

# Agenda

April 4, 2013

Governmental Center,  
301 North Olive Avenue, 6<sup>th</sup> Floor  
Commissioners Chambers

## Meeting will begin at 1:30 pm Executive Session from 3:00pm to 4:00pm Regular Agenda will resume at 4:15pm

### Palm Beach County

#### Commission on Ethics

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#### Commissioners

Manuel Farach, Chair

Robin N. Fiore, Vice Chair

Ronald E. Harbison

Daniel T. Galo

Patricia L. Archer

#### Interim Executive Director

Megan C. Rogers

#### Intake Manager

Gina A. Levesque

#### Interim Staff Counsel

Mark E. Bannon

#### Senior Investigator

Mark E. Bannon

#### Investigator

James A. Poag

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Introduction of new Executive Director, Steven Cullen
- V. Approval of Minutes from March 7, 2013 meeting
- VI. Drafting Committee Update
- VII. Staff Update C12-013
- VIII. Status Re: OPPAGA Review
- IX. Proposed Advisory Opinions
  - a. RQO 13-005
- X. Executive Sessions
  - a. C13-009
  - b. C13-005
  - c. C13-004
- XI. Interim Executive Director Comments
- XII. Commission Comments
- XIII. Public Comments
- XIV. Adjournment

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

**MARCH 7, 2013**

**THURSDAY  
1:38 P.M.**

**COMMISSION CHAMBERS  
GOVERNMENTAL CENTER**

**I. CALL TO ORDER**

**II. ROLL CALL**

**MEMBERS:**

Manuel Farach, Esq., Chair – Arrived later  
Robin N. Fiore, Ph.D., Vice Chair  
Patricia L. Archer  
Daniel T. Galo, Esq. – Appeared later by phone  
Ronald E. Harbison, CPA

**STAFF:**

Mark E. Bannon, Commission on Ethics (COE) Interim Staff Counsel  
Leonard Berger, Assistant County Attorney  
Gina A. Levesque, COE Intake Manager  
Megan C. Rogers, COE Interim Executive Director  
Leilani Yan, County Human Resources Recruitment and Selection  
Manager

**ADMINISTRATIVE STAFF:**

Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

**III. INTRODUCTORY REMARKS**

Commission on Ethics (COE) Interim Executive Director Megan Rogers stated that a quorum was present.

### **III. – CONTINUED**

Commissioner Robin Fiore requested that cell phones and electronic devices be silenced. She added that those wishing to speak should fill out comment cards and submit them to COE Intake Manager Gina Levesque.

### **IV. APPROVAL OF MINUTES FROM FEBRUARY 7, 2013**

**MOTION to approve the February 7, 2013, minutes. Motion by Ronald Harbison, and seconded by Patricia Archer.**

Ms. Rogers clarified that upon arrival, Commissioners Manuel Farach and Daniel Galo could request reopening approval of minutes if they had any changes.

**UPON CALL FOR A VOTE, the motion carried 3-0. Manuel Farach and Daniel Galo absent.**

### **V. EXECUTIVE DIRECTOR APPLICANT UPDATE AND INTERVIEW PROCEDURE DISCUSSION**

Leilani Yan, the County's Human Resources Recruitment and Selection Manager, said that:

- The COE executive director (ED) applications, resumes, and professional conduct questionnaires were distributed to the COE panel approximately two-and-a-half weeks ago.
- Suggestions were made that each panelist to create a top-ten candidate list based on reviewing the relevant materials.
- The frequency table attached to the agenda materials had grouped the candidates' names by how often they were named in each panelist's top-ten candidate list.
- At a previous COE meeting to shortlist the candidates, the panel had discussed the ED's main duties and responsibilities, each candidate's background, experience, and relevant credentials starting with the top group in the frequency table, and whether to delete or add some candidates.

## **V. – CONTINUED**

- The panel then voted yes or no to each candidate listed on the frequency table and to any that were added. Candidates who received three or more yes votes by the five panelists were invited for interviews.

(CLERK'S NOTE: Discussion ensued whether to continue item V. without Commissioners Farach and Galo. By consensus, the COE members agreed to postpone the discussion until after the executive session. For continuation of item V., see page 9.)

Ms. Rogers recommended going into executive session at this time.

