



Agenda

April 3, 2014 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Meeting will begin at 1:30 pm Executive Session from 2:00pm to 2:45pm Regular Agenda will resume at 3:00pm

Palm Beach County

Commission on Ethics

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West Palm Beach, FL 33401

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Commissioners

Salesia V. Smith-Gordon, Chair

Michael S. Kridel, Vice Chair

Michael F. Loffredo

Carmine A. Priore

Clevis Headley

Executive Director

Steven P. Cullen

Intake Manager

Gina A. Levesque

Staff Counsel

Christie E. Kelley

Senior Investigator

Mark E. Bannon

Investigator

Anthony C. Bennett

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from March 6, 2014
- V. Executive Session – C14-001
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. ROO 14-005
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Proposed Advisory Opinions
 - a. ROO 14-006
- IX. Executive Director Comments
- X. Commission Comments
- XI. Public Comments
- XII. Adjournment

If a person decides to appeal any decision made by this Commission with respect to any matter considered at this meeting or hearing, (s)he will need a record of the proceedings, and that, for such purpose, (s)he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

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

MARCH 6, 2014

**THURSDAY
1:31 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

Commission on Ethics (COE) Executive Director Steven Cullen stated that the first order of business was the swearing in ceremony of four commissioners. He added that the appointments were made under section 2-255 of the COE's ordinance, and that the identity of the appointing entities and the terms of appointment were available in the agenda packet.

II. SWEARING IN CEREMONY – CHIEF JUDGE JEFFREY COLBATH

II.a. Dr. Michael F. Loffredo, County Association of Chiefs of Police (Term ends 02/28/2016)

II.b. Dr. Carmine A. Priore, League of Cities (Term ends 02/28/2018)

II.c. Michael S. Kridel, CPA, Palm Beach Chapter of the Florida Institute of CPAs (Term ends 02/28/2018)

II.d. Dr. Clevis Headley, Florida Atlantic University (Term ends 02/28/2018)

(CLERK'S NOTE: Chief Judge Jeffrey Colbath administered the oath of office to newly elected Commissioners Michael Loffredo, Carmine Priore, Michael Kridel, and Clevis Headley.)

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III. ROLL CALL

MEMBERS:

Clevis Headley, Ph.D.
Michael S Kridel, CPA
Michael F. Loffredo, Ph.D.
Dr. Carmine A. Priore
Salesia V. Smith-Gordon, Esq.

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Senior Investigator
Steven P. Cullen, Esq., COE Executive Director
Christie E. Kelley, COE Staff Counsel
Gina A. Levesque, COE Intake Manager

ADMINISTRATIVE STAFF:

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

IV. ELECTION OF CHAIR AND VICE CHAIR

Mr. Cullen called for nominations for the office of chairperson.

Commissioner Michael Loffredo said that he would nominate Commissioner Salesia Smith-Gordon.

With no other names mentioned, Mr. Cullen said that the nominations were closed.

MOTION to nominate Salesia Smith-Gordon as chairperson. Motion by Carmine Priore, seconded by Salesia Smith-Gordon, and carried 5-0.

Chair Smith-Gordon called for nominations for the office of vice chairperson. She added that under Robert's Rules of Order, self-nominations would be closed since a chair had been elected. She said that she would nominate Commissioner Michael Kridel.

MOTION to nominate Michael Kridel as vice chairperson. Motion by Salesia Smith-Gordon, seconded by Michael Loffredo, and carried 5-0.

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VI. APPROVAL OF MINUTES FROM FEBRUARY 6, 2014

Chair Smith-Gordon stated that the February 6, 2014, minutes were e-mailed to the COE members; however, only she and Vice Chair Kridel were present at the meeting.

MOTION to approve the February 6, 2014, minutes. Motion by Michael Kridel, and seconded by Salesia Smith-Gordon.

Chair Smith-Gordon stated that the remaining COE members would abstain from voting since they were not present nor commissioners at the time of the meeting.

