

MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS (COE)

I. CALL TO ORDER: January 6, 2011, at 4:03 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
Bruce Reinhart, Esq.

STAFF:

Alan S. Johnson, Esq., COE Executive Director
Mark Bannon, COE Investigator
Gina Levesque, COE Administrative Assistant
Barbara Strickland, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Judge Edward Rodgers asked everyone to turn off or silence their cell phones. He stated that Complaint C10-006, item V., would be discussed in an executive session that was closed to the public. He said that those who were present for the meeting were invited to remain in chambers until the commission reconvened.

Alan S. Johnson, Esq., Commission on Ethics (COE) Executive Director (ED), stated that the first four agenda items would be completed prior to the recess.

IV. APPROVAL OF MINUTES FROM DECEMBER 2, 2010

Dr. Robin Fiore stated that:

- On page 14 of the minutes, last paragraph, the comment attributed to her was made by Ronald Harbison.
- On page 24 of the minutes, item 11.b., the comments attributed to her were made by the ED.

IV. - CONTINUED

Mr. Harbison stated that the comment reported on page 14 was, indeed, made by him.

Mr. Johnson stated that the comments reported on page 24, item 11.b., were made by him.

MOTION to approve the minutes of December 2, 2010, with the amendments made by Robin Fiore. Motion by Robin Fiore, seconded by Bruce Reinhart, and carried 4-0. Manuel Farach absent.

(CLERK'S NOTE: See below for further comments on the minutes.)

MOTION to recess the meeting and to reconvene later to complete the work for the regular scheduled meeting. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Manuel Farach absent.

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

RECESS

At 3:09 p.m., the COE recessed for an executive session.

V. Executive Session – Complaint C10-006

RECONVENE

At 4:51 p.m., the COE reconvened with Judge Rodgers, Manuel Farach, Robin Fiore, Ronald Harbison, and Bruce Reinhart present.

IV. CONTINUED

Judge Rodgers announced that an additional correction to the minutes was needed.

Mr. Johnson stated that the COE was advised by the minutes supervisor that the tape recording of the meeting confirmed that Dr. Fiore did, in fact, make the comments in the minutes. Dr. Fiore said that she apologized to the commission for her oversight.

VI. PROCESSED ADVISORY OPINIONS

VI.a. Request for Opinion (RQO) 10-032

VI.b. Request for Opinion (RQO) 10-040

Mr. Johnson said that RQO 10-032 and RQO 10-040 would be presented together as the consent agenda.

MOTION to approve the consent agenda. Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 5-0.

VII. PROPOSED ADVISORY OPINIONS

VII.a. RQO 10-036

Mr. Johnson stated that:

- The request involved Maite Reyes-Coles, Coordinator of Independent Living Services for the Coalition for Independent Living Options (CILO), who also served on the Commission for Affordable Housing (CAH).
- The employee asked whether a vendor who had appeared before the CAH was approved to post an advertisement in the CILO newsletter and Web site.
- The cost-free listing was available to any organization offering services to CILO's clientele, and neither the employee nor CILO would benefit from the listing.
- The employee applied for a waiver because CILO had contracts with the County, and if a waiver could not be obtained, she would resign from the CAH.

VII.a. – CONTINUED

- No conflict with the Code of Ethics (Code) was evident.

MOTION to accept RQO 10-036. Motion by Robin Fiore, seconded by Bruce Reinhart, and carried 5-0.

VII.b. RQO 10-038-OE

Mr. Johnson stated that:

- The employment request involved Keith Ellis, an electrician for the City of Boynton Beach (Boynton Beach) and whether he could accept subcontract work for private companies that provided electrical work on various projects for Boynton Beach.
- The Code did not consider a subcontractor as a person with a prohibited contract unless an outside employer or business had a direct contract with the municipality.
- Although Mr. Ellis was not prohibited from entering into such an arrangement under the Code's Section 2-443(c), he was not permitted to use his official position to benefit a customer or client financially. The prime contractor was essentially a client of the subcontractor. If contracts in excess of \$10,000 were in force, Mr. Ellis could not promote that prime contractor by using his official position.
- Judge Rodgers had asked that the item be discussed by the COE.

Judge Rodgers stated that:

- As a sole business owner working as a subcontractor, Mr. Ellis could potentially become a witness in a contract dispute case where the developer or general contractor sued him.
- If the general contractor and the architect placed blame on Mr. Ellis in a lawsuit, he would likely be both prosecuted and defended by Boynton Beach.