**MOTION to recess. Motion by Patricia Archer, seconded by Ronald Harbison, and carried 3-0. Manuel Farach and Daniel Galo absent.**

## **RECESS**

**At 1:45 p.m., the vice chair declared the meeting recessed for an executive session.**

## **RECONVENE**

**At 2:15 p.m., the meeting reconvened, and at the vice chair's request for a roll call, Commissioners Archer, Fiore, and Harbison were present.**

## **VI. EXECUTIVE SESSION**

Commissioner Fiore said that Commissioner Harbison would read the public reports and final order of dismissal for C13-006.

### **VI.a. C13-006**

Commissioner Harbison read the public report and final order of dismissal as follows:

Complainant, Davis Floering, filed a complaint on February 13, 2013, alleging a possible ethics violation involving Respondent, James Cherof, Contract City Attorney, City of Boynton Beach.

## VI.a. – CONTINUED

The complaint alleges Respondent corruptly misused his official position by failing to timely make available to him for examination and/or copying, a video of an interview of Sarah Marquez-Rodriguez, wife of then Mayor Jose Rodriguez, and in so doing acted in a corrupt manner, in violation of Section 2-443(b), *Corrupt misuse of official position*, of the Palm Beach County Code of Ethics.

On February 25, 2013, after reviewing the complaint, supporting affidavit and memorandum of inquiry, the complaint was determined by staff to be legally insufficient, and was presented to the Commission on Ethics on March 7, 2013, with a recommendation of dismissal as legally insufficient.

The Commission on Ethics reviewed the complaint and memorandum of inquiry and determined that there is no allegation based on personal knowledge provided by complainant, or information known or uncovered by staff inquiry to indicate that Respondent acted in violation of the Code of Ethics. Therefore, the Commission has determined that the allegations made by complainant against Respondent, James Cherof, do not constitute a violation of the Code of Ethics and dismissed the complaint on March 7, 2013, due to no legally sufficiency.

Therefore it is:

Ordered and adjudged that the complaint against Respondent, James Cherof, is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on March 7, 2013.

Signed: Robin Fiore, vice chair.

Gina Levesque, COE Intake Manager, informed the COE that Commissioner Galo was now appearing by telephone.

(CLERK'S NOTE: Commissioner Galo joined the meeting by telephone.)

**VI.a. – CONTINUED**

Commissioner Fiore requested that Ms. Rogers introduce the special guests in attendance.

Ms. Rogers said that members of the Boy Scouts of America, Troop 208, were attending today's meeting to earn their Citizenship of the Community merit badge.

**VII.** Pages 17-18

**VIII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA) – None**

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

(CLERK'S NOTE: Item X. was presented at this time.)

**X. PROPOSED ADVISORY OPINIONS**

**X.a. Request for Proposal (RQO 13-002)**

Ms. Rogers stated that:

- A municipal employee asked whether she was prohibited by the Code of Ethics (Code) from establishing a nonprofit organization designed to fulfill the needs of children and vulnerable adults often encountered by police officers.
- Staff had submitted that:
  - Municipal employees were prohibited from using their official positions as police officers to give special benefits not shared with similarly situated community charitable organizations to nonprofit organizations in which they were officers or directors.
  - Lending an employee's name and official title to a fundraising effort would constitute using one's employment to specially and financially benefit the organization that he or she served as an officer or a director.

## **X.a. – CONTINUED**

- Solicitation on a nonprofit organization's behalf should be in the employee's name without reference to his or her public title. This requirement would apply directly to the employee and to anyone else indirectly soliciting on the employee's behalf.
- Employees were not prohibited from soliciting or accepting donations while maintaining charitable officer's or director's positions, provided that the solicitations were made in their private capacity.
- Employees directly or indirectly soliciting donations over \$100 from a vendor, a lobbyist, or a principal employer of a lobbyist for their government employer must maintain a record of the solicitation and provide it to the COE within 30 days of an event or a solicitation.

Commissioner Harbison stated that the COE had previously ruled on a similar advisory opinion letter.

Commissioner Fiore said that the advisory opinion letter should mention that the municipal employee's solicitation of her fellow officers would be according to her employer's policies since her rank could be construed as supervisory.

Ms. Rogers clarified that the submitted information indicated that she was solely an officer, and that she did not hold a leadership position within the ranks. She said that the language contained at the end of every advisory opinion letter regarding other policies and procedures within someone's organization should cover Commissioner Fiore's concern.

Commissioner Harbison commented that while a solicitation may not be a Code violation, the COE's ruling would not override an internal policy of any agency.

Commissioner Fiore said that the advisory opinion letter should reflect language that the letter did not state anything regarding permissibility under employment or other organizational policies. She added that the wording used in previous advisory opinion letters was sufficient.