UPON CALL FOR A VOTE, the motion carried unanimously. Clevis Headley, Michael Loffredo, and Carmine Priore abstaining.

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

V. INTRODUCTORY REMARKS

Chair Smith-Gordon requested that phones be silenced. She said that agendas and comment cards were available for anyone wishing to speak on an agenda item. She added that the agenda item number should be written on the card.

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA) – None

VIII. ITEMS PULLED FROM CONSENT AGENDA – None

IX. PROPOSED ADVISORY OPINIONS

IX.a. Request for Proposal (RQO) 14-004

Mr. Cullen said that:

- An attorney representing a town council member asked whether it would violate the Code of Ethics (Code) if the town council member's spouse sold a vacant lot owned by her to the town.

IX.a. – CONTINUED

- Staff submitted that:
 - The town council member was prohibited from using his official position or office to give anyone a special financial benefit.
 - The Code’s contractual relationships section did not outwardly prohibit the transaction.
 - While the proposed property sale to the town was not prohibited by the Code, the town council member must be cautious not to use his position in a way that would give a special financial benefit.

MOTION to approve proposed advisory opinion letter RQO 14-004. Motion by Michael Kridel, seconded by Clevis Headley, and carried 5-0.

X. EXECUTIVE DIRECTOR COMMENTS

X.a.

DISCUSSED: Staff Introduction.

Mr. Cullen introduced the COE’s staff counsel, Christie Kelley.

X.b.

DISCUSSED: Upcoming COE Goals.

Mr. Cullen said that in the next few months, he wanted to:

- establish a three-year long-range strategic plan, including possibly appointing some committees under article IV of the COE’s by laws;
- continue evaluating training and education programs; and,
- discuss the previously gathered and analyzed performance evaluation data.

X.c.

DISCUSSED: Proposed Senate Bills.

Mr. Cullen stated that the legislative session began this week. He said that the Senate proposed two ethics bills. Senate Bill (SB) 846 proposed technical amendments to the State law, and SB 606 involved proposed changes to the State gift law, possibly affecting jurisdiction of local commissions.

XI. COMMISSION COMMENTS

XI.a.

DISCUSSED: Commission on Ethics Appointments.

Commissioner Priore said that he was excited to be appointed to the COE and about the work that the COE members performed.

Vice Chair Kridel said that he looked forward to working with the COE.

Commissioner Loffredo said that he was proud to be part of the COE.

Commissioner Headley said that he was pleased to be a COE member. He added that he looked forward to serving and doing his part to maintain faith in the democratic process.

XI.b.

DISCUSSED: Commission on Ethics Appointments, and Ethics Awareness Month.

Chair Smith-Gordon thanked the COE members for serving, and she said that she looked forward to working with them. She added that March was Ethics Awareness month.

Mr. Cullen stated that at its next meeting, the Board of County Commissioners would declare March as Ethics Awareness month. He added that the COE would hold events and conduct community outreach.

XII. PUBLIC COMMENTS - None

XIII. ADJOURNMENT

MOTION to adjourn. Motion by Michael Kridel, seconded by Carmine Priore, and carried 5-0.

At 1:49 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

Commissioners

Salesia V. Smith-Gordon, Chair
Michael S. Kridel, Vice Chair
Michael F. Loffredo
Carmine A. Priore
Clevis Headley

Executive Director

Steven P. Cullen

March 19, 2014

Ms. Christy L. Goddeau, Esq.
Law Offices of Glen J. Torcivia, P.A.
701 Northpoint Parkway, Suite 209
West Palm Beach, FL 33407

Re: RQO-14-005
Voting Conflict

Dear Ms. Goddeau,

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

QUESTION:

Whether Commissioner Szerdi is correct in his intention to refrain from voting on any matter which may come before the City of Lake Worth City Commission (City Commission), which would result in a special financial benefit to himself or Hudson Holdings, LLC, a customer or client of his outside employer or business?

