

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

**I. CALL TO ORDER:** July 7, 2011, at 3:04 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  
Dr. Robin Fiore  
Ronald Harbison – Attended via teleconference.  
Bruce Reinhart

**STAFF:**

Mark E. Bannon, COE Investigator  
Alan Johnson, Esq., COE Executive Director  
Gina Levesque, COE Administrative Assistant  
Megan Rogers, COE Staff Attorney  
Tim Montiglio, Recording Clerk, Clerk & Comptroller's Office  
Julie Burns, Condensing Clerk, Clerk & Comptroller's Office

(CLERK'S NOTE: Item IV. was addressed before item III.)

**IV. APPROVAL OF MINUTES FROM MAY 5, 2011, and JUNE 2, 2011.**

Commission on Ethics (COE) Executive Director Alan Johnson said that there were 16 corrections adopted to the June 2, 2011, minutes and that the corrections were already made. He added that approval of the May 5, 2011, minutes were tabled at the June 2, 2011, meeting, for corrections to be made, and those minutes were now presented for approval.

(CLERK'S NOTE: For continuation of item IV., see page 2.)

**III. INTRODUCTORY REMARKS**

Judge Edward Rodgers stated that:

- Ronald Harbison would be attending via teleconference.
- All attendees should turn off or silence their cell phones.

### III. – CONTINUED

- Members of the public submitting comment cards to the COE had a three-minute time limit at the podium.
- Comment card topics had to be relevant to the agenda items.

### IV. – CONTINUED

**MOTION to approve the minutes of the May 5, 2011, and the June 2, 2011, meetings. Motion by Manuel Farach and seconded by Robin Fiore.**

**UPON POLLING THE COE, the motion carried 5-0.**

Mr. Johnson said that the agenda would contain two general public comment sections; items V. and XV., at the start and the end respectively of the meeting.

(CLERK'S NOTE: The numeric order of the agenda was restored.)

### V. PUBLIC COMMENT

#### V.a.

**DISCUSSED:** Public Comment.

Alexandria Larson said that public comment was an important part of the agenda. She said that the County's elected officers, appointed officials, and administrators, had to consider how the decisions they made could be affected by the events they attended, the issues they supported, the activities in which they participated, and who funded them. She said that public perception was guided by who benefitted the most from their decisions.

Suzanne Squire pointed out that the rules for decorum and behavior in meetings also applied to the COE members. She said that the COE was ignoring public comment and that the COE's mission statement was manipulated to correspond with the COE's actions. She said that County government was designed to support the public; therefore, public comment should be important to the COE.

### VI. PUBLIC COMMENT REVISION TO BYLAWS

Mr. Johnson said that:

## VI. – CONTINUED

- Staff had submitted a legal analysis for public commentary during meetings.
- Typically, public comments would be heard for quasi-judicial legislative matters related to the public's rights.
- The courts considered public meetings as marketplaces of ideas.
- The courts extended the right to public comment at meetings where there were no statutory requirements for it.
- Executive functions such as discussion of a job applicant's background were not included. The public is invited but cannot comment.
- Staff recommended two opportunities for public comment on the COE agenda, but the COE could allow public comment at their discretion.
- Because of due process concerns, staff recommended that public comment, which could influence COE members, be restricted from complaint hearings.
- Staff recommended adding section X. for public comment into the bylaws that read:

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.

- Decorum or some control over the length and manner of public comments and responses should be shown.

Judge Rodgers said that the COE had been criticized for approving an item before hearing public comment.

Mr. Johnson said that staff recommended following Robert's Rules of Order which specified panel discussion, public comment, and panel vote, in that order.

## VI. – CONTINUED

Manuel Farach asked at what point would public comment be heard before a vote or on determining punishment. He said that it was important to hear public comment before making a decision.

Dr. Robin Fiore said that the COE would be listening to the public's point of view. She also said that she disagreed with the use of public comment to determine the correct punishment for violators.

Judge Rodgers agreed that public comment should not be addressed until after an item's decision had been made or a penalty had been determined. He said that the public should not be responsible for making decisions that the COE should have made.

Bruce Reinhart stated that he agreed that the COE was responsible for making decisions and determining punishment. Mr. Harbison added that the COE would then have to listen to public criticism about a decision or punishment.

Mr. Farach said that:

- The COE was a quasi-judicial body that had to instill confidence in the public's operation of government.
- Accessible public input would inspire confidence in the system.
- He understood that the COE should not allow popular opinion to influence a vote.

Dr. Fiore said that unless the public had heard the evidence, their comments would not reasonably contribute to outcomes.

Mr. Johnson reiterated that the probable cause hearings were executive, while final hearings were open to the public.

Judge Rodgers said that the COE was new and that some COE practices would require refinement over time.

**MOTION to adopt Section X, as amended to exclude the exclusion or exception of final hearings from the public comment rule involving complaints before the COE. Motion by Manuel Farach.**

**VI. – CONTINUED**

**MOTION DIED FOR LACK OF A SECOND.**

**MOTION to adopt item IV. Motion by Dr. Robin Fiore and seconded by Bruce Reinhart.**

**PUBLIC COMMENT:** Suzanne Squire.

Mr. Reinhart commented that he did not represent a county commissioner suspected of corruption.

**ADDITIONAL PUBLIC COMMENT:** Alexandria Larson.

Judge Rodgers asked whether the public should be solicited for comment on all routine requests for clarification of the Code of Ethics (Code).

Dr. Fiore said that the COE's mandate was to enforce the Code and to address specific issues about the Code that was brought before the COE.

Mr. Johnson clarified that:

- All comments were public comment aside from comment about the original complaints brought before the COE.
- Advisory opinion was a quasi-administrative, quasi-legislative duty of the COE that would be subject to public comment.

**UPON POLLING THE COE, the motion carried 4-1. Manuel Farach opposed.**

**VII. AMENDMENT TO RULES OF PROCEDURE**

**VII.a. Withdraw an Advisory Opinion Request**

Mr. Johnson said that one of the revisions to the Code was the ability to withdraw an advisory opinion request. The provision reflected in section 2.4.F. of the COE's standard procedure was revised to say:

An advisory opinion request may be withdrawn by the submitting party in writing no later than 10 days prior to the public meeting wherein the Commission on Ethics is to consider the request.

## VII.a. – CONTINUED

Mr. Johnson said that an advisory opinion request may be withdrawn up to 10 days before its scheduled hearing. He added that the COE's Rules of Procedure were being changed to comply with the County's Code.

Dr. Fiore asked for assurance that advisory opinion requests were not being withdrawn because the COE staff had provided an opinion or given information after interacting with a citizen. She said that staff's interactions should be part of the public record.