**MOTION to approve proposed advisory opinion letter RQO 13-002 as amended to include the change as discussed. Motion by Ronald Harbison, seconded by Patricia Archer, and carried 4-0. Manuel Farach absent.**

## **X.a. – CONTINUED**

Ms. Rogers clarified that the recommended sentence could read: Please keep in mind you must comply with all city or department policies regarding solicitations from fellow employees. She stated that the language could be added to page 2 after the sentence, In addition, you may not use on-duty West Palm Beach staff or other municipal resources to solicit donations.

The COE's consensus was to add Ms. Rogers' recommended language.

## **X.b. RQO 13-004**

Ms. Rogers stated that:

- A County employee asked whether Palm Beach Fire Rescue (Fire Rescue) could hold a child passenger car seat check at Fire Station 23 sponsored by the Safety Council of Palm Beach County and Lytal, Reiter, Smith, Ivy, and Fronrath, P.A.
- Staff had submitted that:
  - The Code did not prohibit Fire Rescue from partnering with private or public entities to organize and hold child safety car seat checks.
  - An employee was not prohibited from assisting nonprofit or private entities in providing community services as long as the employee or any other person or entity, as described in the misuse of office provisions, did not personally benefit financially from the transaction.
  - The COE could not opine regarding any financial benefit that may flow to a private entity appearing in conjunction with a government department unless the facts and circumstances indicated a potential Code violation.
  - Similar opinion letters had come before the COE. In this situation, there was no exchange of funds from a nonprofit to Fire Rescue or to the County. Rather, it was part of the County's mission to provide a locale for car seat checks, and to offer a mechanism in which nonprofit organizations could provide goods to in-need families.



## **X.b. – CONTINUED**

Commissioner Fiore said that a County employee receiving a child's car seat from the law firm would be accepting a gift from a nonvendor or nonlobbyist if the value exceeded \$100.

Ms. Rogers clarified that the law firm providing the seats was not a vendor or a lobbyist. She added that no facts currently existed to indicate that any County employee was seeking a seat, or that there was any association between the County and the law firm.

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

Commissioner Fiore stated that the COE's advisory opinion letter should state that each person receiving a car seat would be required to determine what effect the applicable ethics and gift law would have on him or her. She clarified that the person accepting a car seat from the law firm would be a County or municipal employee.

Ms. Rogers said that she would be hesitant to include Commissioner Fiore's suggested language with the provision, If a County or municipal employee were to attend the seat check and accept a seat from the law firm, since it did not contain facts that were before the COE.

Commissioner Fiore said that the advisory opinion letter should state that although the COE could not speak to a conflict or gift law possibility, the potential existed.

Commissioner Galo said that as presented, no reason existed under the Code to prevent Fire Rescue from joining with the law firm to provide the event. He added that if a County employee wanted to attend the event and accept any proceeds, it would involve a separate analysis with separate circumstances.

Commissioner Fiore said that the COE was providing a very narrow response, and that an opportunity existed to educate County and municipal employees.

Commissioner Harbison commented that someone else attending the event and receiving a car seat was beyond the scope of this particular advisory opinion letter.

## **X.b. – CONTINUED**

Commissioner Archer suggested adding the sentence, Palm Beach County employees and/or board members should rely upon the Palm Beach County Code of Ethics regarding the acceptance of such a gift.

Commissioner Harbison stated that it would apply to all 38 municipalities as well.

Commissioner Archer said that the sentence could read: County and municipal employees and/or board members should rely upon the Palm Beach County Code of Ethics regarding the acceptance of such a gift.

Commissioner Fiore clarified that the words, and/or board members, referred to officials.

Commissioner Farach suggested the wording, covered persons and entities.

Commissioner Fiore said that the sentence would read, persons and entities within the jurisdiction of the Palm Beach County Code of Ethics should refer to the Code regarding acceptance of gifts.

Ms. Rogers requested that a footnote be added to the sentence referring to the Code's gift law, section 2-444.

**MOTION to approve proposed advisory opinion letter RQO 13-004 as amended to include the changes as discussed. Motion by Ronald Harbison, seconded by Patricia Archer, and carried 5-0.**

## **V. – CONTINUED**

(CLERK'S NOTE: See pages 2-3 for earlier discussion.)

Ms. Yan stated that approximately seven to eight candidates were interviewed during the last process.

Commissioner Harbison said that as a starting point, the COE should consider only candidates who received a three or higher on the frequency table.

