

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

APRIL 5, 2012

**WEDNESDAY
1:43 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Manuel Farach, Esq., Chair
Robin N. Fiore, Ph.D., Vice Chair
Daniel T. Galo, Esq. – Absent
Ronald E. Harbison, CPA – Arrived later
Judge Edward Rodgers

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Senior Investigator
Alan S. Johnson, Esq., COE Executive Director
Gina A. Levesque, COE Executive Assistant
James A. Poag, COE Investigator – Absent
Megan C. Rogers, Esq., COE Staff Counsel

ADMINISTRATIVE STAFF:

Latoya Osborne, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Alan S. Johnson, Esq., Commission on Ethics (COE) executive director, stated that a quorum existed with three commissioners present.

Commissioner Farach, chair, stated that anyone wishing to speak should submit a public comment card and that cell phones should be turned off.

IV. APPROVAL OF MINUTES FROM MARCH 1, 2012

MOTION to approve the March 1, 2012, minutes. Motion by Judge Edward Rodgers, seconded by Robin Fiore, and carried 3-0. Daniel Galo and Ronald Harbison absent.

Mr. Johnson said that the executive session should last no more than 30 minutes. Commissioner Farach said that the meeting would reconvene at 2:15 p.m. after the executive session.

RECESS

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

RECONVENE

At 2:16 p.m., the meeting reconvened. At the chair's request for a roll call, Manuel Farach, Robin Fiore, Ronald Harbison, and Judge Edward Rodgers were present.

Mr. Johnson stated that a quorum existed with four commissioners present.

V. EXECUTIVE SESSION

V.a. C11-026

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

Complainant, Sheryl Steckler, Inspector General, filed the above-referenced complaint on December 16, 2011, alleging a possible ethics violation involving respondent, Everette Vaughan, 911 Project Manager, Palm Beach County Emergency Management Division. The complaint alleges that respondent violated Section 2-444(a) of the gift law. For the reasons set forth below, this complaint is dismissed.

Pursuant to Chapter 2, Article V, Division 8, Section 2-258(a) of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the Code of Ethics. Limitations and prohibitions regarding gifts from vendors to public employees may be found in Article XIII, Section 2-444(a) of the Palm Beach County Code.

V.a. – CONTINUED

Pursuant to Article V, Division 8, Section 2-260(b)(2), a sworn complaint filed by the Inspector General in compliance with the requirements of this subsection is legally sufficient as a matter of law. Therefore, the Commission on Ethics was obligated under Section 2-260(d) to commence a preliminary investigation. Allegations were made on the basis of whistleblower statements that were not substantiated by the preliminary investigation. Therefore, on February 13, 2012, the complaint was determined by staff to lack probable cause, and presented to the Commission on Ethics on April 5, 2012, with a recommendation of dismissal.

Thereafter, the Commission reviewed and considered the investigative report, documentary submissions and the recommendation of staff, and determined that there was no evidence to support a finding of probable cause in this matter.

Therefore, it is ordered and adjudged that no probable cause exists, and the complaint against respondent, Everett Vaughan, is hereby dismissed. Done and ordered by the Palm Beach County Commission on Ethics in public session on April 5, 2012. Signed Manuel Farach, Chair.

VI. PRESENTATION TO FORMER ETHICS COMMISSIONER BRUCE REINHART

Commissioner Farach thanked former Ethics Commissioner Bruce Reinhart for his hard work, insightful comments, and help while serving on the COE. He provided Commissioner Reinhart with a plaque on behalf of the commission.

Commissioner Reinhart thanked the COE.

VII. PRESENTATION OF 2011 ANNUAL REPORT

Mr. Johnson stated that:

- In fiscal year (FY) 2010, the COE had expended 62 percent of its budgeted expenditures.
- In FY 2011, 82 percent of the COE budgeted expenditures had been expended, saving 3 percent over projected savings.