VIII.b. – CONTINUED

Mr. Farach stated that:

- Mr. Ellis was chief electrician at the municipality. The opinion letter stated that he could not control the contract; however, his job required that he attend weekly job progress meetings, and approve plans and specifications.
- Mr. Ellis' work relationships seemed too interconnected to avoid conflicts of interest by virtue of his official position with Boynton Beach.

Bruce Reinhart stated that unless a ruling were made that a bona fide subcontractor relationship did not exist, Boynton Beach's city manager or city council should review the matter as a management issue. He added that he concurred with the proposed opinion letter.

Dr. Fiore commented that:

- The letter's statement asserting that Mr. Ellis had no influence over the actual selection of persons who awarded job bids was naïve because he would have had input into the proposal's development.
- The sentence should be adjusted because although Mr. Ellis may have had no influence over the actual selection, that was not reflected in the opinion letter.
- She detected no Code violation.

Ronald Harbison stated that he agreed with Mr. Reinhart and Dr. Fiore and that although no ethics violation may exist, Mr. Ellis should obtain a waiver to work on any Boynton Beach job involving a private contractor.

Mr. Johnson asked whether staff should include language in the opinion letter referring to Mr. Ellis' activities that may not violate the Code but which were related to his job responsibilities. Dr. Fiore suggested that a statement be made concerning his relationship with his employer in the letter's last paragraph. She suggested adding the following wording, ...and this does not absolve you of having to comply with Boynton Beach rules and regulations.

VIII.b. – CONTINUED

Mr. Harbison commented that the COE's position that it did not entirely approve of Mr. Ellis' activities should be clarified in the opinion letter, rather than a statement regarding prohibited actions.

Judge Rodgers stated that his primary concern was that Mr. Ellis would be approving workmanship and paying bills. He said that he would vote against acceptance of the opinion.

Mr. Johnson read the following Code language:

Prohibited Contractual Relationships: No official or employee shall enter into any contract or other transaction for goods or services with the County. This prohibition extends to all contracts or transactions between the County or any person or agency acting for the County and the official or employee; directly or indirectly, or the official or employee's outside employer or business and outside employer is defined as any entity other than the County or State or any regional local municipal government of which the official or employee is a member, officer, director or employee, and from which he or she receives compensation for services rendered or goods sold or produced.

Mr. Johnson said that the Code's Section Two defined ownership interest as meaning more than five percent ownership interest in a company doing business in the county. He added that allowance granted to Mr. Ellis could be interpreted by others as legal permission to do the same. In that event, he said that:

- Misuse of his office for a customer or client might come into play if Mr. Ellis performed work for a prime contractor.
- Many consultants did not have contracts with municipalities or counties, and perhaps this item should be tabled for further consideration. A decision to extend permission to a subcontractor would have significant implications on future business dealings.

VIII.b. – CONTINUED

- The prohibited contracts were waivable by governing bodies per the Code's Section 2-443(c).
- Mr. Ellis' request to work did not have to be approved if the Prohibited Contracts provision did not apply. He may be required to obtain merit rule approval for work performed outside of Boynton Beach, but no such waiver existed under the Code.
- Judge Rodgers had requested discussion on this item.

Judge Rodgers expressed concern that if a lawsuit resulted from inadequate performance by Mr. Ellis' electrical company, Mr. Ellis could bolster his defense by claiming that the COE had approved his actions by authorizing his subcontracting work.

Mr. Reinhart stated that the facts as presented probably did violate the Code's Section 2-443(c), and he requested a more specific analysis drafted by Mr. Johnson for the COE's evaluation.

MOTION to table the discussion until more specific analysis could be conducted. Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 4-0. Judge Rodgers opposed.

VII.c. RQO 10-039

Mr. Johnson stated that:

- Connie Roy-Fisher, landscape artist and a member of Friends of the Mounts Botanical Gardens (Friends), which was the volunteer advisory board to Mounts Botanical Gardens (Mounts), requested an advisory opinion as to whether it was permissible for her to submit a bid for contracted improvements to Mounts amounting to \$137,000 of County funds.
- The chair of Friends was on the bid selection committee.

VIII.c. – CONTINUED

- The landscaper was not an official or employee of the County. The Code's Section 2-443(a) (b) and (c) did not apply. No Code violation existed, although there was an appearance of impropriety.
- The proposed summary language was:

Although not prohibited from participating under the Code of Ethics, the Commission on Ethics recommends that in order to avoid the appearance of impropriety, neither the chair nor any other member of Friends participate in the selection process on bids or proposals on which a member of Friends is a bidder or proposer.

