

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

I. **CALL TO ORDER:** September 1, 2011, at 1:38 p.m., in the Commission Chambers, 6<sup>th</sup> Floor, Governmental Center, West Palm Beach, Florida.

II. **ROLL CALL**

MEMBERS:

Judge Edward Rodgers, Chair  
Manuel Farach, Esq., Vice Chair  
Robin N. Fiore, Ph.D  
Ronald E. Harbison, CPA  
Bruce E. Reinhart, Esq.

STAFF:

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

Judge Edward Rodgers stated that there was a quorum.

III. **INTRODUCTORY REMARKS**

Judge Rodgers said that if anyone wished to speak, a comment card containing the agenda item should be filled out and submitted to a COE staff member. He added that public comment was limited to three minutes, and it should be relevant to the agenda item.

IV. **APPROVAL OF MINUTES FROM AUGUST 4, 2011**

**MOTION to approve the August 4, 2011, minutes. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 5-0.**

Commission on Ethics (COE) Executive Director Alan Johnson, Esq., introduced Ryan Watstein, a Palm Beach State College intern who, he said, would be working on some Web site mechanisms. He also welcomed the new COE investigator, James A. Poag.

**V. GIFT, OUTSIDE EMPLOYMENT AND VOTING CONFLICT TRACKING APPLICATION (PRESENTED BY INFORMATION SYSTEMS SERVICES (ISS) DEPARTMENT)**

Information Systems Services (ISS) Programmer Jacquelyn Anderson in providing a presentation, stated that:

- The public search screen for gift application in the COE tracking system was currently in production.
- Two searches, an outside employment waiver and voting conflict, were added to the system.
- Users would log on to the COE Web site and click the appropriate application link.
- Gift search users would search by an employee's name, political subdivision, the department or unit, or the reporting year.
- Clicking "view file" would open a document attachment.
- The outside employment waiver module included a private employment and address search criteria.
- A search suggestion provided an idea of items included in the database.
- The voting conflict search module's search options were identical to the gift module's options.
- A global search of the database could be accessed through the ethics search link.

Mr. Johnson stated that for purposes of voting conflicts and the gift law, the database involved the County, the 38 municipalities, and all others under the COE's jurisdiction.

(CLERK'S NOTE: Items VI. and VII. were discussed in tandem.)

**VI. MEMORANDUM OF UNDERSTANDING WITH BOCA RATON AIRPORT AUTHORITY**

**VII. MEMORANDUM OF UNDERSTANDING WITH LAKE WORTH COMMUNITY REDEVELOPMENT AGENCY (CRA)**

## VI. AND VII. – CONTINUED

Mr. Johnson stated that:

- The COE was in the process of entering into memorandums of understanding (MOU) with the City of Boca Raton (Boca Raton) Airport Authority and the City of Lake Worth (Lake Worth) CRA.
- The Children's Services Council was also interested in entering into an MOU with the COE.
- The Boca Raton Airport Authority MOU would go before the Board of County Commissioners (BCC) on September 13, 2011, and the Lake Worth CRA MOU sometime in October 2011.
- Staff had vetted and developed the MOUs prior to the referendum to bring the municipalities under the COE's jurisdiction.
- The MOUs contained an option for the contracting party to choose either an hourly or a per-event fee paid to the COE.
- The collected fees would go into the County's budget to be earmarked for the COE. The COE would bill for the fees, which would be entered into the COE's budget line as income.
- Staff was currently developing a mechanism to track hourly fees if an entity chose that option.

Commission on Ethics Executive Assistant Gina Levesque pointed out that:

- Staff was working with ISS to review ISS' timekeeping system.
- The ISS' timekeeping system was similar to that of the Office of the Inspector General except that the ISS' system was project based.
- The ISS' staff was adapting their timekeeping system to the COE's needs, and the process should be completed in January 2012.

Mr. Johnson stated that the COE needed a consistent timekeeping system with all MOUs and all independent authorities that contracted with the COE. He added that the hourly fee rates were based on staff's hourly pay.

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

## VIII. RULES OF PROCEDURE REVISION

Mr. Johnson stated that:

- He and COE Staff Counsel Megan Rogers had reviewed the rules of procedure regarding updates due to the June 1, 2011, ordinance change.
- After the ordinance change, multiple jurisdictional time periods were established for the County and the municipalities.
  - The County came under the Code of Ethics (Code) and the COE on May 1, 2010, and the municipalities came under the Code and the COE on June 1, 2011.
  - Other taxing entities and possibly constitutional officers may come under the COE's jurisdiction in ensuing years, and the effective dates would be the contract dates.
- Regarding the ordinance's Preliminary Investigations, section 4.1., Staff Procedures Upon Receipt of a Complaint, notification to the Respondent upon a preliminary finding of legal sufficiency was changed from 30 days to 20 days.
- The County's Ethics Ordinances Drafting Committee (EODC) amended section 4.4., Preliminary Investigations, requiring that the COE set a public hearing regarding probable cause within 120 days of a determination rather than leaving it to the respondent to ask that a final hearing be set.
- The COE had rules of procedure that allowed resolutions to be ratified by the COE if the advocate and the respondent agreed on how to resolve the complaint.
- Probable Cause Determination, section 5.9, Setting of Public Hearing, restated that the final hearing should be set by the COE within 120 days.
- Regarding Public Hearings, section 6.4, Disqualification of Commissioners, staff recommended that COE members may – and not shall – be disqualified from sitting at probable cause hearings or final public hearings for bias, prejudice, or interest by a motion of the respondent or advocate but not by the complainant.
  - The motion would be heard by the COE, with the COE member disqualifying himself or herself.

