes owns and operates the Gardens Mall (the Mall), which is located in the City of Palm Beach Gardens. You advise that neither you nor Forbes is a vendor, lobbyist or a principal or employer of a lobbyist

selling or leasing services or property or otherwise lobbying either Palm Beach Gardens or Palm Beach County.

Forbes will frequently “partner” with Palm Beach Gardens and employee organizations in support of various charitable events by donating funds for such events, including Art in Public Places, Volunteer Police Foundation events, and the Big Heart Brigade Chili Cook Off, which is sponsored by Palm Beach Gardens’ firefighters. Several times per year, Forbes will also donate sponsorship funds or purchase VIP admission to other charitable events, such as golf tournaments, the Red Cross Ball, Music for the Children, and other like events, where entry fees range from a few hundred to a few thousand dollars. On behalf of Forbes, you will often invite county or city officials or employees to attend these events as guests. You have stated that Forbes does not and has not used these complementary admissions in any attempt to garner special favor with county or city officials or employees, and neither Forbes nor you personally ask for or receive any “quid pro quo” or special treatment because of these donations.

In addition, you host monthly meetings with public officials and employees, including the Palm Beach Gardens Police Chief and employees of the Growth Management, Building or Administrative Departments, where you discuss crime and growth trends within the city and their effect on the tenants of the Mall and the PGA corridor area in general. You indicate that the purpose of these meetings is to obtain information that the Mall needs to assess its future security, as well as to what type of businesses the Mall should consider adding in the future. Complementary lunch is provided by you at these meetings.

Lastly, you advise that you and other Forbes employees serve on various business and non-profit boards, such as the PGA Corridor Association, The Northern Palm Beach County Chamber of Commerce, and the Nicklaus Children’s Hospital Fund Board, and that some of the members of these boards may be lobbyists or vendors. However, when Forbes purchases either lunch at a meeting, or admission to charity events, you pay for these items from your reimbursed business expense account, and any tickets, passes or admissions you disseminate are directly from Forbes, not through other Forbes’ employees who may be members of these boards.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics:

Sec. 2-442. Definitions.

*Official or employee* means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. (Emphasis added)

*Lobbyist* shall mean any person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying on behalf of a principal, and shall include an employee whose principal responsibility to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government.

*Vendor* means any person or entity who has a pending bid proposal, an offer or request to sell goods or services, sell or lease real or personal property, or who currently sells goods or services, or sells or leases real or personal property, to the county or municipality involved in the subject contract or transaction as applicable. For the purposes of this definition a vendor entity includes an owner, director, manager or employee.

Sec. 2-443. Prohibited conduct.

(b) *Corrupt misuse of official position.* An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties. (Emphasis added)

Sec. 2-444. Gift law.

(a)(1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.

(a)(2) No lobbyist, vendor or principal or employer of a lobbyist that lobbies the county or a municipality shall knowingly give, directly or indirectly, any gift with a value greater than one hundred dollars (\$100) in the aggregate for the calendar year to a person

who the vendor, lobbyist or principal or employer of a lobbyist knows is an official or employee of that county or municipality.

There are similar limitations on such gifts to advisory board members regarding vendors, lobbyists, or principals or employers of lobbyists who contract with or come before a board, or the government department subject to the board's authority.

(f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) *shall report that gift* in accordance with this section. (Emphasis added)

(g) For the purposes of this section, "*gift*" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, *entertainment, hospitality*, item or promise, or in any other form, without adequate and lawful consideration. (Emphasis added)

(1) Exceptions. The provisions of subsection (g) shall not apply to:

(i) A ticket, pass or admission in connection with public events, appearances or ceremonies related to official county or municipal business, if furnished by a nonprofit organization of such public event, or if furnished pursuant to a contract between the event sponsor and the county or municipality as applicable provide that sponsor organization does not employ a lobbyist, and further provided the ticket, pass or admission is given by a representative of the sponsor organization who is not otherwise a vendor, lobbyist, principal or employer of a lobbyist.

The gift law prohibitions and exceptions all contain a common theme. Public officials and employees may not accept anything in exchange for the past, present and future performance of their legal duties. In addition, they may not accept, in the aggregate, more than \$100 during the calendar year from vendors, lobbyists, or principals or employers of lobbyists who lobby, sell or lease to their government employer. In fact, the code applies the \$100 annual gift limit to prohibit the donor vendors, lobbyists, or principals or employers of lobbyists who lobby the public servant's government (or in the case of an advisory board member, the board or relevant department) from giving such aggregate gifts. Therefore, you must take great care to not "pass through" or otherwise indirectly give a prohibited gift on behalf of a sponsor who is a relevant vendor, lobbyist, or principal or employer of a lobbyist.