VII. – CONTINUED

- The reserves had enabled staff to operate without increasing ad valorem expenditures.
- Since 2011, a second investigator had been hired.
- As of February 1, 2012, 16.47 percent of the budget had been expended, putting the COE on track to spend approximately 66 percent of its 2012 budget.
- The COE department had no need for further expansion. It was expected that the current COE staff would remain through the coming years.
- In 2011, staff had completed 92 in-person trainings with County and municipal employees, officials, and advisory board members; and 35 presentations to community organizations. Over 150 digital video discs were distributed to County and municipal departments on request.
- The Ethics Awareness Day on November 18, 2011, was successful, and it was expected that Ethics Awareness Day would take place again in 2012.
- Staff had utilized Palm Beach State College students as interns for graphic design assistance, and was able to develop and post an interactive ethics quiz that was currently available online.
- The COE executive director had been a member of the County Ordinances Drafting Committee and had participated in the Code of Ethics expansion that was effective on June 1, 2011.
- The League of Cities (LOC) and the County Attorney's Office had worked together to develop a countywide lobbyist registration ordinance that recently went into effect at the beginning of April 2012.
- An online process would be established for individuals to view the different municipalities' registered lobbyists.
- The COE's Web site had received over 300,000 views in 2011. After July 2010, the Web site views remained to be over 25,000 monthly, which showed a steady stream of interest.

VII. – CONTINUED

- The Web site now had a searchable database with a unique search engine that only allowed the Web site's information to be produced as search results.

Commissioner Fiore said that Miami-Dade County's Commission on Ethics and Public Trust (Miami-Dade COE) members had complimented the COE on its Web site, including its accessible training and support material.

Judge Edward Rodgers stated that he had received a card that displayed both COE and Office of Inspector General (OIG) information. He said that he wanted to be informed of the published material that related to him and his role as a commissioner.

Mr. Johnson said that:

- The information cards were created and distributed to the board in 2010 when the COE and the OIG shared the same office space.
- A unique information card for residents was being developed for the COE to better eliminate the perceived similarities between the two offices.
- The information cards and other promotional material, such as the "Got Ethics?" sign on County buses, were paid from the COE's budget.
- The COE had issued 123 advisory opinions, which were all available and searchable in PDF format on the COE Web site.
- Staff had received 27 sworn complaints, 29 anonymous complaints, and 4 self-initiated complaints in 2011.
 - Twenty of the 27 sworn complaints were dismissed due to legal insufficiency; two cases were pending, and six were found to be legally sufficient.
 - Of the six complaints found to be legally sufficient, three were dismissed at probable cause hearings; two were found to have probable cause, which later resulted in settlement agreements; and one was pending.

VII. – CONTINUED

- In 2011, misuse of office was the largest segment of the overall complaints, followed by the gift law, contractual relationships, voting conflicts, and nepotism.

Commissioner Farach thanked Mr. Johnson and his staff for helping the commission to run efficiently.

VIII. RULES AND PROCEDURE AMENDMENTS

VIII.a. Section 2

Mr. Johnson stated that:

- Staff believed that the Rules of Procedure (rules) needed to be amended to reflect accurately how the COE processed advisory opinions.
- Staff initially had created its rules with similarity to Miami-Dade's COE since it was the only system in the country comparable to the County's.
- Approximately 70 percent of Miami-Dade COE's advisory opinions were informal and did not go before the COE members, while the County's COE did not perform informal advisory opinions.
- Section 2.5 could be amended to reflect that advisory opinions were presented to the entire commission as individual agenda items, unless listed as consent agenda items, and should not be presented only to the Chair.
- Section 2.7 could be deleted since it authorized that the executive director could provide advisory opinions without COE input.

Commissioner Ronald Harbison suggested that the matter be reexamined to allow the COE executive director and staff authority to provide advisory opinions should the volume of work before the COE become too large.

Commissioner Fiore said that she believed that each commissioner's view of opinions was beneficial, as opposed to advisory opinions being determined by Mr. Johnson who was a lawyer.

VIII.a. – CONTINUED

MOTION to approve the Rules of Procedure amendments to section 2 and 4.2. Motion by Judge Edward Rodgers, seconded by Robin Fiore, and carried 4-0. Daniel Galo absent.

(CLERK'S NOTE: Section 4.2 was inadvertently included in the motion.)

MOTION to approve the Rules of Procedure amendments to section 2 only. Motion by Judge Edward Rodgers, seconded by Robin Fiore, and carried 4-0. Daniel Galo absent.