## VIII. – CONTINUED

- Commission on Ethics members could refuse to recuse themselves.
- Using the word, shall, would require COE members to recuse themselves with or without a legal basis for disqualification.
- Since State Statute 286.012 required that language, the word, may, should be changed to the word, shall, in the sentence: A member may disqualify him or herself because of financial interest.

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

Judge Rodgers clarified that a judge was not required to recuse himself or herself. He stated that he supported using the word, shall, in the first sentence of section 6.4.a, because it was appealable.

Dr. Robin Fiore commented that she supported using the word, may, in the first sentence of section 6.4.a, and using the word, shall, in the second sentence of section 6.4.a.

Mr. Farach stated that:

- The COE had attempted to adopt an appearance of impropriety standard for recusals on several occasions, and the Florida COE and the Florida Attorney General informed the COE that it could not be done.
- The word, may, should remain in the first sentence of section 6.4.a; and the word, shall, should be used in second sentence of section 6.4.a.

**MOTION to approve the rules of procedure amendments, as amended, to include changing the word, may, to the word, shall, in the second sentence of 6.4.a. Motion by Manuel Farach.**

Mr. Johnson suggested discussing the last two sections in the rules of procedure amendments before making a motion to include the changes to 6.4.a.

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

## VIII. – CONTINUED

Mr. Johnson stated that:

- Regarding Penalty, section 8.1.b, Finding and Public Report, the language was revised since an automatic hearing would be set within 120 days, and it was unnecessary to require that the respondent request a public hearing.
- Regarding section 8.2, Order Upon Finding of Violation, the EODC included a second standard by adding the language, by clear and convincing evidence, to the EODC's standard of basing a conviction at a public hearing upon competent, substantial evidence.
- The COE could withdraw any advisory opinions.
  - Regardless of whether a complainant withdrew a complaint, if a violation occurred, the COE would file a self-initiated complaint.
  - In most cases, the COE found no legal sufficiency to a complaint based on anonymous and unsworn information.
  - An occasion had not arisen where a complaint was withdrawn before the COE staff had reviewed it and had made a determination whether there was legal sufficiency.
  - If a complainant filed a complaint and realized that the grievance should be against someone else, staff would vet the issue before it reached the COE, and there would be no legal sufficiency.

Ronald Harbison commented that he would be reluctant to put a procedure in place that prevented the COE from speaking to someone to obtain additional information.

Mr. Johnson said that respondents were informed that his office and the COE could not force them to come in and provide information regarding complaints.

Mr. Farach suggested modifying section 8.2.a. He said that the language appeared to have two different standards of evidence, and he did not want the current language to become a future issue.

## VIII. – CONTINUED

Discussion ensued regarding section 8.2.'s language, and Mr. Johnson said that staff recommended removing section 8.2., pending review and resubmission of the language at the October 2011 COE meeting.

**MOTION to approve the rules of procedure amendments, as amended, to include changing the word, may, to the word, shall, in the second sentence of 6.4.a, and to remove section 8.2. Motion by Manuel Farach, and seconded by Robin Fiore.**

Mr. Johnson clarified that staff now recommended replacing the word, may, with the word, shall, in section 6.4.a's last sentence.

**AMENDED MOTION to include replacing the word, may, with the word, shall, in the last sentence of section 6.4.a. The maker and the seconder agreed, and the motion carried 4-0. Bruce Reinhart absent.**

- IX. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)
- IX.a. REQUEST FOR ADVISORY OPINION (RQO) 11-049
- IX.b. RQO 11-063
- IX.c. RQO 11-065
- IX.d. RQO 11-070
- IX.e. RQO 11-071
- IX.f. RQO 11-073

Mr. Johnson stated that RQO 11-049 and RQO 11-071 contained minor typographical errors that did not affect the language's substance, and they were subsequently corrected.

Judge Rodgers stated that there was public comment on item IX.c., RQO 11-065, and Dr. Fiore requested that item IX.b., RQO 11-063, be pulled from the consent agenda.

**IX. – CONTINUED**

**MOTION to approve the consent agenda as amended, pulling advisory opinion letters RQO 11-063 and RQO 11-065. Motion by Dr. Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.**

**X. ITEMS PULLED FROM CONSENT AGENDA**

**X.a. RQO 11-063**

Mr. Johnson stated that:

- The Village of Palm Springs (Palm Springs) police chief asked whether his department could solicit and accept donations from a Palm Springs vendor to refurbish a donated armored vehicle from Brink's, Inc.
- Solicited donations would go directly into the Palm Springs budget for use solely by Palm Springs in conducting the official business of refurbishing the vehicle for police use.

Dr. Fiore questioned whether the wording, However, you may not promise anything in connection with the donation, should be consistently used in all advisory opinion letters regarding solicitations.

Mr. Johnson responded that similar language was usually included in advisory opinion letters regarding solicitations, but the solicited donations in RQO 11-063 were not considered gifts.

Dr. Fiore commented that the Palm Springs police chief was asking whether his department could solicit and accept the donations; not whether the solicited donations would be considered gifts.

Mr. Johnson said that:

- One caveat to RQO 11-063 would be if Palm Springs, as a governmental entity and not for personal, financial gain, provided free police services to a vendor who donated \$50,000 to refurbish the vehicle.
- He believed that the situation he described would not violate the Code since, as a governmental entity, it was transparent, and the government was providing free police services for donations to the government.