THE RATIONALE for limiting the value of gifts given by vendors, lobbyists or principals or employers of lobbyists to public officials and employees is based on reducing the chance that such gifts are for the purpose of improperly influencing the official or employee in the exercise

of their official duties. When such gifts are given by persons who are not vendors, lobbyists, or principals or employers of lobbyists, this concern is reduced, and so the value of such gifts is not restricted. However, the requirement that such gifts are not given for an improper purpose such as to corruptly influence an official or employee in performance of their official duties remains.

For gifts that are not otherwise prohibited, employees and officials are required to report individual gifts received in excess of \$100 either pursuant to state gift law reporting requirements, or annually pursuant to the county ethics code. This requirement assures that non-exempt gifts of this nature are transparent and subject to public scrutiny.

IN SUMMARY, based on the facts you have submitted, since neither you personally, nor Forbes, are a vendor, lobbyist, or principal or employer of a lobbyist doing business with either The City of Palm Beach Gardens or Palm Beach County, the Code of Ethics does not prohibit you from giving, or officials or employees of Palm Beach Gardens or Palm Beach County from accepting, complementary tickets to charity events, or complementary lunches at meetings, so long as these items are provided to the official or employee directly from Forbes through you, and as long as these items are not; provided to "corruptly" and improperly influence officials or employees in carrying out their official duties, or indirectly provided by a prohibited source. However, if the value of admission to a charity event, or the value of any single complementary lunch is greater than one hundred dollars (\$100), the official or employee receiving this benefit may have to report this information under Section 2-444(f) (1) or (2) of the code or applicable state law.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson  
Executive Director  
Commission on Ethics

ASJ/meb/gal

July 8, 2011

Peter B. Elwell  
Town Manager, Town of Palm Beach  
360 South County Road  
Palm Beach, FL 33480

Re: RQO 11-037  
Conflict of Interest/Misuse of Office

Dear Mr. Elwell,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on July 7, 2011.

YOU ASKED in your letter dated June 16, 2011, whether the sibling relationship between a Town of Palm Beach Building Official and his brother, who has an ownership interest in a private firm hired by a landowner of commercial property to act as a Resident Inspector on a construction project, creates a prohibited conflict of interest under the Code of Ethics, where the Resident Inspector is required to submit inspection and compliance reports to the Building Official, and where the Building Official is responsible for final approval of the work completed.

IN SUM, there is no prohibited conflict of interest created under the Code of Ethics when a Town of Palm Beach Building Official completes his inspection and compliance assessment duties, even where the "Resident Inspector" is a sibling of the Building Official, and even where that Building Official has final authority to issue the necessary compliance documents, provided that in completing his official duties, the Building Official does not act or fail to act, or influence others to act or fail to act, in any manner that will result in a special financial benefit for his brother that is not shared by similarly situated members of the general public (other landowners represented by different resident inspectors).

THE FACTS as we understand them are as follows:

You are the Town Manager for the Town of Palm Beach. Under your Town Code, when a private party is engaged in any construction project within the Town that requires a permit, they are given the option of employing a private resident inspector for the purpose of ensuring that the work is done properly and complies with all building codes. This resident inspector is further tasked with filing weekly reports with the head of the Town's Building Department

(Building Official), as well as documenting compliance with Town Building Codes. The Town's Building Official completes a final inspection of the work, and if appropriate, issues a Certificate of Completion or Certificate of Occupancy as applicable for the project. On one such commercial construction project, the landowners have hired a private company to act as their Resident Inspector. One of the partners/principals of this company is the brother of the Town's Building Official.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics:

Sec. 2-443. Prohibited conduct.

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, *not shared with similarly situated members of the general public*, for any of the following persons or entities: (Emphasis added)
- (3) A *sibling* or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, *or the employer or business of any of these people*; (Emphasis added)
- (b) *Corrupt misuse of official position.* An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, *to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others.* (Emphasis added)

IN SUMMARY, based on the facts you have submitted, there is no prohibited conflict of interest under the code based solely on a sibling relationship between a Building Official, charged with assuring compliance with building codes in the Town of Palm Beach, when a landowner chooses to hire as their authorized resident inspector, a private company in which the brother of the Building Official has an ownership interest, so long as the Building Official does not misuse his official position to benefit his brother, his brother's company, or the landowner who employed his brother's company, by giving a special financial benefit not shared by similarly situated residents employing other resident inspectors.