## V. – CONTINUED

Commissioner Fiore said that applicant, Dean Merten, was a veteran. She added that:

- Veterans' resumes may lack the expertise of those who did not serve since their focused careers were delayed.
- Military service provided applicants with valuable managerial experience.
- Mr. Merten should be considered for the interview list to more accurately assess his competency.

The COE's consensus was to include Mr. Merten, subject to reviewing the final list.

Commissioner Fiore said that:

- When reviewing the candidate list, she had focused on younger candidates rather than those who were ready to retire.
- The COE needed someone to grow with the organization and who had more outreach and educational abilities than legal and technical skills.
- Phillip Massa could be eliminated from the interview list since he had had a full career.

Commissioner Farach suggested that the COE focus on first completing the add-in candidate.

Commissioner Archer said that most of her selections fell within the top nine; however, she would not object to interviewing ten candidates. She expressed concern with removing someone based on age since it was considered discrimination.

Commissioner Farach said that he was looking for qualities that included local County and legally-related knowledge, community involvement, someone who was not looking for an economic bailout, and who had answered all the application questions. He suggested that Craig Lawson be added to the interview list since he met all those criteria.

The COE's consensus was to include Mr. Lawson.

## V. – CONTINUED

Commissioner Archer stated that she preferred interviewing Mr. Massa.

Commissioner Fiore clarified that she had not referenced age but had said, at the end of their career.

Commissioner Galo recommended that all 11 selected candidates be interviewed.

Commissioner Fiore said that she agreed with interviewing 11 candidates. She added that if the candidate pool needed reduction, she would eliminate Robert Meyers since he was closely identified with the Miami-Dade County political structure.

Commissioner Harbison said that his inclination was to not eliminate any selected candidates, and Commissioner Archer said that she agreed.

Commissioner Farach stated that he would exclude Mr. Meyers from the interview list. He added that:

- he did not have local County knowledge;
- he was not a State attorney or a law enforcement officer; and,
- he was unsure whether Mr. Meyers was only looking for an economic bailout.

Commissioner Harbison said that he did not recall discussing the criteria of interviewing only county candidates; and that local knowledge could be a hazard as well as a benefit. He stated that Mr. Meyers should be interviewed. Commissioner Archer said that she agreed; however, Commissioner Galo expressed his opposition.

Commissioner Farach said that anyone involved with the COE should expect to have their salary information published and open for public discussion.

Ms. Yan stated that:

- Mr. Merten and Thomas Pobjecky had not provided salary information.

## V. – CONTINUED

- Additional information could be requested at any time during the interview process.
- Both candidates were contacted. Mr. Merten said that he would forward the information by February 26, 2013; however, she had not yet received it.

Commissioner Fiore requested that Ms. Yan contact Mr. Merten again to explain that he would not be considered without his salary information. She added that the information should be provided by March 8, 2013, at the end of the business day.

Commissioner Farach stated that Mr. Merten should provide full and complete information.

The COE's consensus was that Mr. Merten had until March 8, 2013, at 5:00 p.m. Eastern Standard Time to provide his salary information.

Assistant County Attorney Leonard Berger said that no problem existed as long as the rules were the same for everyone. He recommended that a motion be made that all the selected candidates would be brought in for interviews; however, if Mr. Merten did not provide his salary information by 5:00 p.m., March 8, 2013, he would be removed from the short list.

**MOTION to approve that Mr. Merten has until March 8, 2013, at five o'clock to provide his salary information, or he would be stricken from the interview list. Motion by Robin Fiore, seconded by Patricia Archer, and carried 5-0.**

Ms. Yan said that March 21, 2013, was confirmed as the interview date. She added that the interviews would be public and would be held in the Board of County Commissioners (BCC) chambers; however, the time had not been confirmed.

Commissioner Fiore said that she questioned the selected venue since the chambers was not conducive to personnel interviews. Commissioner Archer added that the BCC chambers were intimidating.

## V. – CONTINUED

Ms. Levesque said that interviews could not be televised in the McEaddy Conference Room; however, the BCC staff tables could be moved to accommodate everyone. She added that the Vista Center was another possible venue.

Ms. Yan said that the interview order would be based on the candidates' travel arrangements.

Commissioner Farach stated that during the last interview process, the panelists were provided with the candidates' writing-test results approximately five minutes before the interviews began.