ANSWER:

Commissioner Szerdi correctly concluded that he cannot use his position in any way when he knows that it would result in a special financial benefit, not shared with similarly situated members of the general public, to himself or Hudson Holdings, LLC, a customer or client of his outside employer or business. In order to comply with the Code of Ethics, he will need to publicly disclose the nature of the conflict before the City Commission discusses the matter, abstain from participating and voting on the matter, and file a state voting conflict form (8B).

FACTS:

The facts, from your email dated March 4, 2014, as we understand them, are as follows:

John Szerdi is a commissioner for the City of Lake Worth. At times, the City Commission renders voting decisions on development projects and related issues. Commissioner Szerdi is a licensed architect and President of LDG Florida Architects, Inc. (LDG). LDG has supplied services to Hudson Holdings, LLC in excess of \$10,000 in the previous 24 months. Hudson Holdings, LLC is a fully integrated real estate company involved in the acquisition and development of commercial and residential real estate. LDG's services to Hudson Holdings, LLC are limited to projects in the City of Delray Beach, and LDG is not providing any services or receiving any compensation for projects Hudson Holdings, LLC may have or may pursue in the City of Lake Worth. Hudson Holdings, LLC recently announced on its website a redevelopment project in the City of Lake Worth (<http://hudsonholdings.com>). Commissioner Szerdi has advised Hudson Holdings, LLC that he cannot provide them any services or receive any compensation related to projects in the City of Lake Worth.

LEGAL BASIS:

The legal basis for this opinion is found in Sections 2-443(a)(1 and 5) and 2-443(c) of the code:

Section 2-443(a)(1 and 5) prohibits Commissioner Szerdi from using his official position to give himself or a customer or client of his outside business a special financial benefit, in a manner which he 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.¹ A customer or client is defined as a person or entity to which an official's outside business has supplied goods or services in excess of \$10,000 over the previous 24 months.² According to the facts presented, Hudson Holdings, LLC is a customer or client of LDG.

Section 2-443(c) similarly prohibits Commissioner Szerdi from voting on an issue or participating in a manner that would result in a special financial benefit attributable to himself or his outside business or customer as previously described. This section addresses the scenario whereby an official would violate the misuse of office prohibitions of the code by voting. In such a scenario, Commissioner Szerdi must 1) disclose the nature of his conflict before the City Commission discusses the issue; 2) abstain from any discussion or vote or otherwise participate in the matter; and 3) file a state voting conflict form (8B), submitting a copy to the City Commission's clerk and the Palm Beach County Commission on Ethics.³

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 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Steven P. Cullen,
Executive Director

CEK/gal

¹ §2-443(a)

² §2-442

³ §2-443(c)

March 27, 2014

Matthew Willhite, Councilman
Village of Wellington
14000 Greenbriar Blvd.
Wellington, FL 33414

Re: RQO 14-006
Voting Conflicts

Dear Councilman Willhite,

Your request for an expedited advisory opinion pursuant to Commission on Ethics Rule of Procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

QUESTION:

Whether, as a Councilman for the Village of Wellington, you are prohibited from participating and voting on a matter coming before the Village Council regarding a new civil aviation ordinance which affects the development where you live.

ANSWER:

Based on the facts you have submitted, you are not prohibited from voting on this matter because any financial benefit or loss attributable to you as an individual homeowner in the Wellington Aero Club community is "shared with similarly situated members of the general public" and does not constitute a unique circumstance whereby your personal gain or loss exceeds significantly other members of the affected class. Public officials are prohibited from using their position to give themselves a financial benefit not shared with similarly situated members of the general public. In evaluating conflict of interest under the Palm Beach County Code of Ethics (the Code), the Commission considers the number of persons who stand to gain or lose from a decision and whether the gain or loss is remote and speculative. Where the class of persons who stand to gain from a decision is small, it is more likely that an official will have a conflict. However, based upon the size of the class presented here, you are not prohibited from participating and voting on the civil aviation ordinance even though you own property in the affected area.