Mr. Johnson said that anything the COE staff had documented would be a matter of public record, and that occasionally, the advisory opinion letter would be mailed more than 10 days before the scheduled hearing.

Judge Rodgers said that the individual filing an advisory opinion request should be entitled to withdraw the request.

Dr. Fiore said that within the 10-day window, any activity related to the advisory opinion request should become public record.

Mr. Johnson said that:

- All advisory opinion requests were submitted in writing and became permanent public records.
- The COE encouraged advisory opinion requests.
- To process the advisory opinion request, the COE would ask for information, and depending on the individual's response, could use that information as evidence if any other complaints led to a hearing.
- All advisory opinion requests were assigned to a case file with a permanent Request for Advisory Opinion (RQO) number.
- Withdrawn advisory opinion requests would have their case files stamped as withdrawn.
- Advisory opinion requests that were not fully processed would still remain on file as public record.

Dr. Fiore suggested that advisory opinion requests should not be processed until the tenth day before the scheduled hearing.

## VII.a. – CONTINUED

Mr. Johnson suggested adding the following language to the County's Code, section 2.4: All records received by the COE staff, notwithstanding this rule, would be maintained.

Mr. Johnson said that withdrawn advisory requests would not be agenda items because they would not be considered by the COE.

Gina Levesque, COE Administrative Assistant, said that advisory opinion letters were not mailed until they were reviewed and approved by the COE chair.

Mr. Johnson said that the processed advisory opinion letters that were mailed by the COE staff were adopted by the COE from the consent agenda and became official when accepted by the COE.

Dr. Fiore said that because there was no method for addressing her concern, she would withdraw her proposed amendment to the Rules of Procedure.

**MOTION to adopt staff's recommendation to amend the Rules of Procedure's section 2.4. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 4-1. Dr. Robin Fiore opposed.**

## VIII. VENDOR DATABASE UPDATE

Mr. Johnson said that the County's staff had assembled a database of 11,000 vendors.

Public Affairs Director Lisa DeLaRionda in describing the County's registered vendor database application, said that:

- County employees used a dedicated intranet site that included the searchable vendor database.
- The County's home page, [www.pbcgov.com](http://www.pbcgov.com), had links to report fraud, report ethics violations, and searches for active registered vendors.
- The search field narrowed choices of registered vendors.

Information Systems Services Application Services Director Archibald Satchell said that:

## VIII. – CONTINUED

- A future phase of the database would incorporate vendors into the CGI Advantage Financial System by 2013.
- Vendors would be able to register online and bid for County contracts.
- County employees and other users would see all current and future vendors in real time.

Ms. DeLaRionda added that the COE website would include a link to the vendor database along with the registered lobbyist link.

Mr. Johnson said that:

- The COE would work with the County to incorporate registered municipal vendors into the database.
- The County Attorney's Office was developing a countywide lobbyist registration ordinance.

Assistant County Attorney Leonard Berger said that:

- The municipal databases would be centrally accessible.
- The current County system would not account for vendors submitting bids until 2013.
- The registration of vendors and lobbyists did not currently apply to the municipalities.

Dr. Fiore suggested that an interactive link enabling employees to report gifts be made accessible on the County's website.

### **PUBLIC COMMENT:** Alexandria Larson.

Mr. Satchell said that Active Vendor Search was currently operational on the County's website.

Mr. Berger said that any vendor or contractor receiving payment from the County would be in the registered vendor database.

## VIII. – CONTINUED

Mr. Johnson said that there was a registered lobbyist database available on the County's website.

**ADDITIONAL PUBLIC COMMENT:** Suzanne Squire.

## IX. COMMISSION ON ETHICS SECOND REQUEST FOR ADVISORY OPINION FROM ATTORNEY GENERAL'S OFFICE

Mr. Johnson said that in relation to advisory opinion requests:

- The COE staff had requested information about non-quasi-judicial issues, recusals, and abstentions from the State COE.
- State statute, section 286.012, did not make exception depending on the type of commission.
- The COE staff had also contacted the State's Attorney General (AG), who said that in a due-process type of hearing, the respondent's rights were protected.
  - If there were nonfinancial biases, prejudices, or affinity, a quasi-judicial board member adjudicating the rights of an individual should be able to abstain without violating the State constitution.
  - The opinion returned from the AG did not discriminate between non-quasi-judicial, due-process issues and abstention on legislative or administrative matters.
- Staff recommended requesting a formal advisory opinion from the AG regarding the violation of due process as opposed to violating the statute that a member could abstain only for financial reasons.

Mr. Johnson said that the County COE did not have the latitude to create rules related to nonfinancial abstentions.

Mr. Harbison expressed concern that the COE could abstain itself out of a quorum.

**MOTION to authorize sending a letter to the State Attorney General seeking a formal opinion on the due-process issue. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 5-0.**

**RECESS**

At 4:29 p.m., the chair declared a recess.

**RECONVENE**

At 4:42 p.m., the meeting reconvened with Manuel Farach, Dr. Robin Fiore, Bruce Reinhart, and Judge Edward Rodgers present. Ronald Harbison was present via teleconference.

**X. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)**

X.a. RQO 11-032

X.b. RQO 11-036

X.c. RQO 11-045

**MOTION to approve the consent agenda. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 5-0.**

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

**XII. PROPOSED ADVISORY OPINIONS**

**XII.a. RQO 11-022 (Revised)**

Mr. Johnson said that:

- Assistant Airport Director Martha LaVerghetta inquired whether she should accept airline tickets, accommodations and meals from her husband's employer, Southwest Airlines, (Southwest) to attend a conference.
- Previously, the COE staff had determined that the family flight privileges were a compensatory benefit of her husband's employment, not gifts.
- The COE staff also determined that since Southwest was not a County vendor, accommodations and meals at the conference were not prohibited, but would become reportable gifts if they exceeded \$100.

## **XII.a. – CONTINUED**

- By consulting the Code's statute, section 112.3148(7), the COE's staff determined that when the spouse attended a function hosted by the husband's employer, the function was considered a gift from the husband and, therefore, not reportable.
- The COE staff had processed an advisory letter to Ms. LaVerghetta, which was revised afterwards, and the advisory opinion was resubmitted.

Dr. Fiore said that Ms. LaVerghetta's public employment at the airport had to be considered when determining whether a gift should be reported.

Mr. Johnson said that COE staff had determined that all pilots at the airport and their guests were invited to the Southwest function regardless of their positions as County employees.

Dr. Fiore said that all spouses who were County employees would still have to report attending the function even though it was not a prohibited gift, and that the COE staff had analyzed the situation correctly the first time.

Mr. Farach said that proposed advisory letters contained notices that the requesting party was a County employee.

Mr. Harbison said that all spouses, County employees or not, were entitled to attend functions without having to report them. He said that it was unfair to burden County employees with a compliance requirement that was not applied to other guests.