Ms. Yan said that:

- Local candidates would be given an advanced writing sample.
- Ms. Rogers had been provided a draft writing sample for her review and comments, which could be given to the panelists.
- The writing test would be proctored.
- Nonlocal candidates would be given the writing test based on their availability. An additional room could be reserved in the Governmental Center with a proctor present as well.
- Candidates were provided with computers to complete the writing test, and the results could be emailed in advance to the panelists.
- Candidates had been sequestered during the last interview process, but they could attend the public meeting upon conclusion of their final interview process.

Mr. Berger said that:

- Under the Sunshine law, candidates could not be sequestered if they wanted to attend another candidate's interview.
- The Fourth District Court of Appeals had opined that suggestions could not be made to candidates that they not attend another candidate's interview.

## V. – CONTINUED

- The COE could select a final and a backup candidate; however, the BCC would decide the ultimate approval.

Ms. Yan said that:

- At the beginning of the last interview process, the COE chair stated that no public or media comments would be taken.
- The panelists would be given a master schedule before the interviews began.
- Candidates would be given a brief orientation regarding the interview process.
- During the last interview process, candidates were provided with each panelist's biography.
- Background checks began and two letters of reference were requested once the short list of candidates had been determined. Candidates were sent the job advertisement so that the letters of reference specified how their qualifications, backgrounds, and experience related to the position.

Commissioner Farach recalled that during the last interview process, the panelists had voluntarily agreed not to speak to candidates; if there was discussion, the panelists should disclose that to the other panelists in a public setting.

Mr. Berger explained that the COE members were not compelled to disclose or discuss with anyone that they had spoken to a candidate. He said that should the COE members elect to make disclosure, the best time would be before the candidate's interview began.

Commissioner Archer suggested starting at eight o'clock since 45-minute interviews for ten candidates equaled seven-and-a-half hours of interview time without lunch.

Ms. Yan said that the draft questions would be sent to the panelists tomorrow. She suggested less than one hour for lunch with a morning and afternoon break.

## **V. – CONTINUED**

Commissioner Farach confirmed that the interviews would take place on March 21, 2013, at 8:00 a.m. in the BCC chambers.

(CLERK'S NOTE: Commissioner Galo left the meeting by telephone.)

## **RECESS**

**At 3:45 p.m., the chair declared a recess.**

## **RECONVENE**

**At 3:58 p.m., the meeting reconvened with Commissioners Archer, Farach, Fiore, and Harbison present.**

(CLERK'S NOTE: Item XI. was presented at this time.)

## **XI. PALM BEACH COUNTY HOUSING FINANCE AUTHORITY**

### **XI.a. RQO 13-003**

Ms. Rogers said that:

- The County's Housing Finance Authority (HFA) was an independent body of the County. Its board members were appointed by the BCC, making them officials rather than advisory board members.
- Staff had recommended that an advisory opinion be prepared interpreting the Code to indicate that HFA members were advisory board members, and to enter into a Memorandum of Understanding (MOU) between the COE and the HFA.
- After reviewing the HFA's ordinance, staff had determined that the HFA had been brought under the COE's and the Code's jurisdiction by the BCC. The BCC had revised the HFA's ordinance to specifically allow oversight of the HFA.
- Staff now stated that:
  - The HFA was a dependent special district independent of County or municipal government.



## **XI.a. – CONTINUED**

- As an independent entity without COE action, HFA members would be considered officials as defined by the Code.
- The State statute that authorized the creation of the HFA required that its members be appointed by the local governing body.
- The Code provided waivers, exceptions, and exemptions only for advisory board members. It recognized that an advisory board member's ability to influence public decision-making resulting from his or her appointment was limited to the narrow reach of his or her advisory board.
- To define HFA members as officials rather than advisory board members, despite the fact that HFA members performed the same function as advisory board members, would result in a "manifest incongruity."
- For purposes of Code interpretation and enforcement, HFA members would be treated as advisory board members based RQO 13-003's opinion.
- The COE's jurisdiction was limited to the county and its 38 municipalities. The COE had limited jurisdiction over independent government, civic, and regional organizations when a County or a municipal governing body appointed members to that organization or board.
- The issues involving RQO 13-003 were different and distinct from previous pension plan opinions.
  - The BCC had extended the COE's jurisdiction to the HFA.
  - While pension plan opinions were separate entities similar to the HFA, municipalities that funded the plans had a financial nexus to the funding operations.
  - In this case, the HFA was functionally and wholly independent from the County, and its budgets were separate; therefore, no nexus existed between the decisions of plan trustees and the fiscal solvency of an associate local government.

## **XI.a. – CONTINUED**

- Staff recommended that the COE interpret HFA board members as advisory board members rather than officials when applying the Code.