## **X.a. – CONTINUED**

Commission on Ethics Staff Counsel Megan Rogers, Esq., clarified that Palm Springs' police chief and officials would engage in the solicitations; not rank-and-file police officers.

Mr. Farach said that he supported Dr. Fiore's idea of no quid pro quo, but he expressed concern about the COE entering into a debate by adding the proposed language.

Mr. Johnson said that he agreed that proposed language based on individual solicitations could be added.

Ms. Rogers commented that Brink's, Inc., sold old armored trucks to law enforcement departments nationwide.

Mr. Johnson stated that:

- Staff had mentioned the Code, section 2-443(b), in RQO 11-053, noting that it prohibited a Town of Palm Beach employee from accepting any benefit, directly or indirectly, if corruptly linked in any way to a quid pro quo arrangement. RQO 11-053 also said that, Corruptly includes an act or omission that is done with a wrongful intent, which is inconsistent with the proper performance of their public duties.
- Staff could incorporate RQO 11-053's boilerplate language into RQO 11-063, and bring back the revision at the October 2011 COE meeting.

Mr. Harbison said that he did not want to impede the government's ability to negotiate.

Judge Rodgers recommended that staff bring back revised language for RQO 11-063.

## **X.b. RQO 11-065**

**PUBLIC COMMENT:** Alexandria Larson.

## **X.b. – CONTINUED**

Mr. Johnson referenced RQO 11-065's footnote 7, page 58, stating that anonymous gifts were by nature unknown. He added that:

- The standard was that someone should know or should have known with the exercise of reasonable care that an individual was a lobbyist or a vendor of the County or a municipality.
- During some charity drives, individuals would throw money into a tip jar or a boot, and no one observed the denomination's amount.
  - An issue would arise only when donors were identified by calling attention to their donations.
  - Donors would then be admitting to a Code violation if they were a municipal vendor of the person accepting the donation.
- County or municipal employees could decline donations over \$100, but if they accepted them, the donors' name should be recorded, or they should be asked whether they were County or municipal lobbyists or vendors.

**MOTION to approve advisory opinion letter RQO 11-065. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.**

## **XI. CHILDREN'S SERVICES COUNCIL – PROPOSED ADVISORY OPINION RQO 11-068**

(CLERK'S NOTE: Bruce Reinhart rejoined the meeting.)

Mr. Johnson stated that RQO 11-068 was separated from the other proposed advisory opinion letters. He advised that the COE should handle advisory opinion letters as they came in from entities desiring participation in the COE process regarding their core functions and how the Code impacted their core functions as entities. He added that:

- The Children's Services Council (CSC), established under Florida Statute 125.901, requested an opinion regarding the duties and responsibilities of a member.

## XI. – CONTINUED

- By State statute, 10 members were designated for the CSC of which five were governor appointed. Generally, nine CSC members were not within the COE's jurisdiction, and by State statute, one BCC member should sit on the CSC.
- The enabling statute contemplates the role of the CSC to allocate and provide funds for other agencies in the county, which are operated for the benefit of children.
- The CSC's core function was to raise money for other entities, unlike the County or municipalities that generally raised revenue, then decided where to allocate it.
- Only CSC's staff solicited for grants and donations, and CSC members were advised only of grant activity and solicitations by reviewing annual reports or occasional updates on grant proposals or funding collaborations.
- The CSC had established the Resource Development Initiative (RDI), which was a collaborative effort with the United Way of Palm Beach County.
  - When funds were directly solicited by RDI, foundations or other donors usually requested a list of CSC members; however, when RDI solicited contributions for other nonprofit organizations, neither CSC members' names nor their titles were provided.
  - The Prevention Partnership for Children Inc. (PPC), was established as a 501(c)(3) nonprofit charitable organization to allow donors to make donations to nonprofits rather than to the government.
- Although the CSC did not solicit from CSC vendors or lobbyists, if the CSC came under the COE's jurisdiction, that solicitation would become relevant.

## XI. – CONTINUED

- Staff had recommended that:
  - Commissioner Steven Abrams, the BCC member sitting on the CSC, was not directly or indirectly, through name or title, involved in solicitations.
  - Since the CSC was another government entity and was mandated to allocate and provide funds to other agencies for the benefit of children, the CSC was in a unique position because funds solicited were solicited by public employees on behalf of the public entity in performance of their official duties for use solely by the public entity for a public purpose.
  - For a government entity that was mandated to raise funds and distribute them to nonprofits and other organizations, the CSC's grants and donations would not be considered gifts.

The CSC's general counsel, Thomas Sheehan, Esq., clarified that:

- The PPC's board of directors were the same individuals as the CSC members, and the PPC utilized the CSC's staff.
- The PPC was an enterprise fund for the CSC.
- Donations would go directly to the CSC and not through the County. Under the Internal Revenue Service codes, donations were tax deductible.

Mr. Johnson stated that:

- Any COE decisions that applied to Commissioner Abrams as a CSC member would apply equally to all CSC officials and employees.
- He was informed that Commissioner Abram's official title would not be used while serving on the CSC.
- Commissioner Abrams would not be soliciting for the CSC, nor would any CSC employees be soliciting on his behalf.

Mr. Sheehan clarified that when soliciting grants, the CSC typically furnished a list of CSC's board of directors, but no CSC member was singled out that the solicitation was being made on behalf of that individual.

**XI. – CONTINUED**

**MOTION to approve proposed advisory opinion letter RQO 11-068. Motion by Manuel Farach, seconded by Bruce Reinhart, and carried 5-0.**

(CLERK'S NOTE: Mr. Johnson requested that the agenda be reordered to present items XIII.a. and XIII.h. in tandem. The COE's consensus allowed the request.)