### **PUBLIC COMMENTS:** Suzanne Squire and Alexandria Larson.

Mr. Johnson said that:

- Inheritance was an exception to the gift law. Unless a vendor had left the inheritance because a person did something to get that inheritance, then it would be a violation of the Code.

## XII.a. – CONTINUED

- The proposed advisory opinion letter sent to Ms. Verghetta contained the following statement:

You must be very careful not to use your position as an Assistant Airport Properties Manager to financially benefit your spouse's employer. This provision of the code is important because of your county position, it requires you to have ongoing contact with PBI lessees 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 may 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.

- Ms. LaVerghetta could not use her position to provide a financial benefit to her husband's employer, Southwest.
- Staff recommended that Ms. LaVerghetta's acceptance of the airline tickets, accommodations and meals from her husband's employer was within the Code's guidelines.
- Ms. LaVerghetta should not have to recuse herself from negotiating contracts with Southwest or AirTran unless the COE determined otherwise.
- The COE agenda and copies of the proposed advisory opinion letters were provided to the County Administrator's Office.

Mr. Reinhart said that since the COE had rendered an opinion and provided information to Ms. LaVerghetta's management, County administration would be responsible for pursuing further action regarding her duties.

Judge Rodgers said that the COE would not extend an advisory opinion more than necessary in responding to requests for opinion.

Dr. Fiore said that the State's administrative code had not been revised to reflect changes in the workforce population.

**XII.a. – CONTINUED**

**MOTION to approve the original proposed advisory opinion letter sent to Martha LaVerghetta and to regard her as a person of responsibility. Motion by Dr. Robin Fiore, and seconded by Manuel Farach.**

Mr. Farach said that he seconded Dr. Fiore's motion because he was concerned about unnecessary reporting requirements for public officials and the micromanaging of County administrators.

Mr. Reinhart verified that the gift was from the husband's employer to the County employee, not a gift from spouse to spouse. Mr. Johnson added that the husband's employer was a lessee of the County, not a vendor, and the gift was not prohibitive.

**UPON CALL FOR A VOTE, the motion carried 5-0.**

**XII.b. RQO 11-027**

Mr. Johnson said that a municipal employee asked whether he could use the municipal email system to solicit volunteers for a charity event. He said that the COE staff had recommended that the employee avoid using his official position and municipal resources to financially benefit a charity.

**MOTION to adopt RQO 11-027 as drafted by staff. Motion by Manuel Farach, seconded by Bruce Reinhart, and carried 5-0.**

**XII.c. RQO 11-028**

Mr. Johnson said that:

- A municipal village attorney asked whether employees of the village's golf course could accept tips.
- Tips were contemplated as part of the compensation agreement and documented in the job description.
- The COE staff had recommended that a municipal service employee should not be prohibited from accepting tips and gratuities when they were defined as expected compensation.

**MOTION to adopt RQO 11-028 as drafted by staff. Motion by Bruce Reinhart.**

(CLERK'S NOTE: The motion was seconded later in the meeting.)

## XII.c. – CONTINUED

Mr. Farach said that the tips should be within the normal range expected for the services performed.

Mr. Johnson said that:

- The requested advisory opinion would address only adherence to the gift law.
- Employees providing financial benefit to guests in exchange for accepting tips would violate the “misuse of office” section.

Mr. Farach said that tips could be so out of proportion from normal tips or services rendered that they would not be permissible even if reported. He added that extreme tipping should be mentioned in the advisory opinion letter’s summary.

Mr. Reinhart suggested adding the following language to RQO 11-028:

Where tips and gratuities are an officially contemplated basis for the overall compensation and the gratuity was of a magnitude that was an industry standard or otherwise customary in the context.

Dr. Fiore said that tips were for special services provided beyond what was normally expected, especially in the golf industry, and should not apply to management.

Mr. Harbison said that public golf courses typically do not have caddies and that tipping would be customary and appropriate mostly with bag handlers and wait staff in the restaurant.

Mr. Johnson stated that:

- The gratuity referred to by Mr. Reinhart was neither a contemplated part of the *compensation package nor an industry standard or customary in that context*, which protected the advisory opinion.
- The advisory opinion would not protect a salaried employee such as the golf course supervisor.

## XII.c. – CONTINUED

Mr. Reinhart said that golf professionals were compensated by receiving a percentage of golf cart rental fees since the services they provided would increase the use of golf carts.

Mr. Farach suggested that the last paragraph on page two of the advisory opinion letter, be changed to include the following at the end of the paragraph: Presuming that it is a customary and accepted standard, and it is in excess of \$100, it still had to be reported.

Mr. Johnson said that:

- The third sentence in the fourth paragraph on page two of the advisory opinion letter should be changed to read:

We note that such a gratuity was neither a contemplated part of the employee's compensation package and is an industry standard or otherwise customary in this context.

- Tips were part of compensation. The COE staff did not contemplate tips as being reportable, and golf course employees could or could not include them as part of their compensation.

Dr. Fiore said that if golf course employees did not include tips as part of their compensation, then the tips had to be reported as gifts.

Mr. Harbison said that he agreed with the COE staff's recommendation, and common sense needed to dictate. He added that if someone attempted to use RQO 11-028's advisory opinion to justify some type of abusive transaction, the COE would handle the situation on a singular basis.

Mr. Farach stated that if a caddie or "bag boy" received more than a \$100 tip, that amount should be reportable.

Dr. Fiore stated that she did not object if tips were included in the compensation agreement; if tips were not included in the compensation agreement, then they were considered gifts.

Mr. Farach said that it was sometimes customary to tip the club professional who lined up tee times since some tee times were more desirable than others.

## XII.c. – CONTINUED

Mr. Johnson clarified that:

- If a tip was given at a municipal golf course and the COE or the COE staff was informed that it occurred, the tip would be subject to misuse of office because someone used his or her official position for personal gain.
- The COE staff recommended that the advisory opinion letter not be changed or tailored to include a circumstance that could happen and that was contemplated in another area of the County's Code.
- Tips were considered part of an employee's compensation package offered by the municipality; the COE was merely answering that narrow question.

Mr. Farach stated that a normal compensation was considered part of the package; a \$500 tip was not.

Mr. Johnson said that if a city manager said that a billionaire wanted to offer a \$500 tip, as long as there was no misuse of office, who would dictate that that amount was too much. He added that tips were part of the compensation package, and the COE would be on a "slippery slope" by quantifying the tip amount.

Dr. Fiore stated that:

- The proposed advisory opinion letter stated that the Village of North Palm Beach (Village) did not have a standard employment contract with service employees of the country club.
- There was no way to enforce a COE decision, because whatever the Village decided to pay someone, or whatever tips someone received, the Village would just say it was customary.
- If the Village had an employee contract specifying that tips were part of their compensation, the COE could agree that they were not considered gifts. If the Village did not have an employee contract, the COE would not know that tips were part of the compensation package.