VIII.b. Section 4.2

Mr. Johnson stated that:

- Section 4.2 pertained to the types of cases that were presented in executive session.
- The preliminary and investigation section read as follows:

A preliminary investigation shall be undertaken by the Commission on Ethics of each legally-sufficient complaint over which the Commission on Ethics has jurisdiction to determine whether there is probable cause to believe that a violation has occurred. If upon completion of the preliminary investigation, the Commission on Ethics finds no probable cause to believe that a violation has been committed, the Commission on Ethics shall dismiss the complaint with the issuance of a report to the complainant and the respondent.

- Sworn complaints could be submitted with no legal sufficiency due to lack of jurisdiction, the event occurring earlier than two years prior, no personal knowledge, or a Sunshine Law violation.
- If a completed inquiry showed legal sufficiency, staff was able to do self-initiated complaints and begin an investigation; however, if an inquiry showed no legal sufficiency, it would be a waste of resources to prepare reports and enter into executive session.

VIII.b. – CONTINUED

- Section 4.2 could be amended to state that all legally-sufficient complaints should be brought before the COE for a ruling on probable cause or dismissal; complaints with no legal sufficiency did not need to be brought before the COE for dismissal.
- The COE could request that staff perform additional investigations, which would justify the continuation executive sessions as currently done.

Commissioner Harbison suggested that an activity report should be given to the COE on the complaints dismissed due to lack of legal sufficiency and not brought before the COE in executive session.

Judge Rodgers suggested that complainants be given the opportunity to resubmit their complaints for reconsideration within a certain amount of days from dismissal.

Mr. Johnson said that a dismissed complaint would be assigned a C-number and would not be present on the COE Web site if it lacked official COE dismissal. The complaint would be kept on file, and sent to the respondent and the complainant, he added.

Commissioner Fiore expressed concern that the suggested procedure would prevent public transparency if dismissed complaints were not made available on the Web site.

Mr. Johnson said that a rule could be drafted that allowed sworn complaints with no legal sufficiency to be made available on the Web site. He suggested tabling the item until the May 2012 COE meeting to be included under the more broad discussion regarding staff-generated reports.

MOTION to table the discussion on item VIII.b. until the May 2012 COE meeting. Motion by Ronald Harbison, and seconded by Judge Edward Rodgers.

Mr. Johnson stated that the criteria for legally-sufficient complaints were included in the complaint form that was available on the Web site; and Commissioner Fiore suggested that those criteria should be made clearer for better understanding by those submitting complaints.

UPON CALL FOR A VOTE, the motion carried 4-0. Daniel Galo absent.

IX. BOCA RATON VOTING CONFLICTS

IX.a. Request for Advisory Opinion (RQO) 11-116

Mr. Johnson stated that:

- The issue related to whether an official employed by an institution, such as a bank, having a great pool of customers or clients eliminated a conflict in certain circumstances with a regular customer of the bank that was not connected or was not an unusual customer.
- A decision on RQO 11-120 needed to be made before making a determination on RQO 11-116.

Assistant County Attorney Leonard Berger stated that the Code's language was meant to be broad enough for individuals to recognize potential issues before they became problems. He said that according to State law, an elected official could not vote on any matter that would inure to the special private gain or loss of oneself, or a business associate, or a wide variety of relatives. He recommended that the COE members follow the State COE's lead.

Commissioner Harbison said that he agreed with staff's recommendation on RQO 11-116. He also said that he believed that the Code's language was appropriate since it did not create a bright line, and allowed for interpretation based on each case's facts.

Judge Rodgers said that he believed that staff may have been assigning a dollar amount, \$10,000, which could mean different things to different classes of people. He suggested that staff could use a different classification method when analyzing a similar situation, rather than in terms of dollars.

Richard Radcliffe, LOC executive director, said that he appreciated the COE and staff's efforts on the issue.

MOTION to approve staff's recommendation on RQO 11-116. Motion by Judge Edward Rodgers.

MOTION DIED FOR LACK OF A SECOND.

Mr. Johnson reiterated that RQO 11-120 should be presented before a motion was made on RQO 11-116.