Mr. Berger said that:

- The County could amend the Code many times and continually would come across similar situations.
- Barring this particular circumstance, it was advantageous to encourage local entities to enter into MOUs since they would pay for the COE's services.
- Without evaluating the situation, it was difficult to say whether an entity's review and amendment of its code would prevent the entity from being under an MOU.
- The HFA board members and staff would be covered by the Code as if the HFA was essentially a "miniature city."

**MOTION to approve proposed advisory opinion letter RQO 13-003. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Daniel Galo absent.**

(CLERK'S NOTE: Item VII. was presented at this time.)

## **VII. LAKE WORTH HIGH SCHOOL MOCK ETHICS BOWL**

### **VII.a. Ethics Bowl Case: Academic Integrity**

Ms. Rogers welcomed two Lake Worth High School ethics bowl teams and said that:

- On February 16, 2013, 18 ethics bowl teams from countywide schools competed in the second annual high school ethics bowl held at Lake Worth High School.
- Attending today was one of the champion teams who would advance to represent the county at the national high school ethics bowl being held on April 16, 2013, in North Carolina.

## VII.a. – CONTINUED

- Both teams would be demonstrating their ethical problem-solving skills by addressing an ethical dilemma that was asked during the countywide high school ethics bowl.

Following self-introductions, Lake Worth High School debate coach, James Peterson, thanked County staff for organizing the ethics bowl and Palm Beach State College for sponsoring the event. He introduced Lake Worth High School Principal Dr. George Lockhart, and Atlantic High School Principal Dr. Anthony Lockhart, after he explained how the demonstration would proceed.

(CLERK'S NOTE: The Lake Worth High School mock ethics bowl demonstration was presented at this time.)

Commissioner Fiore congratulated the teams. She said that the ethics bowl involved much preparation and study, and that it required the team members to trust their fellow teammates. She added that its purpose was to give the students an opportunity to articulate ethical decision-making. She concluded that they had performed that task well.

Commissioner Harbison stated that he was proud of the teams. He informed them that the COE had ruled on an ethics case involving honesty several years ago. After he described an ethical situation that had occurred while teaching a college course, he asked for the teams' input.

Commissioner Archer said that she was pleased to see that the students exhibited such willingness to discuss ethical situations since they would be the County's future COE members and officials.

Commissioner Farach congratulated both teams and stated that he was very impressed with them.

Mr. Peterson commented that one goal of the Palm Beach County School District was to initiate middle school ethics bowls. He said that a mentor program could be incorporated where high school students mentored middle school students in becoming ethics moderators and judges.

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

**XII. INTERIM EXECUTIVE DIRECTOR COMMENTS**

**XII.a. Ethics Awareness Month Agenda**

Ms. Rogers said that:

- Ethics bowls and similar events were part of the kickoff honoring March as Palm Beach County Ethics Awareness Month.
- Each week the COE would have at least one keynote event where individuals can log on to the COE's Web site, Facebook or Twitter account and utilize various training tools.
- Every Friday at 1:00 p.m., the COE would conduct online chats to discuss various issues.
- The County's Ethics Awareness Month was being implemented in conjunction with many civic and social organizations.
- On March 8, 2013, at 9:00 a.m. a panel discussion would take place in the BCC chambers and on Channel 20. The discussion would include former COE Executive Director, Alan Johnson, Assistant County Attorney Leonard Berger, Bruce Lewis from the Black Chamber of Commerce and other organizations, and Joseph Centorino from Miami-Dade County

Commissioner Harbison commented that these types of events were important regarding the COE's role in community development and its work outside of enforcing the Code.

Commissioner Fiore said that she was pleased about the numerous virtual activities since it was important that people could participate off-site.

Ms. Rogers stated that tomorrow's broadcast would be concurrently replayed.

**XIII. COMMISSION COMMENTS – None**

#### **XIV. PUBLIC COMMENTS**

##### **XIV.A.**

**DISCUSSED:** Question-and-Answer Session with Boy Scout Troop 208.

Lucas Violim asked who was responsible for maintaining homes that went into foreclosure.

Commissioner Farach responded that no one was responsible for maintaining foreclosed homes, and that no law existed regarding that issue, which created a problem. He said that a few legislative bills had been introduced to impose liability on lenders or homeowners' associations (HOA). He added that resolving the problem was difficult due to competing social policies.

Commissioner Archer commented that many gated or HOA communities were attempting to change their documents to reflect that maintenance costs incurred by them would be reimbursed by the mortgage holder at the time of foreclosure. She added that it was still unclear whether the HOAs' challenges would be enforceable in court.