Mr. Johnson clarified that tips were described in the employee job description.

**XII.c. – CONTINUED**

**AMENDED MOTION to include the additional language as discussed. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 5-0.**

**XII.d. RQO 11-029**

Mr. Johnson stated that a City of West Palm Beach (City) commissioner asked whether, as an elected official, the commissioner could serve on the board of directors of a local nonprofit organization, and if she could continue to fundraise on the organization's behalf. He said that in the Code's June 1, 2011, revision, the COE staff had recommended that:

- The City commissioner may not use her elected office to provide a special financial benefit to a nonprofit organization while serving as the charity's officer or director.
- The Commissioner could not vote or participate in the decision-making process if a matter that specially or financially benefitted the charity came before the City commission.
- When soliciting donations on behalf of the charity, she needed to retain a detailed log of her contacts, including the amounts solicited by her and pledged by donors.
- The log should be submitted to the COE within 30 days of the charitable event; if not associated with an event, within 30 days of the solicitation itself.
- The City commissioner could not solicit a donation in exchange for any special, official consideration as a commissioner.

Mr. Farach questioned whether the proposed advisory opinion letter should include receiving and not just soliciting a donation in excess of \$100.

Mr. Johnson suggested that the third paragraph, fifth line of the letter could read: a record of those solicitations and donations. He added that the Code specifically said, The log contains the amount solicited and the amount pledged.

Mr. Farach said that he supported inserting the language, the amount solicited and the amount pledged.

## **XII.d. – CONTINUED**

Mr. Johnson clarified that the sentence could read, a record of those solicitations and pledges.

Dr. Fiore questioned how a public official, serving on the board of any entity, could fulfill the sentence: You may not use your elected office to give a special financial benefit while serving as an officer or director of a charity. She added that the person was soliciting as a public official and giving a benefit to a particular charity that was not available to all other charities; therefore, the person was using his or her elected official position to give a special financial benefit.

Mr. Farach clarified that the proposed advisory opinion letter needed to follow the Code's ordinance.

Mr. Reinhart stated that, as a City commissioner, she could not vote on any item that benefitted the charity, which was different from saying, I'm a West Palm Beach City commissioner, and I support this charity. I'd appreciate it if you'd consider a donation.

Mr. Johnson read the specific Code provision and the similar language contained in the voting conflicts disclosure that referred to a special financial benefit:

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.

Mr. Johnson read similar language under the Code's disclosure and voting conflicts:

County and municipal officials shall abstain from voting and not participate in any manner that will result in a special financial benefit.

Mr. Reinhart requested clarification of the proposed advisory opinion letter's sentence that began, In summary, as to how the Code allowed the City commissioner to react.

## XII.d. – CONTINUED

Mr. Johnson added that:

- The COE would need to interpret the Code's meaning.
- The COE staff's interpretation was that someone could not take an official action, meaning in his or her official capacity.
- The solicitation language in section 2-443 was simply a carve out for the gift law.
- If the COE believed that the misuse of office applied, then the COE was basically negating the solicitation language; or the City commissioner would need to state a name, without using her position.

Dr. Fiore stated that the conflict would need to be pointed out to public officials. She added that:

- On one hand, a carve out existed under the gift law, but the abuse of position clause was still in effect.
- The City commissioner would not benefit by the COE sending out an advisory opinion letter stating that everything was fine when the opposite was true.
- The COE needed to place the complexity of the Code's gift law carve out and the abusive position clause in the advisory opinion letter.

Mr. Johnson responded that if the COE wanted to adopt the interpretation as discussed, he would request additional research because it was not a commonly accepted interpretation of an official act.

Mr. Reinhart stated that the drafting committee's intention was that public officials could use their public office to solicit on a charity's behalf.

Dr. Fiore clarified that the Code's carve out dealt with solicitation, not with serving on a board of directors.

Judge Rodgers commented that the City commissioner could serve on the board as long as she did not use her commissioner's title.

## XII.d. – CONTINUED

Mr. Johnson clarified that in the proposed advisory opinion letter, the commissioner could not use her position to financial benefit a nonprofit entity if she was on the board of directors or was an officer.

Mr. Johnson stated that:

- Because the City commissioner was a board of directors' member for the nonprofit organization, it put her in a different position than just a commissioner lending her name to a charitable fundraiser.
- A specific carve out could be added to the proposed advisory opinion letter stating that because another section in the Code applied, the City commissioner could not use her position to specifically financially benefit the nonprofit charity; therefore, her solicitations should exclude her official title while acting as a director.

Mr. Reinhart and Mr. Farach said that they did not believe a specific carve out in the advisory opinion letter could be extrapolated from the Code's language.

Mr. Farach stated that he supported Dr. Fiore's statement that someone should not be able to serve on a board when serving as an elected official.

Mr. Johnson clarified that:

- Before the Code's revision, the COE's prior position was that someone could not solicit directly or indirectly while serving as a public officer.
- The revised Code included a specific carve out that someone may solicit as long as a log of the solicitations was kept.

Mr. Farach suggested informing the City commissioner that no clear answers could be derived from the ordinance's language as written, and the COE could not provide her with any safe harbor.

Mr. Johnson clarified that:

- Previous to the Code's ordinance change or drafting committee's change, the COE's last advisory opinion was that someone could serve on a board, but he or she could not take part in a charitable event or fundraiser as a board of directors' member or as an officer of that charitable event or fundraiser.

## XII.d. – CONTINUED

- Debate had previously taken place regarding the public good of fundraising for charities and the loss of funds.

Dr. Fiore questioned why social policy was being discussed because the main point was to preserve public integrity. She added that:

- It was a form of arrogance for the drafting committee to avoid doing narrowly what they were asked to do.
- By not removing the language, You may not use your name or your office to benefit someone else, the COE was now stuck with the conflict until another drafting committee was appointed.
- She had hoped that the COE did not take the alternative approach that every time a commissioner or a public official raised money for an organization, an investigation would take place to determine whether it was a misuse of office.

**MOTION to direct staff to rewrite proposed advisory opinion letter RQO 11-029 reflecting the two Code-ordinance conflicts, and to advise the requesting party that the COE could not provide direct guidance or safe harbor regarding the request. Motion by Manuel Farach.**

Mr. Farach responded affirmatively to Mr. Johnson's question whether the conflict was in the context of someone who was on a board or was an officer of a charitable organization, since the conflict would not exist if an elected official was not on a board or was not an officer. He added that Mr. Johnson could advise the requesting party that the COE had discussed the issue at length.