IX.b. RQO 11-120

Mr. Johnson stated that:

- A Boca Raton City Attorney asked whether an elected official whose outside employer was a large national bank or financial institution, Citibank, was required to abstain in every instance any client or customer of the outside employer appeared before her board.
- A related request was submitted on November 1, 2011, and an opinion was published as to the reasonable care standard regarding knowledge of a conflict.
- In RQO 11-099, it was determined that one should have actual or constructive knowledge and would be responsible for his/her actions.
- The City Attorney had submitted additional requests on November 30, 2011, and December 19, 2011, asking whether the term, similarly situated members of the general public, would eliminate the customer or client conflict under certain circumstances.
- The elected official was a business banker at a local Citibank branch, had no supervisory authority, and was responsible for opening small business customer accounts.
- Staff had submitted that:
 - An official who was employed by a large national bank as a business banker at a local branch and responsible for opening small business customer accounts, did not automatically have a conflict under Section 2-443(a)(5) of the Code when customers of the bank appeared before her, since the customer pool may be so large that a general customer, was considered a member of the general public.
 - The rule did not offer complete protection. A significant customer or client may not be similarly situated to other normal and usual bank customers because of the benefit that may flow to the banker's employer.

IX.b. – CONTINUED

- Customers or clients who directly conducted business with the employee/official or did business within the official's particular department, store or branch were not similarly situated to the large majority of nationwide customers or clients who had no such nexus to the official.

Judge Rodgers said that he believed that advisory opinions should not be too specific. He added that individuals should be advised on the law and that the COE should avoid dealing with factual specifics and anticipations.

Mr. Johnson replied that the COE and staff should not deal with hypotheticals. He said that RQO 11-120, like other advisory opinions, spoke to the specific facts that were submitted. He read the following from the Code:

These advisory opinions are for any person within the jurisdiction of the Commission on Ethics when in doubt about the applicability or interpretation of any provision within the Commission on Ethics' jurisdiction to himself or herself in a particular context may submit in writing the facts to the situation to the Commission on Ethics with a request for an advisory opinion to establish their standard of public duty.

Mr. Johnson continued by saying that the commission was somewhat bound to provide a more specific advisory letter, rather than a general letter of advice.

Commissioner Fiore stated that she supported the advisory letter's content since it advised the interested individual on things that should be seen as red flags.

Commissioner Farach said that he shared Judge Rodgers' belief that the advisory opinions were becoming too specific; however, he had spoken to other elected officials who were concerned about similar issues.

MOTION to approve staff's recommendation on RQO 11-120. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 4-0. Daniel Galo absent.

(CLERK'S NOTE: Discussion on RQO 11-116 was continued at this time.)

IX.a. – CONTINUED

Mr. Johnson stated that:

- The RQO 11-116 asked the following:
 - how the \$10,000 threshold value of goods or services provided to a customer or client of an official or employee's outside employer was calculated when the employer was a large national financial institution;
 - whether all goods or services for all departments should be included in the calculation of the threshold amount in the event that an official or employee's outside employer was divided into operational departments or divisions; and,
 - whether the Code's reference to the previous 24-month period suggested that an official should recalculate the aggregate value of goods or services provided to a customer or client of his/her outside employer to ascertain whether or not the \$10,000 threshold had been met each time a matter came before a governing body.
- The \$10,000 threshold within the previous 24-month period should be calculated at the time that the vote or decision was being made, or any time that the customer or client came before the governing body.

Commissioner Harbison said that he believed that staff's explanation was the only possible explanation related to this type of situation, unless a loophole was created.

Commissioner Fiore stated that the last sentence on page 2 that began, "Where there is," was too comforting and suggested the avoidance of knowledge. She said that she would prefer that the sentence be removed since it went beyond the COE's duties.

Mr. Johnson suggested that all language after footnote 4 on page 2 be removed to eliminate the broadness of the advisory opinion.

Commissioner Fiore asked that the first paragraph on page 3 be eliminated as well.

IX.a. – CONTINUED

Mr. Johnson said that the language after footnote 4 on page 2, and before the sentence on page 3 that read, "When in doubt," would be removed.

MOTION to approve RQO 11-116 as amended to include the changes as discussed. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Daniel Galo absent.

RECESS

At 3:50 p.m., the chair declared the meeting recessed.

RECONVENE

At 4:04 p.m., the meeting reconvened with Manuel Farach, Robin Fiore, Ronald Harbison, and Judge Edward Rodgers present.

X. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

Mr. Johnson requested that item X.c., RQO 12-014, be pulled from the consent agenda since the Boca Raton City Attorney had questions and concerns regarding the advisory opinion.