**XIII.a. RQO 11-035**

**XIII.h. RQO 11-060**

Mr. Johnson stated that:

- Since Palm Tran was a County department and an independent corporation, it was a joint employer of Palm Tran employees.
- Palm Tran employees received a County paycheck, and under the Code, they were considered County employees.

Assistant County Attorney Donna Raney clarified that:

- Palm Tran, created in 1995, was essentially considered a dependent special district.
- Palm Tran was a not-for-profit corporation that was created as an agency or instrumentality of the County, and staff viewed Palm Tran as having an identity of interest that was complete to the County.
- The BCC was Palm Tran's board of directors, and Palm Tran's clerk and treasurer was the Clerk & Comptroller.
- Funds expended for Palm Tran's purposes were considered County funds, and there were no funds in the corporation.

Mr. Johnson stated that:

- The issues in RQO 11-035 and RQO 11-060 were identical except that the Palm Tran Pension Board (PTPB) was created by State statute.

### **XIII.a. AND XIII.h. – CONTINUED**

- The PTPB members were appointed by the County administrator and were paid a County salary while performing PTPB business.
- A new State statute required that the County, and in RQO 11-060, required that the City of Boca Raton (Boca Raton), make good on losses that could occur from PTPB decisions.

Ms. Raney clarified that the new State statute required County sponsorship and funding of normal pension-plan costs but not to compensate for prior actuarial deficits or underfunding.

Mr. Johnson stated that:

- Staff recommended that the COE view this issue as a nexus between the employment by the County and in RQO 11-060, by Boca Raton, and the official duties performed by the County/Boca Raton employees for the PTPB.
- Misuse of office and the responsibility to not corruptly abuse their office still applied to the County/Boca Raton employees who worked for the PTPB, in addition to voting on matters where they would have a financial benefit.
- Since the PTPB was State created, the County's Code had no jurisdiction over gifts given to PTPB members by its vendors, only jurisdiction over gifts given by County/Boca Raton lobbyists or vendors. Any gifts over \$100 to PTPB members from its vendors should be reported; any gifts over \$100 to PTPB members from County/Boca Raton lobbyists or vendors was prohibited.

The PTPB's legal counsel, Bonnie Jensen, clarified that her law firm worked for the PTPB. The law firm did not have any relationship with the County, nor was PTPB counsel paid by the County.

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

Dr. Fiore said that she saw nothing to the contrary indicating that PTPB lobbyists were not subject to the Code because they were lobbying PTPB members who were County employees; hence, they were lobbying the County.

### **XIII.a. AND XIII.h. – CONTINUED**

Boca Raton Police and Firefighters' Retirement System (BRPFRS) legal counsel, Pedro Herrera, commented that:

- The BRPFRS board was composed of Boca Raton employees and nonemployee volunteers.
  - The only requirement of volunteers was that they lived within the Boca Raton city limits.
  - The volunteers were not Boca Raton vendors.
- The BRPFRS was created by State law and by local municipal ordinance.

Ms. Rogers clarified that:

- Pension boards were not typical advisory boards because they had their own vendors.
- Staff viewed the issue as follows: Should employees/officials of the County/ Boca Raton misuse their positions as pension board members for their own personal financial benefit, they would be in violation of the Code.
- The reporting requirements and the gift law regarding lobbyist and vendor restrictions would not apply to employees/officials of the County/Boca Raton.
  - Pension board lobbyists were not registered County/Boca Raton lobbyists.
  - Pension board vendors did not provide, sell, or lease goods or services to the County/Boca Raton; only to the pension boards.
- Gifts or travel reimbursement from pension board lobbyists or vendors to pension board members were reportable gifts.

Dr. Fiore stated that RQO 11-035 and RQO 11-060 were two different situations, and they should be segregated for consideration purposes.

### **XIII.a. AND XIII.h. – CONTINUED**

Mr. Johnson said that:

- Under the Code, employees of governmental entities were not lobbyists; therefore, pension board employees who lobbied the County were not considered lobbyists because pension boards were governmental entities.
- Although pension board employees received County salaries, they were not being paid to specifically serve on a pension board.

Dr. Fiore said that if pension board members were not required to work extra hours to compensate for the hours they spent sitting on the pension board, then they were being paid to sit on the pension board.

Ms. Jenson clarified that pension board members were not allowed to be compensated as trustees; only as employees.

Mr. Farach stated that although shared some of Dr. Fiore's concerns, he was unsure whether they directly impacted today's decisions.

Mr. Harbison commented that if someone was not a government employee and was appointed by a municipal council or a government body to serve on a pension board, that individual should be subject to the same standards as an advisory board member or a government employee.

Ms. Rogers clarified that:

- The individual would be subject to the same standards as an official.
- If a Boca Raton vendor wanted to reimburse an official pension board member for travel expenses, the member should apply for a waiver.

The BRPFRS chair, Christopher Somers, stated that:

- Appointed BRPFRS members have regular outside employment while volunteering their time on the BRPFRS.
- Several appointed BRPFRS members were concerned whether approval of travel-expense waivers from the Boca Raton City Council (BRCC) could be timely accomplished.

**XIII.a. AND XIII.h. – CONTINUED**

- The appointed BRPFERS members had expressed concern regarding the identification of businesses as Boca Raton vendors and how that information would be tracked.

Mr. Harbison commented that applying for waivers along with BRPFERS members who were Boca Raton employees might be the safest practice, and the logistics of that process could be arranged with the BRCC.