FACTS:

The facts, as we understand them from your email dated March 25, 2014 are as follows:

You are a Councilman for the Village of Wellington (the Village). You were elected to the Wellington Council in March 2008 and were re-elected in 2012. About two years ago, an issue of creating a civil

aviation ordinance was proposed in front of the Village council after the Wellington Aero Club Property Owners Association proposed to pave their runway. The Wellington Aero Club (the Aero Club) is a private residential airpark community, consisting of approximately 268 home sites. At that time, you did not live in the Aero Club. At a later date, the issue was brought up again by a few residents who asked why the aviation ordinance was not being moved forward. It is your recollection that Councilman John Greene asked staff to look into the issue and that you supported the idea of looking at the proposal. Again, at that time, you did not live in the Aero Club. Since that time, the ordinance has been at the direction of the Village manager and was assigned to a staff member, who has been working on creating the aviation ordinance. Subsequently, in November 2013, you purchased a home in the Aero Club. The aviation ordinance is now scheduled to come before the Village's citizen advisory boards for their input on the drafted ordinance.

LEGAL BASIS:

The legal basis for this opinion is found in the Section 2-443(a)(1) and Section 2-443(c) of the Code:

Section 2-443(a)(1) prohibits you from using your official position to give yourself a special financial benefit, in a manner which you know 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.¹ Similarly, Section 2-443(c) prohibits you from voting on an issue or participating in any matter coming before the Village Council which would result in a special financial benefit, not shared with similarly situated members of the general public, to yourself.²

Whether a matter rises to the level of prohibited conduct and voting conflict turns on whether a special financial benefit is shared with similarly situated members of the general public. Financial benefit, in the context of the Code, constitutes economic gain or loss.³ For a financial benefit to be "special", the benefit must inure uniquely to you, rather than affecting everyone in a community in the same way.⁴

As the COE has previously opined, there is no bright line in determining the number of individuals who would need to be similarly affected to transform a personal gain into a gain or loss shared with similarly situated members of the general public.⁵ Therefore, the determination of whether a measure will result in a financial benefit not shared with similarly situated members of the general public turns on the size of the class of persons who stand to benefit from the measure. Where a class is large, a prohibited financial gain would result only if there are circumstances unique to you which would enable your property to benefit more than the other property owners within the class. Where the class of persons benefiting is small, the likelihood of prohibited financial benefit is much greater.⁶ The general line drawn by the Florida Commission on Ethics involves situations where the interest of the public official involves 1% or less of the class, in other words, 100 or more affected persons. For example, the state

¹ §2-443(a)(1)

² §2-443(c)

³ RQO 10-013

⁴ RQO 12-063

⁵ RQO 10-013

⁶ CEO 92-37 (two percent or eight percent of the property to be affected or 5 of 60 sites and 5 of 168 sites is of sufficient size to result in a "special" gain); CEO 93-19 (measure to construct a sidewalk affecting 40 homes would not affect enough persons in order for its effect not to be considered "special" under the voting conflicts law).

commission has previously found that that 297 persons who stand to benefit from a measure is sufficiently large, such that any gain to one person under the measure would not be "special."⁷

Here, the affected class contains approximately 265 home sites in the Aero Club community. While any benefit to "the public" may be nebulous, it is clear here that any impact which the ordinance may have on property owners affects the class as a whole. The Code would prohibit you from voting on this matter if facts and circumstances showed that the civil aviation ordinance would provide a unique benefit to you. However, under these circumstances, the economic benefit or loss affects a class large enough so as to remove any prohibited individual financial benefit. Therefore, you are not prohibited from voting on or participating in 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 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,

Steven P. Cullen
Executive Director

CEK/gal

⁷ CEO 93-12 (a Trustee of a firefighter's retirement system, who was a recipient under the pension plan, was not prohibited from voting on an issue involving the handling of a pension lawsuit that could benefit himself as a member of the class action because all members of the class action were similarly situated and stood to gain in the same way regarding firefighter retirement benefits).