X.a. RQO 12-012

X.b. RQO 12-013

X.c. Pages 14-15

X.d. RQO 12-015

X.e. RQO 12-019

X.f. RQO-12-020

X.g. RQO 12-021

Motion to approve the consent agenda as amended pulling item X.c. Motion by Judge Edward Rodgers, seconded by Robin Fiore, and carried 4-0. Daniel Galo absent.

XI. ITEMS PULLED FROM CONSENT AGENDA

XI.a. RQO 12-014

Mr. Johnson stated that:

- The County's Director of Electronic Services and Security asked whether planning employees were permitted to attend an educational seminar provided by a County vendor. The attendance was determined by supervisory personnel to be for educational purposes in their official capacity.
- Staff had submitted that:
 - County employees were not prohibited from attending a tuition-free educational seminar in their official capacity as County employees for a public purpose, notwithstanding the fact that the training was provided by a County vendor.
 - Registration fees associated with educational conferences where attendance was for governmental purposes and related to an employee's official duties and responsibilities were excluded from the definition of gift.
 - However, employees could not accept anything else of an aggregate value in excess of \$100 from a vendor, lobbyist, principal or employer of a lobbyist who sold, leased to, or lobbied the County.

Gina Levesque, COE executive assistant, clarified that a Royal Palm Beach City Attorney had concerns, rather than the Boca Raton City Attorney.

Mr. Johnson said that the attorney was concerned that a waiver was required to account for the travel expenses that were paid by the vendor. In RQO 12-014, the County employees drove to a seminar less than 35 miles away in a County vehicle with no overnight stay, which was not considered by COE staff to be travel expenses.

Commissioner Fiore requested that the advisory opinion language read, annual aggregate, rather than, aggregate, and that every advisory letter that discussed the aggregate of \$100 should read, annual aggregate. Mr. Johnson said that the language could be amended.

XI.a. – CONTINUED

MOTION to approve proposed advisory opinion letter RQO 12-014 as amended to include the changes as discussed. Motion by Ronald Harbison, seconded by Judge Edward Rodgers, and carried 4-0. Daniel Galo absent.

XII. PROPOSED ADVISORY OPINIONS

XII.a. RQO 12-011

Mr. Johnson stated that:

- A County employee asked whether he was permitted to attend a professional development conference and receive travel and related expense reimbursement where attendance:
 - was for educational purposes;
 - would be in his official capacity; and,
 - had been reviewed and approved by his supervisor.
- Discussion on the advisory opinion was previously tabled due to the existence of a partial vendor list that did not include the vendors that went directly to the Clerk & Comptroller's Finance Department. Also, the vendor list included organizations to which the County had made payments, but were not considered to be actual vendors.
- The association in question was listed on the vendor list but was not a County vendor. The association only accepted the registration fee paid by the County; since it was not a vendor, a travel expenses waiver was not needed.
- The vendor list had since been updated.
- The advisory opinion letter was resubmitted to state that since the conference attendance was for a public purpose, as vetted by the employee's supervisor, then it was excluded as a gift and did not have to be reported.

Commissioner Fiore said that she wanted to ensure that the advisory opinion letter did not suggest that travel expenses of an employee's family would also be covered.

XII.a. – CONTINUED

Megan Rogers, COE staff counsel, clarified that the organization's local chapter would provide the employee with a \$1,000 tuition stipend, but would not compensate his/her family since the cost of the conference was over \$2,000. A previous advisory opinion had addressed a family-related scenario, where the COE had broken down a way for an employee to calculate the actual benefit being received for reportable gift purposes, she added.

Mr. Johnson said that language could be added to footnote 3 on page 2 of the advisory opinion letter to reference previous similar advisory opinions, and to explain that travel expenses for family members accompanying an employee may constitute a reportable gift.

Commissioner Fiore suggested that language be added to read: This opinion applies only to your travel and attendance.

Mr. Johnson replied that the summary language could read: This opinion applies solely to your expenses in your official capacity.

Commissioner Farach said that the suggested language could be amended to read: This opinion applies solely to expenses, reimbursements, and stipends you will receive in your official capacity.

MOTION to approve proposed advisory opinion letter RQO 12-011 as amended to include the changes as discussed. Motion by Judge Edward Rodgers, seconded by Robin Fiore, and carried 4-0. Daniel Galo absent.