**MOTION SECONDED by Dr. Robin Fiore.**

Mr. Reinhart disclosed that he socially knew the requesting party, City Commissioner Kimberly Mitchell, and that she had long ago discussed the family-zoned project with him.

Mr. Harbison clarified that the COE was discussing a direct solicitation rather than an indirect solicitation by virtue of simply being on a board.

Mr. Johnson responded that direct and indirect solicitation was already the subject matter of another advisory opinion before the Code's revision.

**XII.d. – CONTINUED**

Mr. Harbison stated that the advisory opinion letter dealt with direct solicitation by the City commissioner.

Mr. Johnson said that:

- The issue more involved the use of the title, commissioner, for solicitation purposes, because under the gift law, regardless of direct or indirect solicitation, a log should be kept if she used her title for the solicitation.
- Regarding the misuse of office, it would be direct or indirect solicitation if the commissioner allowed someone else to use her name.

**UPON CALL FOR A VOTE, the motion carried 5-0.**

**XII.e. RQO 11-030**

Mr. Johnson stated that:

- A County department director asked whether a conflict of interest existed if a County employee, who volunteered as an officer/treasurer of a local nonprofit land trust, was involved in matters where the County provided financial assistance to purchasers of foreclosed homes from that nonprofit land trust.
- In some instances, the nonprofit land trust purchased and resold foreclosed properties to the County's subsidized purchasers.
- Although the County employee's official position did not involve actual grant decision making, it required her to initially screen applicants to determine whether applicants were eligible for County financial assistance, including potential clients of the nonprofit land trust, whom she served as a corporate officer.
- The COE staff recommended that there was an inherent conflict of interest between the County employee's duties and her position as an officer and board member of the nonprofit land trust because she was involved in the qualification process.

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

**XII.e. – CONTINUED**

**MOTION to approve proposed advisory opinion letter RQO 11-030 as drafted by staff. Motion by Manuel Farach, and seconded by Dr. Robin Fiore.**

Mr. Johnson commented that the County department director was in a quandary whether to approve allowing the employee to continue as a volunteer officer/treasurer of the nonprofit land trust while continuing to screen applicants that may include those who applied for the nonprofit land trust.

Commission on Ethics Investigator Mark Bannon clarified that the situation did not involve outside employment because she was a volunteer at the nonprofit land trust.

**UPON CALL FOR A VOTE, the motion carried 4-0. Bruce Reinhart absent.**

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

**XII.g. RQO 11-033**

Mr. Johnson stated that:

- The City of Lake Worth (Lake Worth) vice-mayor asked whether the remaining funds in her campaign account could be used to pay for a trip to an event held as part of a municipal sister city program.
- The vice-mayor may not use her official position to obtain a special financial benefit or otherwise corruptly misuse her public office as set forth in the Code.
- The COE staff had stated that the vice-mayor's political contributions and how they were used could not be regulated by the COE because they were regulated by State and federal law.

(CLERK'S NOTE: Mr. Reinhart rejoined the meeting, and Mr. Johnson stated that he inadvertently skipped item XII.f.)

**PUBLIC COMMENT:** Suzanne Squire.

Mr. Harbison stated that it appeared that the COE had no jurisdiction over this matter.

## XII.g. – CONTINUED

Dr. Fiore questioned why the proposed advisory opinion letter could not state that the COE had no jurisdiction.

Mr. Farach said that he supported inserting the usual language that stated to the effect, Notwithstanding, if there was a misuse of public position; however, Judge Rodgers commented that the COE would benefit more by stating less in the advisory opinion letter.

Mr. Johnson stated that regardless of the factual scenarios, when people reached out to the COE for an advisory opinion, they were possibly subjecting themselves to unwelcomed public scrutiny, and that was why RQO 11-033 was more expansive. He added that if the COE desired, he could shorten the proposed advisory opinion letter.

Mr. Farach suggested the following change to page 2, the second paragraph, of the proposed advisory opinion: 1) Retain the words, In summary, and 2) Delete the rest of the paragraph and replace it with the next paragraph.

Dr. Fiore suggested that the paragraph could state, The Code of Ethics does not prohibit you from using funds, but...

Mr. Reinhart suggested that the paragraph could state, The Code of Ethics neither authorizes you nor prohibits you from...

Mr. Johnson read the following revised paragraph after the sentence, In summary: based on the information you have submitted, the Code of Ethics neither authorizes nor prohibits you...

Dr. Fiore continued the sentence by adding the words, from using campaign funds, with a period after the word, funds.

Mr. Reinhart suggested adding the words, as described, after the word, funds.

Judge Rodgers stated that using the suggested language would put the COE in a position for the vice-mayor to say, Well, they told me it didn't prohibit it.

Mr. Johnson responded that the proposed advisory opinion letter's language neither prohibited nor authorized.

## **XII.g. – CONTINUED**

Dr. Fiore also suggested removing the sentence that began, As a former candidate, on page 2, the first paragraph, because the COE was not in the business of giving advice that was not contained in the Code.

Mr. Johnson suggested that page 2, the second paragraph, first sentence could state in part, neither prohibits nor authorizes you to use funds disbursed.

Dr. Fiore said that page 2, second paragraph, first sentence, should read in part, funds as described, with a period after the word, described.

Mr. Johnson clarified that the rest of the first sentence on page 2, second paragraph, would be removed after the words, funds as described.

Dr. Fiore stated that the last paragraph on page 2 could remain; and that the last two sentences in the first paragraph, page 2, could be removed since they were an interpretation of Florida Statute 106.141.

**MOTION to approve proposed advisory opinion letter RQO 11-033 as amended to include the changes as discussed. Motion by Dr. Robin Fiore, seconded by Bruce Reinhart and carried 5-0.**

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

## **XII.f. RQO 11-031-OE**

Mr. Johnson stated that:

- The Lake Worth vice-mayor asked whether a conflict of interest existed if she accepted employment with a local college that had contracts with Lake Worth. In the course of employment with the local college, she would provide counseling to small to medium-sized businesses and recruit companies for the college's growth acceleration program. All counseling services were provided without cost to the participating businesses, and college staff positions were funded, in part, by federal grants.
- The Code specifically exempted all government entities from the definition of outside employment; therefore, staff recommended that the college, which was a State facility, was not an outside employer of the commissioner, and the Code's prohibited contractual relationship section did not apply.

## **XII.f. –CONTINUED**

Responding to Dr. Fiore's question whether the position of vice-mayor was a full-time position, Mr. Johnson said that:

- She was an official, and the position was considered a stipend; several municipalities did not pay a stipend for the vice-mayor position.
- Because the services provided by the college were free to the public, businesses advised by the vice-mayor were not customers or clients as defined by the Code.
- As long as the vice-mayor did not use her official position for personal financial benefit or otherwise corruptly use her position inconsistently within the proper performance of her public duties, employment with the college would not violate the Code.