- An advisory opinion was requested by the landscape artist out of concern for the appearance of impropriety.

MOTION to accept the advisory opinion as written by the Executive Director (ED) Alan Johnson. Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 5-0.

VII.d. RQO 10-041

Mr. Johnson stated that:

- This request represented the 41st advisory opinion letter that the COE had issued since June 2010. Some commissions at state levels issued fewer than 10 in a year.
- Eric Johnson, an employee of the City of Boynton Beach (Boynton Beach) and member of a Delray Beach church requested advice regarding his proposed candidacy on the church's board of directors.
- The church conducted no business with Boynton Beach, although it was in negotiations to buy property in the municipality.

VII.d. – CONTINUED

- Additional questions involved reimbursement for the requestor's travel on behalf of the church for purposes of mission trips, conference attendance, and solicitations for donations.
- The requestor was not prohibited from joining the church's board of directors, and he was advised in the proposed opinion letter not to use his official position to benefit the church financially.
- The opinion letter contained a reference to Commissioner Burt Aaronson's proposed honor from the synagogue that he attended. Because Commissioner Aaronson was not permitted to appear to solicit on behalf of the synagogue, the proposed honor was deferred.

Dr. Fiore stated that her preference was for a statement to be made in the opinion letter instead of a reference to an opinion concerning Commissioner Aaronson.

Mr. Reinhart said that the letter could cite the reference making it searchable for others seeking information, and that the reasoning behind the opinion should be restated to provide a self-contained letter to the recipient.

Judge Rodgers asked whether the opinion language covered instances of good-will donations made as a result of friendship with the requestor.

Mr. Johnson read the letter's summary as follows:

You may not under any circumstances accept any donations in excess of \$100 directly or indirectly from a lobbyist, principal or employer of a lobbyist who lobbies Boynton Beach.

Judge Rodgers pointed out that politicians and lobbyist donations to churches were commonplace.

Mr. Johnson suggested additional language as follows:

You may not accept a gift for yourself or on behalf of the church.

VII.d. – CONTINUED

Mr. Reinhart suggested the following phrase:

A gift to the church could be construed as an indirect gift to you and, therefore, may fall within...

Mr. Harbison commented that every potential abuse that could occur could not be anticipated. He said that the commission's concern was for the non-church member who attempted to garner favor with the government employee by making a contribution to the church.

Mr. Reinhart said that a blanket statement that the church could not accept any gifts that were tied to the government employee in any manner was insufficient. He asked the ED for clarification that the gift would have to come from a lobbyist, principal or employer of a lobbyist.

Mr. Johnson responded by saying that:

- A gift to the church was not reportable as a gift to the government employee.
- If a gift to the church resulted from a solicitation by or through the County employee, it could not be larger than \$100.
- If the employee indirectly solicited a gift for the church, the lobbyist limitation of \$100 applied.

Mr. Johnson asked whether it would be acceptable to say, "You may not solicit or accept a gift with a value in excess of \$100."

Judge Rodgers said that the Code may already contain that provision.

Mr. Johnson suggested the language, "You may not solicit on behalf of the church or accept a gift of more than \$100 from a lobbyist."

Concerning lobbyist registration requirements, Mr. Johnson said that:

- A jurisdiction issue had arisen because Boynton Beach had adopted the Code but not the lobbyist registration ordinance.

VII.d. – CONTINUED

- Boynton Beach now had lobbyists registered with the municipality but not under the County Code.
- The County's lobbyist registration ordinance required anyone who lobbied for or against any issue coming before the commission's advisory board to be registered as a lobbyist.
- The definition of a lobbyist was, "someone who lobbies," rather than, "someone who is registered to lobby."
- Anyone who lobbied was under the jurisdiction.

MOTION to accept the opinion as amended by the commission. Motion by Robin Fiore, seconded by Bruce Reinhart, and carried 5-0.

VIII. EXECUTIVE DIRECTOR COMPENSATION

Mr. Reinhart stated that since the last COE meeting, he had gathered facts concerning Mr. Johnson's compensation for the commission to consider. He distributed lists that he said were excerpted from records provided by the County human resources (HR) staff.

Mr. Reinhart said that the lists entailed:

- Salary levels for the position of director and above in County government, representing medium- to high-level supervisors whose salaries were commensurate with Mr. Johnson's.
- Pay scales for all County Attorney's Office employees because Mr. Johnson performed legal services.
- Salary levels for other executive directors of existing County commissions.
- A Rate column that represented the rate per hour for services rendered for 2,080 hours per year, and a Salary column resulted from the rate multiplied by 2,080 using the Excel computer program.