XII.b. RQO 12-016

Mr. Johnson stated that:

- A municipal fire rescue chief asked whether including the cost of employee travel expenses for pre-build conferences and acceptance conferences for high-cost Fire Rescue and other fire apparatus vehicles in the contract price for the vehicles violated the Code's prohibition on accepting travel expenses from vendors section.

XII.b. – CONTINUED

- Staff had submitted that while public employees may not directly or indirectly accept travel expenses from a municipal vendor, service provider, bidder or proposer, this prohibition did not apply to expenses that were ultimately paid by the municipality from municipal funds pursuant to a contract for the purchase of goods, where the purpose of the travel was to ensure that the terms of the contract were fulfilled.

City of Boynton Beach Fire Chief Ray Carter stated that:

- The fire trucks in question fell into two categories: Advanced Life Support Transport vehicles, valued from \$180,000 to \$220,000 each; and fire trucks, valued at approximately \$1 million each.
- The preconstruction and acceptance visits in question served multiple purposes such as identifying past maintenance issues, and ensuring that all bid document content and specifications were in compliance.
- Visits as such were a common practice among many countrywide fire services, and most vendors agreed to include such visits as a line item in the bid documents.
- Individuals that went on the visits were committee members responsible for creating the specifications, and a fleet maintenance member responsible for repair and maintenance of the vehicles.

MOTION to approve proposed advisory opinion letter RQO 12-016. Motion by Ronald Harbison, seconded by Judge Edward Rodgers, and carried 4-0. Daniel Galo absent.

XII.c. RQO 12-017

Mr. Johnson stated that:

- A municipal ethics officer asked whether City of West Palm Beach (West Palm Beach) employees could accept reduced tuition to attend a Florida International University (FIU) online MBA program.
- Discounted tuition was not available to all members of the general public; only to students whose employer or family member's employer had enrolled in a FIU corporate partnership program.

XII.c. – CONTINUED

- The university did not vend, lease, or lobby West Palm Beach.
- Staff had submitted that:
 - West Palm Beach employees were not prohibited from accepting a FIU tuition discount or scholarship based on their status as West Palm Beach employees provided that there was no quid pro quo or special treatment or privileges given to FIU or its agent, Academic Partnerships, in exchange for offering these scholarships.
 - For gift-law reporting purposes, tuition discounts or scholarships received by public employees or their family members for degree programs, when based on their public employment status, were reportable gifts under the Code.
- The purpose of the corporate partnerships was for FIU advertising in West Palm Beach program announcements to all employees; no financial or contractual commitment existed.
- The tuition discount would constitute a reportable gift for transparency reasons, and did not imply that a negative was attached to it.

Commissioner Fiore stated that the terms, scholarship, and, tuition discount, were interchangeable throughout the letter. She suggested that the term, tuition discount, only be used since the term, scholarship, provided other implications.

Ms. Rogers explained that Academic Partnerships was the service provider that was responsible for FIU's online course work. Academic Partnerships used the term, scholarship, while the West Palm Beach used the term, tuition discount, she added.

Mr. Johnson said that the program was valued at \$37,000, although West Palm Beach employees would pay \$27,000 and receive a \$10,000 discount.

Commissioner Fiore said that she did not consider the tuition discount to be broad-based since the opportunity would not be taken by all West Palm Beach employees although it was available to all of them.

XII.c. – CONTINUED

MOTION to approve proposed advisory opinion letter RQO 12-017. Motion by Judge Edward Rodgers, seconded by Robin Fiore, and carried 4-0. Daniel Galo absent.

XII.d. RQO 12-018

Mr. Johnson stated that:

- Accepting travel expenses was separate from the gift law. Travel expenses paid for by a vendor, regardless of the type of event, required a waiver.
- Registration fees and related costs associated with educational or governmental conferences and travel expenses that were properly waived if received from a vendor, were not considered gifts and reporting was unnecessary, provided that attendance was for governmental purposes, and was related to official duties and responsibilities.
- State-reporting individuals had no obligation under the Code, except for providing the COE with a copy of the State-required quarterly report.
- A County commissioner asked whether she may receive travel reimbursement from a Robert Wood Johnson Foundation (RWJF) and a Quantum Foundation (QF) grant to the School Board of Palm Beach County (School Board) for attendance at an annual training for the Healthy Kids, Healthy Communities Project as a community partner with the School Board.
- Some expenses would be paid by the School Board; others would be paid by the foundations.
- Staff had submitted that:
 - Neither RWJF nor QF was a vendor or principal of County lobbyists; therefore, the Code did not prohibit an elected official from attending and receiving travel reimbursement for the event.