The Commission on Ethics cannot opine as to whether, in order to prevent the appearance of impropriety, you as Town Manager should have the resident inspector report directly to the Building Official's supervisor (Director of Planning, Zoning and Building), or use a different Building Official within the Building Division in that role. Since the relationship itself does not constitute a prohibited conflict under the Code of Ethics, this would be a matter of management policy to avoid any appearance of impropriety. This is especially true if the official acts of the Building Official are of a discretionary nature.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson  
Executive Director  
Commission on Ethics

ASJ/meb

July 8, 2011

Jim Kuretski, Councilman  
Town of Jupiter  
210 Military Trail  
Jupiter, FL 33458

Re: RQO 11-038  
Misuse of Public Office/Conflict of Interest

Dear Councilman Kuretski;

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on July 7, 2011.

YOU ASKED in your e-mail dated June 17, 2011, whether being employed by Florida Power and Light (FPL) presented an inherent conflict of interest based upon customers and clients of FPL appearing before your council in most, if not all decision-making matters.

IN SUM, the code of ethics prohibits an official from using his or her official position, or voting on a matter, that would result in a "special financial benefit, not shared with similarly situated members of the general public" for a customer or client of the official's outside employer. FPL is a publicly regulated utility and maintains an effective monopoly among users of electric power in the Town of Jupiter and throughout the State of Florida. As such, most, if not all persons and entities coming before your council would be similarly situated members of the general public, insofar as their being customers or clients of your outside employer. Therefore, under these circumstances, there is no inherent special financial benefit. Notwithstanding, depending upon the facts, there could be a scenario where a specific customer or client is not similarly situated with other customers of FPL. Additionally, you must take care to avoid using your official position to give a special financial benefit to FPL. In that regard, this commission cannot opine as to speculative factual scenarios.

In addition, the fact that your outside employer may franchise with the Town of Jupiter does not make it a prohibited contractual relationship as FPL is a sole source provider of electric power to the town.

THE FACTS as we understand them are as follows:

You are an elected official with the Town of Jupiter (the Town), a municipality within Palm Beach County. Your outside employer is FPL. The Town has a franchise agreement with FPL, effectively making all businesses and residential property owners or renters within the Town users of its electrical power supply services and thereby customers or clients of FPL. FPL likewise has franchise agreements with Palm Beach County government and most municipalities within the county (Lake Worth has its own electric utility). The circumstances make FPL effectively the sole source of electric power to individuals and businesses within the Town. You have previously disclosed and abstained from voting on matters directly involving FPL but have never abstained based upon matters involving customers or clients of FPL.

THE LEGAL BASIS for this opinion relies on the following provisions of the code:

Sec. 2-443 Prohibited conduct.

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, *not shared with similarly situated members of the general public*, for any of the following persons or entities (emphasis added):
- (1) Himself or herself;
  - (2) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
  - (5) A customer or client of the official or employee's outside employer or business;

The code defines *customer or client* in sec. 2-442

*Customer or client* means any person or entity to which and official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000.00)

- (c) *Disclosure of voting conflicts.* County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7)...
- (d) *Contractual relationships.* No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official *or employee's outside employer or business.* (emphasis added)

The Code of Ethics prohibits employees, officials, and the outside employer or business of an employee or official from contracting with the municipality they serve, unless an exemption or exception applies.

The code defines *outside employer* in sec. 2-442

*Outside employer or business* includes:

Any entity, other than the county, the state, or any other federal regional, local, or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced.

- (e) *Exceptions and waiver.*

- (3) The outside employer or business involved is the *only source of supply within the county or municipality* as applicable and there is full disclosure by the official or employee of his or her interest in the outside employer or business... (emphasis added)

FPL is the sole source of electric supply within the Town and therefore your employment with FPL does not constitute a prohibited contractual relationship.

Likewise, the likelihood is that most, if not all persons and business entities appearing before you are customers or clients of FPL. While a significant number of customers will be below the approximately \$400 per month legal threshold to reach \$10,000 in 24 months, the simple fact remains that a significant portion of the business and residential population would be at or near this amount. Since those appearing before your council are similarly situated, there is no inherent conflict merely because a person or entity is a customer or client of FPL. Notwithstanding, the misuse of office provisions dealing directly with yourself or your outside employer remain applicable and depending upon the facts and circumstances may require abstention where a special financial benefit could be gained by you or FPL.

IN SUMMARY, because of the unique characteristics of a publicly regulated utility that maintains a monopoly within the community, you are not inherently in violation of the misuse of office or voting conflict provisions of the code of ethics as they apply to a "special financial benefit" for a customer or client of your outside employer. In addition, the fact that your outside employer maintains contracts with your government entity is not a prohibited contractual relationship in that your employer is the sole source provider within your jurisdiction. You have an ongoing duty to avoid using your position or voting on matters that would specially benefit you or your employer directly.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson  
Executive Director  
Commission on Ethics

ASJ/meb/gal