Mr. Johnson stated that:

- The waivers regarded reimbursement specifically for travel expenses to conferences and seminars.
- Employees or the officials appointed by the governing body had a responsibility under the Code's misuse of office section.
- Individuals appointed by the BCC or by Boca Raton were considered officials but not advisory board members, and the Code's specific gift-law section did not apply to them.
- The BRPFERS members had 90 days after attending a conference or seminar to procure the travel expense waiver from the BRCC.

(CLERK'S NOTE: Judge Rodgers left the meeting.)

Mr. Harbison commented that people should not be hypersensitive and so concerned about the Code's rules that they would resign from a board. He added that the COE did not want to impede the talent pool from joining various boards.

Dr. Fiore said that specific areas of the Code may be causing BRPFERS members some anticipated concern, and the COE would like their feedback after working through the advisory opinion process.

Mr. Farach stated that if the BRPFERS needed an issue addressed on an accelerated basis, a process was in place, and Mr. Johnson should be contacted.

Mr. Johnson requested that RQO 11-035 and RQO 11-060 be voted on separately.

**MOTION to approve proposed advisory opinion letter RQO 11-035. Motion by Ronald Harbison.**

**XIII.a. AND XIII.h. – CONTINUED**

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

Mr. Johnson suggested tabling the item until the October COE meeting.

**MOTION to request that Mr. Johnson research whether PTPB vendors and lobbyists were not lobbying the County when they lobbied PTPB members who were considered County employees, and to resubmit proposed advisory opinion letter RQO 11-035 with his recommendation. Motion by Robin Fiore.**

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

Mr. Farach stated that the motion was to table item XIII.a.

Mr. Johnson clarified that staff's recommendation was to proceed with RQO 11-060.

**MOTION to approve proposed advisory opinion letter RQO 11-060. Motion by Ronald Harbison, and seconded by Robin Fiore.**

Dr. Fiore asked whether Mr. Johnson could facilitate the timeliness of the BRCC's waiver process.

Mr. Johnson replied that if an issue existed, he would assist. He also stated that if the BRCC decided that a travel expense was not appropriate after reimbursement was made during the 90-day window, the member who attended the conference or seminar would be required to pay any expenses over \$100 if the funds were received from a Boca Raton vendor or lobbyist.

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

(CLERK'S NOTE: For continuation of item XIII.a., see page 19.)

## RECESS

At 3:57 p.m., the vice chair declared a recess.

## RECONVENE

At 4:11 p.m., the meeting reconvened with Mr. Farach, Dr. Fiore, Mr. Harbison, and Judge Edward Rodgers present.

### XIII.a. – CONTINUED

Ms. Jensen stated that:

- Under the PTPB's trust agreement, there was no requirement that trustees be County employees.
- Currently, the PTPB had no vendors or lobbyists who were also County vendors or lobbyists.
- The PTPB vendors consisted of two contracted attorneys, an administrator, an actuary, an investment monitor, and approximately eight investment managers.
- Approximately 40 PTPB vendors attended Florida Public Pension Trustees Association's educational conferences.
- All travel expense reimbursements came from the pension fund itself on pension fund checks.
- The PTPB was regulated by State statute regarding the ethics gift law.
  - If a PTPB vendor attending a conference took PTPB trustees to dinner, the vendor was limited to spending \$25 per trustee. If a PTPB vendor spent more than \$25 per invited person, the vendor reported the amount as a lobbyist to the State.
  - The PTPB trustees were not permitted to accept more than \$100.

**MOTION to approve proposed advisory opinion letter RQO 11-035. Motion by Manuel Farach.**

(CLERK'S NOTE: Motion seconded later in the meeting.)

### **XIII.a. – CONTINUED**

Mr. Farach stated that proposed advisory opinion letter RQO 11-35 did not answer Dr. Fiore's earlier question whether PTPB vendors and lobbyists were not lobbying the County when they lobbied PTPB members who were considered County employees. He added that her concerns, which he and Mr. Harbison shared, could be an issue in the future.

**MOTION SECONDED by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.**

(CLERK'S NOTE: Mr. Johnson stated that item XIII.i. contained public comment. He requested that item XIII.i. be presented at this time. The COE's consensus allowed the request.)

### **XIII.i. RQO 11-062**

**PUBLIC COMMENT:** Alexandria Larson.

Mr. Johnson noted that Village of North Palm Beach (Village) Councilman Thomas Hernacki's question regarding a possible conflict of interest that came before a vote at the July 28, 2011, Village council meeting. He added that:

- Mr. Hernacki had abstained from the vote and had filed a Form 8B.
- Should the COE find that Mr. Hernacki benefitted financially from participating and voting to change a Village ordinance, staff could amend the proposed advisory opinion letter and bring it back to the COE.

Ms. Rogers clarified that Mr. Hernacki paid rent and parking for his place of business. She added that:

- The free boat storage facilities were located on high school property since Mr. Hernacki renovated the boats for use by high school crew teams.
- The free boat storage on high school property was available to anyone who allowed his or her's boat usage for the high school's crew teams.

Mr. Johnson stated that the COE would only be denying Mr. Hernacki his voting rights if the Code did not contain a section that dealt with having to abstain from voting and not participating if there was a special financial benefit.

### **XIII.i. – CONTINUED**

Mr. Farach requested that staff bring back RQO 10-013's recommendation regarding an advisory opinion letter that dealt with Aviation and Airports Advisory Board (AAAB) members of general aviation airports. He added that the COE members had voted on the matter, and the circumstances could be applicable to this situation.