XII.d. – CONTINUED

- Local elected officials and advisory board members who were State-reporting individuals were required to report gifts quarterly in accordance with State law, and were not subject to the annual gift reporting requirements under the Code's Section 2-444(f)(2).
- A State-reporting individual was responsible for complying with State-reporting requirements.

MOTION to approve proposed advisory opinion letter RQO 12-018. Motion by Ronald Harbison, seconded by Judge Edward Rodgers, and carried 4-0. Daniel Galo absent.

XII.e. RQO 12-022

Mr. Johnson stated that:

- A County commissioner asked whether an elected official whose outside business provided rental space to a municipality may participate and vote on interlocal agreements, annexation issues, and lawsuits between the County he served and his municipal customer or client.
- Staff had submitted that:
 - Officials whose outside business or employer contracted with other governments were not prohibited from voting on issues between their government-client and the government that they served, provided that the matter was unrelated to their business relationship with the government-client.
 - Voting or participating on issues that may result in a special financial benefit to their outside employer or business would violate the Code's misuse of office provisions.
 - When presented with a situation that would benefit themselves or their outside employer or business, officials must publicly disclose the nature of the conflict, file the required State disclosure form, refrain from voting and not participate in, or influence the process.

- Material regarding the Village of Wellington lawsuit was included in the advisory opinion letter since the County commissioners were required to vote on it, and it was one of Commissioner Santamaria's concerns in the initial advisory opinion request.

MOTION to approve proposed advisory opinion letter RQO 12-022. Motion by Judge Edward Rodgers, seconded by Ronald Harbison, and carried 4-0. Daniel Galo absent.

XII.f. RQO 12-023

Mr. Johnson stated that:

- A County commissioner asked whether the revised Code permitted an elected official to be an honoree at nonprofit charitable fundraising events for his/her years of service.
- The commissioner would not partake in any solicitations done by the nonprofit organization, and was not a board member or officer of the organization.
- Any nonprofit organization that solicited was required to comply with the Code; therefore, any County vendors or lobbyists that provided a gift in excess of \$100 was required to be included in a transparent solicitation log for submission to the COE within 30 days following the event.
- Once the commissioner was no longer in office, he/she could serve as an honoree without permission. The advisory opinion only applied to events occurring while the commissioner was in office.
- If the charity failed to comply with the law requirements, it would most likely constitute as an ethical violation on behalf of the elected official.

MOTION to approve proposed advisory opinion letter RQO 12-023. Motion by Judge Edward Rodgers, seconded by Ronald Harbison, and carried 4-0. Daniel Galo absent.

XII.g. RQO 12-024

Ms. Rogers stated that:

- A local nonprofit executive director asked whether his foundation may give tickets valued in excess of \$100 to municipal library employees to attend a fundraising event.
- A nonprofit organization was dedicated to raising supplemental funds for the West Palm Beach Library, such as furniture for programming and computers.
- An exception under the Florida Administrative Code explained that when an employee or elected official received a ticket directly from the charity, the employee was only required to report the actual cost to the charity, as compared to the face value of the ticket.
- Staff recommended that under the Code, employees and elected officials be required to report the face value of the ticket, recognizing the emphasis that was placed both on the vendor and lobbyist gift limitations.
- Individuals attending the event would also receive a gift from Tiffany & Co. valued at \$50. Staff recommended that since the gift was separate and identifiable from the ticket, it was required to be reported separately from the face value of the ticket, providing for additional transparency.

MOTION to approve proposed advisory opinion letter RQO 12-024. Motion by Robin Fiore, and seconded by Judge Edward Rodgers.

Commissioner Farach expressed concern that the COE was creating a dual-reporting issue for County employees and elected officials.

Mr. Johnson replied that State-reporting individuals only complied with the State requirements, and provided the COE with copies of their reports. However, those who were State- and local-reporting individuals, such as someone who was an elected official and a local employee, were required to comply to both State- and local-reporting requirements.