VIII. – CONTINUED

- The hire date was included because HR staff stressed that all jobs showed a broad spectrum of salaries; the strongest determining factor was longevity; and names were omitted from the data.

Mr. Reinhart suggested that the salary issue be added to the next meeting's agenda for thorough discussion.

Mr. Farach inquired about the COE's budget. Mr. Reinhart replied that Mr. Johnson had reported at the last meeting that the last fiscal year showed \$70,000 under budget.

Mr. Harbison requested an e-mail of the Excel files. Mr. Reinhart said that he would send it in exactly the same format that he had received it.

After a brief discussion, the group decided that the ED should conduct the distribution. Mr. Johnson agreed to distribute the lists to each member in a clear trail of communications.

IX. WORKSHOP ITEMS

Dr. Fiore asked whether remaining agenda items could be postponed until the next meeting.

Mr. Johnson replied that he had requested that item IX.c. be postponed because he needed to revise it after conferring with Assistant County Attorney Leonard Berger. He said that the complaint was exempt and confidential per State law.

(CLERK'S NOTE: Mr. Reinhart left the meeting.)

Mr. Johnson stated that the remainder of item IX. consisted of Code revisions to match Code specifications, which the commission had previously tabled. He said that he would present additional Code revisions to the drafting committee and provide an update at the next COE meeting.

MOTION to defer discussion of remaining workshop items until the next COE meeting. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

X. EXECUTIVE DIRECTOR COMMENTS

X.a. Referendum Committee Update

Mr. Johnson stated that:

- The COE drafting committee and the inspector general drafting committee had met twice.
- While the COE ordinance remained substantially unchanged, language concerning the municipalities was added.
- A 4-2 vote established that advisory opinions could be withdrawn once entered, but not within 10 days of the next COE meeting. The rationale for it was to preserve County time and money.
- He would bring requests to revise the Code to the commission concerning lobbyist gifts so as to change language to comport with other Code provisions.

Mr. Harbison remarked that he had requested that an item be added to the COE meeting agenda that concerned other parties to transactions that were in violation of the Code.

Judge Rodgers commented that the county contained 10 percent of the total number of municipalities in the state. He asked Mr. Johnson for ideas that would create more efficient handling of advisory opinion requests and generate additional income.

Mr. Johnson said that:

- No taxing authorities had responded to overtures made by the COE.
- An estimate of anticipated work to be done would be calculated following the referendum's effective date in April, May or June 2011.
- The County had pledged to fund the COE.
- A new attorney was anticipated to begin work at the ED's office in February 2011 or sooner. Two to three interns would also join the staff to perform new media and public outreach functions.

X.a. – CONTINUED

- Several potential clients had anticipated the COE's jurisdiction and sought advice now. He sought commission direction regarding procedure.

Mr. Farach stated that this appointed board should be careful so that it would not be viewed as exceeding its jurisdiction.

Mr. Harbison suggested that opinion-seekers should refer to the Code as it existed.

Dr. Fiore said those seeking opinions should be referred to the training materials.

XI. PUBLIC COMMENTS – None

XII. BOARD COMMENTS

XII.a. Manuel Farach, Esq. – None

XII.b. Executive Director Comments

XII.b.1. Hearing Process

Mr. Johnson stated that he intended to collect feedback on the hearing process from each commissioner, and then list discussion as an agenda item.

XII.b.2. Ethics Advertising

Mr. Johnson mentioned that County buses now displayed COE posters and the slogan "Got Ethics?" followed by the COE's Web site address. He said that the County provided the free advertising space.

XII.c. Ronald Harbison

XII.c.1. Grand Jury Report

Mr. Harbison asked for confirmation that the governor of Florida's (State) grand jury report had referred to Palm Beach County and Broward County ethics commissions as State models.

XII.c.1. – CONTINUED

Mr. Johnson responded by saying that the 127-page report singled out Miami-Dade and Palm Beach counties as State models for local and county ordinances. He said that he would post the report on the Web site.

XII.d. Bruce Reinhart, Esq. - None

XII.e. Judge Edward Rodgers

XII.e.1. Suggestions for Hearings

Judge Rodgers suggested that:

- Consideration should be given to today's executive hearing and ideas for making upcoming hearings better.
- Thought should be given toward any hearings mistakes that could be avoided.
- Agenda space should be provided to member contributions.

XIII. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

Mr. Johnson stated that the next meeting would be held on February 3, 2011.

At 6:09 p.m., the chair declared the meeting adjourned.

APPROVED:


Chair/Vice Chair