Responding to Dr. Fiore's question whether any of the businesses would be lobbyists or vendors and if so, would that create a problem because the vice-mayor was soliciting them to become sponsors of the college, Mr. Johnson answered that it was not the vice-mayor's job to solicit businesses to become sponsors because the services provided by the college were free.

Dr. Fiore said that the proposed advisory opinion letter referenced that the commissioner would be recruiting small- to medium-sized enterprises for the Small Business Development Center's (SBDC) growth acceleration program.

Commission on Ethics staff counsel Megan Rogers stated that:

- The SBDC enabled business growth throughout the county, and it was not specific to the college.
- The businesses could potentially become future Lake Worth vendors, who would apply for contracts in the customary manner; and the vice-mayor would advise them as she would any other business that asked for her assistance as a government service provided by the college.

Judge Rodgers said that he thought it would embarrass the vice-mayor if she realized that a business' contract application had been disqualified by Lake Worth when she had been paid to teach that business how to obtain a contract.

Ms. Rogers stated that the vice-mayor could decide whether to accept the employment, knowing that such a scenario could result.

## **XII.f. – CONTINUED**

Mr. Reinhart commented that if the situation arose and there was a potential problem under the Code, the COE would address it then.

Mr. Farach said that he was concerned that an elected official, who had some type of jurisdiction or authority over a local school, was given a job with that school.

Mr. Johnson clarified that if the facts were that there was some quid pro quo special financial benefit that she received from the college other than taking the job corruptly, that would violate a different section of the Code. He added that nothing in the facts indicated that there was a corrupt agreement.

Dr. Fiore said that it would be considered corrupt if the vice-mayor had no resume for the job.

Mr. Farach questioned why the vice-mayor was being chosen for the position as opposed to a COE member, for example, and whether the qualification factored into why she was the Lake Worth vice-mayor.

Ms. Rogers clarified that:

- In the early '90s before becoming Lake Worth's vice-mayor, she had worked in the SBDC position for what was then called the Palm Beach Community College.
- Aside from the vice-mayor's elected role, her lifelong profession has been involved in the business community, and she had operated a consulting firm for small businesses.
- The vice-mayor was a certified business analyst for the Palm Beach State College's (PBSC) Small Business Development Center from 2000-2002.
- The certified business analyst position may have changed in the last 10 years, but the title remained the same.
- The vice-mayor's qualification for the SBDC position included a bachelor's degree in business sales and marketing and numerous other qualifications, which she possessed. The preferred qualifications included a master's degree, which the vice-mayor also possessed.

## XII.f. – CONTINUED

- Based on the printout provided by the vice-mayor, she believed that the position was publicly advertised.
- She had spoken to the person who made the hiring decision, and at this time, based on facts that were not contained in the COE's file or in the proposed advisory opinion letter, there may be another conflict with the person hiring the vice-mayor for the position.
  - The gentleman involved in the vice-mayor's hiring process did not anticipate any problem with the COE, but the vice-mayor requested an advisory opinion to ensure that she was being transparent.
  - Currently, Lake Worth was involved in a lawsuit with PBSC, along with several other municipalities.
  - Due to the lawsuit and nothing related to the COE, the PBSC's attorneys were concerned with hiring someone who was an elected official for Lake Worth, so the advisory opinion request may be a moot point.

Mr. Farach stated that he was concerned that the vice-mayor would receive the position based on her official position in Lake Worth.

Dr. Fiore commented that the vice-mayor's background would make her suitable for the position. She stated that she supported Mr. Reinhart's position that if a problem arose, the COE could address it, but the COE should not anticipate a problem arising.

Mr. Harbison stated that he also supported Mr. Reinhart's position.

**PUBLIC COMMENT:** Suzanne Squire.

Dr. Fiore said that there really was no conflict with the vice-mayor advising businesses how to successfully obtain grantors or sponsors, because that was a service provided by the County. She added that misuse of the vice-mayor's office would be an issue, which could only be addressed if that misuse took place.

**MOTION to approve proposed advisory opinion letter RQO 11-031-OE as drafted. Motion by Bruce Reinhart, seconded by Dr. Robin Fiore, and carried 4-1. Manuel Farach opposed.**

**XII.h. RQO 11-034**

Mr. Farach disclosed that the Forbes Company (Forbes) had been one of his clients, and he had performed work for them, although not in the last few years. He added that he could not state that Forbes would not be a client in the foreseeable future.

Mr. Johnson responded that Mr. Farach would then have grounds to recuse himself.

Mr. Farach stated that he would recuse himself from discussing or voting on proposed advisory opinion RQO 11-034, and that after the meeting, he would inquire as to the appropriate forms that should be submitted.

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

Mr. Johnson stated that:

- The Code adhered to no participation and no vote, but physical presence was permitted.
- A local business person asked whether he or his employer were prohibited from providing complimentary lunches to municipal officials or employees or from inviting them to attend charity events within the municipality.
- The business was not a vendor, and it did not employ lobbyists within the municipality.
- Staff recommended that as long as the business was not a vendor, lobbyist, principal, or employer of a lobbyist of that municipality who sold, leased, or lobbied that municipality, and there was no quid pro quo or special treatment or other privilege obtained by the business or any of its employees in exchange for the lunches or tickets to charitable events, the Code did not prohibit the gifts; however, an individual gift in excess of \$100 should be reported by the official or employee pursuant to the Code or by Florida statute for a State reporting individual.
- The COE would be grappling with the issue of a municipal employee's ability to receive a free lunch.

**XII.h. – CONTINUED**

Judge Rodgers said that:

- County departments had departmental policies that police officers were advised not to accept free lunches.
- Police officers received the special free lunch benefit because businesses desired their presence as a safety and security factor.
- Permitting police officers to receive the special free-lunch benefit due to their positions was not good departmental policy.

Mr. Johnson said that:

- When training municipalities' staff, he talked about Code compliance and personal integrity or departmental rules.
- Some municipalities and many departments had a zero tolerance for taking anything from a vendor.
- Obviously someone could not pay for the past, present, or future performance of a specific legal duty; but in general terms, a vendor could take an employee to lunch up to an aggregate of \$100, even if it was the employee's department that was being vended by the vendor.

Mr. Reinhart stated that:

- The advisory opinion request stated that the gift was limited to complimentary lunches to employees at monthly meetings to discuss common issues.
- The proposed advisory opinion letter accurately answered the advisory opinion request, which was that Forbes was not a vendor. Forbes was permitted to give the gifts; and Forbes did not have a reporting requirement, although any kind of quid pro quo could not be solicited or accepted.