Mr. Johnson responded that:

- In RQO 10-013, the airports were self-contained; therefore, AAAB members' financial decisions impacted only users of the airports, and the County was not required to compensate for the monetary difference regarding those financial decisions.
- Only individuals who used those airport fields were affected by AAAB members' financial decisions. The AAAB members who owned airplanes were similarly situated to everyone else whether they voted for or against that financial decision.

Mr. Farach commented that staff's analysis in RQO 10-013 as to the financial benefit and the similarly situated issue was the proper analysis to apply to RQO 11-062.

Mr. Johnson said that:

- He believed that the matrix used in RQO 10-013 meant that Mr. Hernacki had a special financial interest because even in the best-case scenario, there were numerous similarly situated persons but not a majority.
- Staff could reverse RQO 11-062's recommendation to state that financial benefits were involved and that Mr. Hernacki lacked enough people who were similarly situated in his position.
- Once abstaining as a council member, Mr. Hernacki could not personally influence an ordinance vote, and he could speak only after the vote was taken.

Mr. Harbison requested that staff consider the fair-market value concept in similar matters.

**XIII.i. – CONTINUED**

**MOTION to request that staff rewrite proposed opinion letter RQO 11-062 reflecting the analysis used in RQO 10-013, and to bring back the revised letter to the October 2011 COE meeting. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 3-1. Judge Edward Rodgers opposed and Bruce Reinhart absent.**

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

**XII. PROPOSED ADVISORY OPINIONS – RE: CHARITABLE ORGANIZATIONS**

**XII.a. RQO 11-039 (RESUBMITTED)**

Mr. Johnson stated that:

- A Village of Tequesta (Tequesta) attorney asked whether a municipality could hold a charity fundraising event on behalf of a nonprofit organization that benefitted public safety officers, using off-duty firefighters and certain on-duty municipal staff to solicit and run the event.
- A municipal employee and a Tequesta council member served on the nonprofit organization's board.
- Donations would be solicited from Tequesta's vendors.
- The event included raffles, door prizes, and silent auctions. All raised funds would be deposited into the nonprofit organization's account; however, 75 percent of the funds would be redistributed to other Tequesta-approved local nonprofit organizations.
- Staff recommended that a municipality could organize and hold charitable events to benefit the nonprofit organizations that they chose as long as there was no quid pro quo or other special considerations given by Tequesta's officials or employees to any donors, and as long as no person or entity with a pending application for approval or award currently before Tequesta's council was solicited for donations.
- Tequesta's staff, employees, and resources could not be used in vendor solicitations over \$100.

## **XII.a – CONTINUED**

- Any vendor or lobbyist solicitations over \$100 should be logged.
- Staff was unable to determine the nonprofit organizations' names that received the 75-percent funding; therefore, RQO 11-039 was revised to state that individuals using their official titles to serve on boards for the nonprofit organizations may need to recuse themselves and abstain from any vote or solicitation involving a special financial benefit.

Commission on Ethics Investigator Mark Bannon clarified that Tequesta's firefighters chose which charities should receive the donated funds. The charities' names were presented as a package to Tequesta, and Tequesta's council voted on the package's approval.

**MOTION to approve proposed advisory opinion letter RQO 11-039. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 4-0. Bruce Reinhart absent.**

## **XII.b. RQO 11-051 (RESUBMITTED)**

Mr. Johnson stated that:

- A Town of Juno Beach councilman was personally creating a pending 501(3)(c) charitable fundraising organization. He was on the nonprofit organization's board, and he wanted to hold a volleyball fundraiser.
- The advisory opinion letter was resubmitted due to concerns that the language regarding future potential financial benefits was not strong enough. Further staff review supported the concern.
- The advisory opinion letter was now properly vetted to state that any remaining donated funds could be used to either compensate the nonprofit organization's board of directors or for travel expenses.
  - Donated funds that compensated the nonprofit organization's board or for travel expenses were considered financial benefits.
  - If the funds represented a personal, financial benefit for the councilman, he could not be involved in any official acts, nor could he use his official name to solicit votes to specially and financially benefit himself or his outside business or employer.

**XII.b. – CONTINUED**

- The nonprofit organization was considered a business owned by the councilman. As a board of director's member, he could possibly own more than five percent of the nonprofit organization; therefore, the Code would apply to him.

**MOTION to approve proposed advisory opinion letter RQO 11-051. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.**

**XIII. PROPOSED ADVISORY OPINIONS**

**XIII.a.** Pages 13-20.

**XIII.b. RQO 11-037 (RESUBMITTED)**

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 of work completed by his brother whose company was hired to perform the work of a resident inspector.
- The issue was discussed at the July 7, 2011, COE meeting, and it was determined that although he would treat his brother in the same manner as similarly situated members of the public, there would be no violation.
- The fact that their relationship was so close and the Town manager had discretion in the matter led the COE to conclude that it would be preferable for someone else, such as the Town manager's supervisor, to sign off on his brother's projects.
- He had spoken to the Town manager who agreed with the COE's conclusion.