UPON CALL FOR A VOTE, the motion carried 4-0. Daniel Galo absent.

XIII. PROCEDURAL MATTERS RE: C11-027 (Scott Swerdlin)

Mr. Johnson stated that:

- The hearing for C11-027 regarding Scott Swerdlin, was currently scheduled for June 15, 2012.
- The Code required that the COE Chair volunteer or designate another commissioner to conduct discovery matters, including prehearing conferences, motions, subpoenas, settlement issues, examining exhibits and documents, witness lists, and other procedural matters.

Commissioner Farach said that he volunteered to conduct the discovery matters.

Mr. Johnson continued by saying that:

- A COE quorum was three members.
- Pursuant to the COE Rule of Procedure 6.1, public hearings may be conducted by all COE members, or by a three-member panel designated by the Chair.
- Commissioner Galo had previously stated that he believed that he may have had a legal conflict under the rules of professional conduct for the Bar Association. His firm represented an insurance company that represented an insurance company that represented a company of which Dr. Swerdlin was a client. He planned to abstain from the public hearing discussion and decision.
- No financial conflict existed under the COE or State Code.

Judge Rodgers said that he would volunteer to participate in the public hearing; however, he may be out of town on the scheduled date. He suggested that an alternative be designated if that were the case.

Mr. Johnson said that Dr. Swerdlin's attorney had a scheduling conflict on June 15, 2012, and had requested that it be rescheduled. He added that Dr. Swerdlin's attorney was unavailable on Fridays.

Judge Rodgers said that he had served as a mediator for several cases that involved Dr. Swerdlin's attorney, who may prefer his nonparticipation in the final hearing.

XIII. – CONTINUED

Commissioner Fiore said that the COE had up to 120 days to conduct the public hearing; however, the final hearing should be completed in May since commissioners had scheduling conflicts in June.

Mr. Johnson replied that the public hearing date needed to be set within 120 days; however, the actual public hearing could be scheduled later.

Ms. Levesque said that Dr. Swerdlin's attorney had prior engagements scheduled on Fridays. She also said that he requested that the public hearing be held on two consecutive days.

Commissioner Farach said that the panel could be chosen today while the date could be scheduled at a later time.

Ms. Levesque requested that the commissioners provide her with their available dates and times to assist in scheduling with the attorney. Mr. Johnson said that the second day would only be scheduled in the event that the public hearing was not concluded on the first day.

Commissioner Harbison said that he believed that as many commissioners as possible should participate in the public hearing.

Commissioners present said that they were available and willing to participate in the public hearing presuming that the date(s) worked with their schedule.

Commissioner Farach said that he would communicate with Mr. Johnson and staff regarding the procedural aspects of the public hearing.

Mr. Johnson said that he had handled the initial proposal, which appeared to be rejected with no plans for a negotiated settlement. He also said that Commissioner Farach, as chair, could accept motions to discuss negotiations.

Commissioner Farach said that he would be uncomfortable with accepting motions for negotiated settlements without the entire commission present.

Commissioner Fiore said that she would be unable to attend the public hearing if it was scheduled on a Wednesday. She said that she was best available on Mondays and Tuesdays.

XIII. – CONTINUED

Commissioner Farach suggested a schedule of 9:00 a.m. to 5:00 p.m., with an hour for lunch.

Mr. Johnson said that the public hearing could be recorded with an audio recording device. He also said that a court reporter was not currently available; however, one was not required for a Code-enforcement hearing. He added that the respondent could bring a court reporter if he wished.

Commissioner Farach said that he believed that the COE should bear the cost of a court reporter's attendance and transcription. Mr. Johnson replied that a court reporter could be provided if the COE agreed. He mentioned that the public hearing would also be broadcast via Channel 20.

Commissioner Farach said that the public hearing's transcript should be sworn to by a certified court reporter.

Ms. Levesque said that she would begin searching for an adequate location.

XIV. EXECUTIVE COMMENTS

Mr. Johnson thanked the COE for bearing with the scheduling of longer agendas.

XV. PUBLIC COMMENTS – None

XIV. ADJOURNMENT

At 5:54 p.m., the chair declared the meeting adjourned.

APPROVED:



Chair/Vice Chair