**MOTION to approve proposed advisory opinion letter RQO 11-034 as drafted.  
Motion by Bruce Reinhart and seconded by Ronald Harbison.**

## **XII.h. – CONTINUED**

Mr. Bannon clarified that:

- Forbes' employees were not buying lunches for the various advisory boards on which they served.
- Forbes' employees were members and not directors of the various organizations.
- Forbes would purchase the lunches in conjunction with monthly official public meetings to discuss such issues as growth management and security.

(CLERK'S NOTE: Mr. Farach rejoined the meeting.)

**UPON CALL FOR A VOTE, the motion carried 3-1. Judge Edward Rodgers opposed, and Manuel Farach abstained.**

(CLERK'S NOTE: Manuel Farach submitted Form 8B, Memorandum of Voting Conflict for County, Municipal, and other Local Public Officers, regarding item XII.h., in compliance with Florida Statute, Section 112.3143.)

## **XII.i. RQO 11-037**

Mr. Johnson stated that:

- The Town of Palm Beach (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 had been hired to perform the work of a resident inspector.
- Resident inspectors were hired by private construction entities to ensure that all work was performed properly and in accordance with the Town's building codes.
- In this particular jurisdiction and municipality, the private residents, who had work performed on their houses, hired their own resident inspectors to "inspect the inspectors."

## XII.i. – CONTINUED

- Resident inspectors filed weekly reports with the Town building official. At the conclusion of a project, the Town building official completed a final inspection of the work, and if appropriate and applicable for the project, a certificate of completion or occupancy was issued.
- The COE staff recommended that while there was 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 who employed his brother's company, by giving a special financial benefit not shared by similarly situated residents.
- The COE could not 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.
- When the COE staff reviewed the Code, the relationship itself was not the problem, or would not be the problem under the Code. The problem was using the relationship to do something.
- The COE staff was unable to find that the Code would, on its face, state that the sibling relationship was a Code violation, which explained why additional language was added stating that there was a concern.

Dr. Fiore commented that although the issue could turn into a Code problem, it was a management issue, and the COE needed stronger language regarding that situation.

Mr. Reinhart stated that:

- His general position was that the COE should not provide advice to management.
- He was uncomfortable with RQO 11-037's paragraph on page 3, the first sentence, because the COE could not provide an opinion, but on the other hand, the COE, in essence, was suggesting how the issue should be handled.

## XII.i. – CONTINUED

- The COE could include appropriate language to the effect:

Although the narrow issue presented does not itself constitute a prohibited conflict under the Code of Ethics, it raises substantial concerns about appearances of impropriety that we recommend be addressed as a management issue.

- The first sentence in the first paragraph on page 3 could be deleted and replaced with a sentence that began with the word, since, or the word, the.
  - The language, the narrow issue presented does not itself constitute a prohibited conflict under the Code of Ethics, could be added after the word, since, or the word, the.
  - The rest of the paragraph could be deleted, and the following language could be added: Nevertheless, it raises a substantial appearance of impropriety, concern, which we recommend be addressed as a management matter.

Mr. Johnson suggested changing the proposed words, it raises, to the words, it could raise, and Mr. Reinhart agreed. He added that the resident inspector was paid privately by the resident to ensure that work performed was to building code.

Mr. Farach said that the term, threshold inspector, was probably more technical under the statute.

Mr. Bannon clarified that by way of ordinance, the resident inspector was required to hold the proper certifications, but the homeowner actually employed the inspector. He added that under the Town's ordinance, that resident inspector must provide certain reports to the Town as the work progressed until the final inspection was performed.

Mr. Reinhart commented that there might be motivation to look the other way if the project was not moving properly.

Mr. Farach said that hiring a resident inspector was a common practice in large, commercial projects. Dr. Fiore said that the resident would certainly pick the resident inspector who was the brother of the Town official, and Mr. Farach agreed.

## XII.i. – CONTINUED

Mr. Farach said that:

- At some point there was a violation of the Code's section 2-443, which stated that, An official or employee shall not use his official position or take or fail to take any action.
- He was troubled in balancing section 2-443, which did not yet consider the request to be a violation with Mr. Reinhart's position that it was not the COE's responsibility to manage public officials but to opine on the Code.

Mr. Johnson requested that Mr. Reinhart retain the last sentence in the first paragraph on page 3 regarding the difference between someone who had discretionary powers and someone who did not, and Mr. Reinhart agreed.

Dr. Fiore suggested that the sentence being retained should be placed before the proposed language that began with the word, Nevertheless.

For clarification, Mr. Reinhart read the paragraph's proposed language as follows:

The narrow issue presented does not itself constitute a prohibited conflict under the Code of Ethics; nevertheless, it could raise a substantial appearance of impropriety. This is especially true if the official acts of the building official are of a discretionary nature. We recommend this situation be addressed as a management matter.

Mr. Bannon clarified that:

- The Town building official's brother was not actually a resident inspector himself. He was part of the company of resident inspectors. The company was one of several companies that performed resident inspections in the Town.
- The Town had originally planned to request that the particular company report elsewhere, although it would not have been cost effective because it would have cost the Town more for the company to furnish resident inspectors.
- The company's position was that their client wanted to hire them, but if the Town was going to charge the company more to perform the resident inspections, that cost would carry over to the client.

## XII.i. – CONTINUED

- Resident inspectors were privately hired, they were required to only hold state certification in the inspection field, and they were paid an hourly rate; therefore, they could earn more money by not passing a project's inspection.
- The company was owned by the brother of the Town's building inspector director, who signed off on the company's certificates.
- He believed that the Town manager had planned to have the resident inspector's reports signed off by a different building official, who was the building inspector director's supervisor.

Judge Rodgers questioned whether faulty work would be performed because of some collusion between the parties, which would then affect the Town's taxpayers.

Mr. Farach expressed his concern with the Town's building official not taking steps to reflect that his brother's company received no better or worse benefit than anyone else. He added that:

- The way that section 2-443 was written, in this particular case, it was incumbent on the Town's building official to take that affirmative step.
- The language on page 2, last paragraph, of the proposed advisory opinion where it began, so long as, started to address his concern.
- He was cognizant that the COE did not want to micromanage the building officials or anyone else. If there was an ordinance violation, the COE should discuss it; if not, the COE should say there was no violation.

Mr. Johnson clarified Mr. Farach's concern that there may have been complicity on the public employee's part.

Mr. Farach responded that it was also the "turning of a blind eye" to the fact that the Town business official's brother could approach customers by saying, By the way, my brother is head of the building department.

## XII.i. – CONTINUED

Mr. Johnson said that the Code was written in such a way that it prohibited the official from using or failing to use his official position or office. The Code did not contemplate preventing a third party from using or failing to use his or her official position or office without the complicity or the assistance of the Town's building official.