Ayden Dunn asked what were the biggest concerns confronting the County today.

Commissioner Harbison stated that the County's biggest concerns were probably resources and budgeting since the County could not operate in a deficit. He added that revenue typically came from real estate taxes and other fees, which were reduced due to current economic conditions.

Commissioner Fiore said that even with limited resources, the County had a responsibility to maintain safety nets for its many fragile and vulnerable citizens.

Commissioner Archer said that one difficulty confronting the County and its municipalities dealt with ethics and the lack of trust in elected officials and employees.

Sean McCabe asked whether any COE members opposed any ethics laws.

Commissioner Harbison said that the COE was not overburdened with too many ethics laws; rather the amount of ethics laws were lacking.

#### **XIV.A. – CONTINUED**

Commissioner Fiore stated that the COE's duties were to enforce the ethics laws that were enacted by the citizens. She said that the ethics ordinance was a guide for County and municipal employees and advisory boards on how to be ethical when performing their duties.

Commissioner Farach commented that the COE members came from different backgrounds and had different viewpoints. He said that after debating, they voted and moved on to other issues. He added that the COE members did not write the ethics laws; they only applied them.

Commissioner Harbison said that if there was no freedom to disagree, then democracy would not exist.

Commissioner Farach explained the legislative, judicial, and executive branches of government, and the Sunshine Law. He added that the COE acted in a quasi-judicial function.

Mr. McCabe asked whether any COE members wanted to run for higher public office in the county, state, or country.

Commissioners Harbison and Fiore stated that they had no plans to run for public office. Commissioner Fiore said that she had an interest in continuing volunteer work. Commissioner Harbison commented that although he had no desire to run for office, he admired those who did. He added that he was, however, interested in public policy.

Commissioner Archer said that it was very difficult, time consuming, and expensive to run for office; however, once elected, she enjoyed the opportunity to make decisions regarding a municipality's operations. She added that she enjoyed serving in public office but would no longer run for election.

Steven Slaman thanked the COE for taking time to answer his question. He asked what steps the County had taken for hurricane protection.

Commissioner Fiore said that:

- Every hurricane-damaged state received hurricane disaster funding from the government.

#### **XIV.A. – CONTINUED**

- Every state had an Incident Command System. During a declared emergency, the appointed incident commander directed an entire infrastructure on how to handle the situation.
- The military, Homeland Security, and those involved in disaster and crisis preparedness continually practiced hypothetical emergency scenarios.

Diego Maldonado asked what the County did to improve the flood canals after Hurricane Isaac.

Commissioner Farach said he believed that Hurricane Isaac was a South Florida Water Management District (SFWMD) issue, which probably did not involve the County.

Ms. Levesque said that the County's Emergency Operations Department and other groups worked with the SFWMD to handle the flooding caused by Hurricane Isaac.

Commissioner Farach thanked the boy scouts and their leader for attending today's meeting.

#### **XV. ADJOURNMENT**

**MOTION to adjourn the meeting. Motion by Robin Fiore, seconded by Patricia Archer, and carried 4-0. Daniel Galo absent.**

**At 5:35 p.m., the chair declared the meeting adjourned.**

APPROVED:

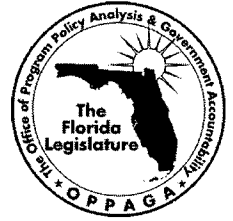
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Chair/Vice Chair



# The Florida Legislature

## OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY



R. Philip Twogood, Coordinator

March 26, 2013

Ms. Megan Rogers, Interim Executive Director  
Palm Beach County Commission on Ethics  
2633 Vista Parkway  
West Palm Beach, FL 33411

Dear Ms. Rogers:

At the direction of the Legislature, the Office of Program Policy Analysis and Government Accountability will conduct a review of the Palm Beach County Commission on Ethics. The review will consider the commission's budget, its operating procedures, and the mechanisms it has in place to assure compliance with those procedures. Kara Collins-Gomez will supervise the review.

We expect to begin this project immediately. To assure the least disruption to the commission and its staff, we would like to meet with you or your representative to discuss the procedures for this review. We will contact your office in the near future to establish an appropriate time and place for the meeting.

Thank you for your cooperation. If you have any questions, please call Ms. Collins-Gomez at 850-717-0503.

Sincerely,

A handwritten signature in cursive script that reads "R. Philip Twogood".