**MOTION to approve proposed advisory opinion letter RQO 11-037. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.**

**XIII.c. RQO 11-047**

Mr. Johnson stated that:

- A Village of Palm Springs (Village) police chief attended a statewide police chief's conference with his family. Certain expenses were allowable; others were not.
- The Village paid for the police chief's registration fee. The police chief paid for his family's registration fee.
- The police chief received a discounted hotel rate, which had been negotiated by the conference organizers.
- At the conference, the police chief won a raffle for a \$120 Blue-Ray disc player.
- He visited the hospitality suite, and he divided the hospitality suite cost by the number of people in his party. Neither the raffle nor the hospitality suite was sponsored by a Village vendor.
- As part of the conference program, the police chief and his family accepted tickets valued at \$50 per person to attend a NASCAR Night presented by Motorola, a Village vendor.
- The police chief had attended an awards banquet hosted by the police chief's association, and the Village received an award for excellence in policing, a wall plaque, and a \$1,000 check payable to the Village's police department.
- The banquet that was held by the police chief's association was estimated to cost \$55.47 per guest, but the police chief paid those expenses when he registered himself and his family.
- Staff had recommended that:
  - Any gift received by an employee and associated with a conference related to an employee's public position that was valued at greater than \$100 was either a reportable gift or a prohibited gift.

### **XIII.c. – CONTINUED**

- Registration fees paid by a municipality for an employee's conference attendance in his or her official capacity were specifically excluded from the gift definition and were not reportable.
- Discounted hotel rates received in conjunction with conference attendance as part of a negotiated group rate available to all similarly situated conference attendees were nonreportable gifts as far as the difference in price from the listed hotel rate and the negotiated rate.
- The Blu-Ray disc player and attendance at the hospitality suite, while reportable if valued over \$100, was not prohibited because they were not provided by a Village vendor, lobbyist, principal, or employer of a lobbyist.
- If the Blu-Ray disc player valued at \$120 had been given by a vendor, the police chief would have 90 days to return the \$20 without being in Code violation.
- Motorola's NASCAR Night gift, which was valued at \$50 per person, was a prohibited gift if valued over \$100. The police chief accepted tickets valued at \$200 so \$100 would need to be reimbursed to be in Code compliance.

**MOTION to approve proposed advisory opinion letter RQO 11-047. Motion by Manuel Farach, seconded by Robin Fiore, and carried 4-0. Bruce Reinhart absent.**

### **XIII.d. RQO 11-050**

Mr. Johnson stated that:

- A City of Riviera Beach attorney asked whether a sitting council member must abstain from voting on her son's trustee reappointment for a municipal firefighters' pension trust fund.
- The trustee's position was voluntary and unpaid.

### **XIII.d. – CONTINUED**

- The Code did not prohibit the appointment of a relative on a non-land-use planning, or zoning commission for municipalities with populations less than 35,000.
- Only the County Code's antinepotism law applied to RQO 11-050, and according to the Code's financial benefit section, the council member was not required to abstain from voting.

**MOTION to approve proposed advisory opinion letter RQO 11-050. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 4-0. Bruce Reinhart absent.**

### **XIII.e. RQO 11-052**

Mr. Johnson stated that:

- The Village police chief inquired whether Village employees' acceptance of 15-percent discounts from Friendly's Restaurant violated the County's Code.
- A similar issue would arise again for an advisory opinion request where the restaurant was a vendor.
- Staff recommended that public employees and officials were not prohibited from accepting discounts from a local restaurant that was not a Village vendor, employer, or principal of a lobbyist doing business with, or lobbying their municipal government as long as there was no quid pro quo or special privilege or treatment given to the restaurant in exchange for, or because of, the discount.

**MOTION to approve proposed advisory opinion letter RQO 11-052. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.**

### **XIII. – CONTINUED**

#### **XIII.f. RQO 11-053**

Mr. Johnson stated that:

- The Town manager asked whether awards given to employees for outstanding performance or employee tenure were considered gifts for purposes of gift disclosure requirements, and whether the gifts themselves could be donated by a nonprofit organization that was not a Town vendor, lobbyist, principal, or employer of a lobbyist.
- Staff had submitted that:
  - Recognition for length of service to the Town or employee awards for outstanding performance were excluded from the County Code's gift definition and were exempt from all prohibitions and reporting requirements of the gift law.
  - The County's Code, however, prohibited sponsorship of awards by a nonprofit organization if the sponsorship was based on any quid pro quo arrangement or was based on the receipt of any special benefit resulting from an official act.

**MOTION to approve proposed advisory opinion letter RQO 11-053. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.**

#### **XIII.g. RQO 11-055**

Mr. Johnson stated that:

- The Town manager inquired whether employees could accept gifts donated to the Town for distribution to employees through the use of a blind-draw raffle.
- Staff had submitted that:
  - While not prohibited from accepting donated gifts to the Town, some limitations and prohibitions existed regarding who gave those gifts.

### **XIII.g. – CONTINUED**

- As long as the individuals or entities donating the items were not Town vendors, lobbyists, principals, or employers of lobbyists, and the gifts were not accepted in exchange for the performance or nonperformance of a legal duty or an official action, employees were free to accept the gifts. However, gifts from a vendor valued over \$100 were prohibited.
- For transparency purposes, permitted gifts valued over \$100 should be reported.

**MOTION to approve proposed advisory opinion letter RQO 11-055. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.**

**XIII.h.**        Pages 14-18

**XIII.i.**        Pages 20-22

**XIII.j.**        **RQO 11-064**

Mr. Johnson stated that:

- County Information Systems Services Director Steve Bordelon administered discounted mobile phone packages provided by AT&T, Verizon, Sprint and T-Mobile to public officials.
- Mr. Bordelon had asked whether employees could accept discounted mobile phone packages provided by the four major carriers when discounted rates were available to all government employees, both Countywide and Statewide.
- Staff had recommended that:
  - Employees were not prohibited from accepting mobile phone discounts, provided that the discount was not based on preferred treatment of the vendor by the employee.