Mr. Farach stated that he disagreed because if the public official knew that someone was doing something to give a special, financial benefit to members of his family and the public official did not stop that action, he believed it was a violation of section 2-443.

Dr. Fiore suggested the language, The use of the relationship to promote a financial benefit is prohibited.

Mr. Farach said that not only was section 2-443 prohibitory, it also required affirmative action if the public official learned that someone was violating the ordinance.

Dr. Fiore commented that the proposed advisory opinion could state that it was a violation of the Code to use a public official's name to obtain a benefit by anyone.

Mr. Johnson clarified that:

- The Code did not contain language to that effect.
- He did not see how a Code violation existed if someone was not doing something that he or she would not do for everyone else in the same situation.
- Someone could never use their official position with a wrongful intent, or some act or omission that was inconsistent with the proper performance of his or her public duties.
- The COE could recommend that the public official be vigilant in not allowing someone to use his or her name, but if the public official did allow that to occur, it would not violate the Code unless there was some nexus between the public official allowing someone to do it. For instance, someone could not be prevented from taking out an advertisement.

## XII.i. – CONTINUED

Mr. Farach stated that:

- At some point, the line would be crossed if someone used a public official's name several times as opposed to using it once.
- If someone used a public official's name once and the public official did nothing to stop that use, he did not see that there was a violation. If an advertisement ran 12 times and the public official took no steps to prevent it from running, there would be an issue with section 2-443.

Mr. Reinhart commented that:

- The COE was really being asked to provide an opinion on the Town building official's conduct.
- The question was whether the building official's failure to police his own brother's conduct, a failure to act, could, under a certain hypothetical, rise to a violation; and he agreed with Mr. Farach that it could.

Mr. Johnson and Mr. Farach suggested adding the following proposed advisory opinion language:

You should take great care not to allow your familial relationships to give others the misimpression that there is a special relationship, which can lead to a financial benefit.

Dr. Fiore said that RQO 11-037 stated on page 3, first paragraph, that the relationship was not prohibited, but it would be a matter of management policy to avoid any appearance of impropriety.

Mr. Johnson suggested adding the language to page 3, first paragraph, management as well as the official himself to avoid, or adding the language, it would be incumbent upon the official as well as management to avoid that appearance of impropriety, as opposed to being specific about some act.

Dr. Fiore commented that the COE had been stuck on RQO 11-037's summary without reading the summary's second paragraph.

Mr. Reinhart clarified that part of RQO 11-037's summary had already been rewritten earlier in the discussion.

## **XII.i. – CONTINUED**

Dr. Fiore said that the summary's second paragraph stated what the COE had, for the most part, wished to convey.

Mr. Johnson responded that he did not believe that RQO 11-037 had a timeframe.

**MOTION to table item XII.i. until August to allow staff further time to research and possibly recirculate another advisory opinion draft letter. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 5-0.**

Mr. Johnson recommended that the original advisory opinion letter be distributed before the next meeting, along with a draft with the suggested revisions.

## **XII.j. RQO 11-038**

Mr. Johnson stated that:

- A Town of Jupiter (Jupiter) councilman asked whether being employed by a publicly regulated utility presented an inherent conflict of interest when customers of the utility appeared before Jupiter's council in most, if not all, decision-making matters.
- Based upon a franchise agreement with Jupiter, all businesses and residential property owners within Jupiter who used electrical power supply devices purchased those services from the councilman's outside employer, Florida Power & Light (FPL).
- The public utility had similar, if not identical, contracts with the County and most County municipalities.
- Staff recommended that because all residents and businesses that appeared before Jupiter's council were required to purchase their power from the councilman's outside employer, a regulated public utility, all persons and entities were similarly situated; and there was no inherent conflict merely because a person or entity was a customer or client of that utility.
- Additionally, the public utility was the sole source of electric supply within Jupiter, therefore, the councilman's employment with the public utility would not constitute a prohibited, contractual relationship under the sole source exception to the prohibition.

## **XII.j. – CONTINUED**

- Notwithstanding, the councilman must be careful not to use his official position to obtain a special, financial benefit for himself or his outside employer.
- He believed that the proposed advisory opinion letter stated that there could be customers or clients that were not the usual customers or clients, and those customers or clients would then be in a position where they could specially and financially benefit under the Code.
- The councilman abstained from any issues that arose regarding FPL.

**MOTION to approve proposed advisory opinion letter RQO 11-038 as drafted by staff. Motion by Manuel Farach, seconded by Bruce Reinhart, and carried 5-0.**

## **XIII. NATIONAL ASSOCIATION OF COUNTIES ACHIEVEMENT AWARD**

Mr. Johnson stated that:

- On July 17, 2011, the National Association of Counties would present its achievement award to the County for enactment of innovative, sweeping ethics reform measures.
- The ethics reform measures covered the ethics initiative to the Board of County Commissioners' adoption of the initial Code, the establishment of the COE, and the hiring of an inspector general.
- The award would be presented in Multnomah County, Portland, Oregon.

Judge Rodgers suggested that if a County representative was unable to be present, a personal representative could be hired to report to the COE.

Mr. Johnson said that:

- The award was for the County and its entire ethics reform process.
- He would recommend to Assistant County Administrator Bradley Merriman or to Legislative Affairs Director Todd Bonlarron that they contact friends who would be present to ensure that pictures were taken and to provide some feedback.

**XIII. – CONTINUED**

- The County had released a press release on June 29, 2011, and had sent the information to all press outlets.
- The information would soon be placed on the COE's current events website page.

**XIV. EXECUTIVE DIRECTOR COMMENTS – None**

**XV. PUBLIC COMMENTS**

**XV.a.**

**DISCUSSED:** Respect for the COE.

League of Cities Executive Director Richard Radcliffe stated that he had new-found respect for how the COE agonized to do the right thing, and when people said, "corruption county," everyone should now say, "Ethically innovated county."

There should be a level playing field in government, and no one should be allowed to strong-arm anyone, Mr. Radcliffe said. He added that it was wrong for someone to solicit and advertise by using their name, but if the opinion letter's language was too broad every single charity, nonprofit, or hospital board in the county would need to destroy their letterhead.

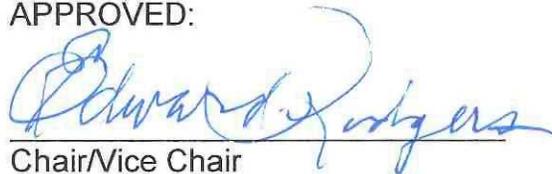
Judge Rodgers read the following comment card submitted by Suzanne Squire:

Please use the bylaw mission statement everywhere on everything; the one on website is nothing close to real one, guardian public trust.

**XVI. ADJOURNMENT**

**At 7:14 p.m., the chair declared the meeting adjourned.**

APPROVED:

  
Chair/Vice Chair