R. Philip Twogood  
Coordinator

RPT/kg

cc: The Honorable Steven Abrams, Chairman, Palm Beach County Board of County  
Commissioners  
Ms. Sheryl Steckler, Inspector General, Palm Beach County



April 5, 2013

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

Re: RQO 13-005  
Voting Conflicts

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 April 4, 2013.

YOU ASKED in your email dated March 18, 2013, whether you are prohibited from participating in a workshop discussing the creation of a fiber network by the Town of Jupiter. You are an employee of Florida Power and Light (FPL). FPL is a wholly owned subsidiary of NextEra Energy (NextEra) and NextEra owns FPL FiberNet, a provider of fiber networking services in Florida, Georgia and Texas.

IN SUM, elected officials are prohibited from using their official position, participating or voting on an issue that would give a special financial benefit to themselves or their outside employer, not shared with similarly situated members of the general public. Based on the facts presented, you are not prohibited by the Code from participating and voting on this matter at this time.

THE FACTS as we understand them are as follows:

You are an elected official with the Town of Jupiter. Your outside employer is Florida Power and Light (FPL). FPL is a wholly owned subsidiary of NextEra Energy (NextEra). NextEra is also the parent company of FPL FiberNet (FiberNet). FiberNet provides fiber services throughout much of FPL's service area, including the Town of Jupiter.

The company was launched in early 2000 to sell fiber-optic network capacity and dark fiber on a wholesale basis to local and long-distance telephone companies, internet service providers and other telecommunications companies in Florida. FiberNet, delivers telecommunication services on its independently owned and operated fiber-optic network throughout most major metropolitan areas in Florida and Texas with additional long haul connectivity throughout the United States.

FPL and FiberNet are separate corporations; they do not share a board of directors, address, employees, or provide similar services. You are an employee of FPL. You are not paid nor are you employed by NextEra. You do not work with or have contracts with FiberNet. Based on information provided to COE

staff, you were not aware that NextEra had an interest in fiber services until this matter came before the council.

The Town currently contracts with ATT for fiber services. Several years ago, Town staff reported that ATT was not interested in maintaining its relationship with the Town and encouraged the Council to consider creating its own fiber utility to provide fiber service to local businesses. At that time, the Council authorized funds to install a limited underground fiber network to connect the Town's facilities and reduce its dependence on ATT. At an upcoming workshop, Town staff will present a plan to expand the Town's existing fiber network to provide fiber service to local businesses.

The following entities currently provide fiber services within the Town: ATT, Verizon, FPL FiberNet, Sprint, Palm Beach County, EarthLink, Comcast, Century Link, and TW Telecom.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Commission on Ethics Ordinance and Code of Ethics, which took effect on June 1, 2011:

Section-2-443(a) prohibits officials and employees from using their official position to give themselves or their outside employer or business, a special financial benefit not shared with similarly situated members of the general public. Section 2-443(c) similarly prohibits officials from voting on an issue or participating in a manner that would result in a special financial benefit attributable to themselves, their outside business or a customer or client as previously described. Essentially, the voting conflict section addresses the scenario whereby an official would violate the misuse of office prohibitions of the code by voting. In such a scenario officials are required to 1) disclose the nature of their conflict before the Council discusses the issue; 2) abstain from any discussion or vote and not participate in the matter; and 3) File a state voting conflict form (8B), submitting a copy to the board, council or commission clerk and the Palm Beach County COE.<sup>1</sup>

The code defines *Outside employer or business* in §2-442

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)

As an employee of FPL, you are compensated for your work by FPL alone. You are not compensated by, nor do you provide services for FiberNet. You are not compensated by, nor do you provide services to NextEra Energy. While NextEra Energy owns both FPL and FiberNet, the two corporations are separate and legally distinct entities. They do not share a board of directors, physical address or financial resources. Based on the facts presented, you are not prohibited from participating and voting on this matter.<sup>2</sup>

<sup>1</sup> §2-443(c)

<sup>2</sup> Fla. Stat. 286.012 imposes an affirmative duty on elected officials to vote on all matters unless "there appears to be a possible conflict of interest".

IN SUMMARY, an elected official may not use his official position, including participation and voting on issues before the Town Council, to financially benefit his outside employer. Based upon the facts and circumstances provided, you are not prohibited by the Code of Ethics from voting or participating on this matter.

This opinion construes the Palm Beach County Code of Ethics Ordinance 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.

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

Sincerely,

Megan C. Rogers  
Interim Executive Director

MCR/gal

PROPOSED