### **XIII.j. – CONTINUED**

- The mobile phone discounts were not prohibited, provided that they applied to all similarly situated government employees or officials, and that they were not otherwise offered as a quid pro quo or as a means to convey a special financial benefit in violation of either the County Code's financial or corrupt misuse of office sections, or for officials who received similar discounts, as referenced in the voting conflict section.

Dr. Fiore suggested that the second paragraph, last sentence, Public comment was received, including input from a former Florida Ethics Commissioner, be removed.

**MOTION to approve proposed advisory opinion letter RQO 11-064 as amended to reflect striking the last sentence in the second paragraph. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.**

### **XIII.k. RQO 11-066**

Mr. Johnson stated that:

- Martin DeLoach, Palm Beach Shores fire chief and Fire Chief's Association of Palm Beach County vice president, had spoken at the August 4, 2011, COE meeting regarding whether the Code's uniformed extra-duty detail outside employment provisions applied equally to law enforcement and to fire rescue agencies.
- Judge Rodgers had expressed his concern at the August 4, 2011, COE meeting regarding not having the municipalities and the unions present to comment on the issue.
- Fire Chief DeLoach had spoken with the League of Cities executive director and with various union representatives for the county's firefighters. Everyone agreed with adding the filing requirement exemption of outside employment waivers for extra-duty details by police and now by firefighters that were administered or contracted by their public departments. Fire Chief DeLoach had provided COE staff with a letter regarding that agreement.

**XIII.k. – CONTINUED**

**MOTION to approve proposed advisory opinion letter RQO 11-066. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 4-0. Bruce Reinhart absent.**

**XIII.l. RQO 11-072**

Mr. Johnson stated that:

- A City of Palm Beach Gardens (City) municipal employee who supervised and administered a City public arts program asked whether she may receive compensation from a local chamber of commerce for selecting artists to participate in an annual arts festival in her personal, non-City time. The municipal employee's stipend for 10 hours of judging would be \$250 and lunch.
- Staff submitted that:
  - The municipal employee may participate in the event, although the chamber of commerce's offer was made based on her municipality's membership in the North Palm Beaches Cultural Alliance.
  - The municipal employee had been invited to judge the event not because of her official position but because of her expertise and proficiency in the field.
  - The municipal employee's participation would be on personal time, and by participating in the program, she would have an opportunity to be exposed to innovative, local, and national artists, which would, in turn, benefit her public employer and her job.

**MOTION to approve proposed advisory opinion letter RQO 11-072. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0.**

#### **XIV. EXECUTIVE DIRECTOR COMMENTS**

##### **XIV.a.**

**DISCUSSED:** October 2011 COE meeting.

Mr. Johnson suggested starting the October 2011 meeting at 1:30 p.m. to cover the issues to be discussed.

##### **XIV.b.**

**DISCUSSED:** Convening an October 2011 Inspector General Committee meeting.

Judge Rodgers said that at the last meeting with County Inspector General (IG) Sheryl Steckler, he had questioned why the COE was present and what power or relationship the COE had with Ms. Steckler and the Office of Inspector General. He added that a County attorney had informed him that the COE had extensive power. He said that he invited the attorney to speak regarding that matter at the next COE meeting.

Mr. Johnson replied that:

- Issues would arise in future complaints that would possibly be brought before the IG Committee.
- He would place an item on the COE's October 2011 agenda regarding a special IG Committee meeting that would last approximately 15 minutes to a half-hour long.
- At the October 2011 COE meeting, Assistant County Attorney Leonard Berger would make a presentation on the COE's powers and responsibilities by Code regarding the IG and the IG Committee.
- The COE's regular October 2011 meeting could temporarily adjourn to convene an IG Committee meeting, then reconvene the COE's regular meeting.
  - Two additional members, the public defender and the state attorney, would also be present at the IG Committee.
  - Both meetings would be publicized.

#### **XIV. – CONTINUED**

Mr. Farach suggested that the IG Committee's updated meeting take place before the COE's meeting, and his colleagues agreed.

Mr. Johnson said that:

- Mr. Berger would provide an advance copy of his presentation to the COE.
- Mr. Berger would be addressing the Code regarding the IG Selection Committee's ability to rehire Ms. Steckler at the end of four years or to remove her in the interim based on malfeasance or extreme misfeasance.
- The IG ordinance had a process for complaints.

Judge Rodgers commented that:

- He had received several complaints from municipal managers and municipal council members.
- A meeting could be arranged with himself, Ms. Steckler, and perhaps the League of Cities' director where he would discuss some of the complaints and problems as a mediator and not as a CEO representative.

Dr. Fiore said that she wanted Ms. Steckler to be aware that Judge Rodgers would be present only as a mediator.

Judge Rodgers said that Ms. Steckler would be scheduling the meeting. Mr. Farach added that his only concern would be that Judge Rodgers mediated it in his private, individual capacity and not in his capacity as the COE chair or as an IG Committee member.

Mr. Johnson added that a problem would occur if more than one IG Committee member attended the meeting because there would be a Sunshine Law issue. He added that attendees would have no authority to make decisions.

League of Cities Director Richard Radcliffe said that he would help to facilitate the meeting.

Mr. Harbison said that the COE and the IG had no power to criminally prosecute or to send anyone to jail.

XV. PUBLIC COMMENTS – None

XVI. ADJOURNMENT

At 5:27 p.m., the chair declared the meeting adjourned.

APPROVED:



Chair/Vice Chair