

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

SEPTEMBER 12, 2012

**WEDNESDAY
1:33 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

(CLERK'S NOTE: At 1:20 p.m., Judge Peter Evans led a swearing-in ceremony for the appointment of Patricia L. Archer to the Commission on Ethics.)

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Manuel Farach, Esq., Chair
Robin N. Fiore, Ph.D., Vice Chair
Patricia L. Archer
Daniel T. Galo, Esq.
Ronald E. Harbison, CPA

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
Megan C. Rogers, Esq., COE Staff Counsel

ADMINISTRATIVE STAFF:

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

III. INTRODUCTORY REMARKS

Commission on Ethics (COE) Executive Director Alan Johnson stated that a quorum was present.

IV. APPROVAL OF MINUTES FROM AUGUST 2, 2012

Commissioner Daniel Galo said that in the second to last paragraph on page 12, of the August 2, 2012, minutes, the word, decline, should be changed to the word, define.

MOTION to approve the August 2, 2012, minutes as amended. Motion by Daniel Galo, seconded by Ronald Harbison, and carried 5-0.

V. NEGOTIATED SETTLEMENT – C11-027

Mr. Johnson said that the item involved C11-027's offer of negotiated settlement from the respondent and Pro Bono Advocate Joseph Small. He recommended that Mr. Small present the negotiated settlement, and at the COE's request, the respondent, his representative, and Mr. Small could respond.

Commissioner Galo disclosed that he had a conflict, and that the appropriate form was prepared and filed with the Clerk & Comptroller's Office. He disclosed that he currently worked for a law firm that represented an insurance company that insured a homeowners' association in which Dr. Scott Swerdlin was a board member.

(CLERK'S NOTE: Commissioner Galo left the meeting.)

Mr. Small read the following negotiated settlement:

The Respondent admits to having violated Count One, *Misuse of public office*, and Count Three, *Disclosure of voting conflicts*. He will be assessed the maximum fine as to each count, which is \$500. As a term of this negotiated settlement, he will also receive a letter of reprimand, which we have gone over, and we propose to the Commission that it's acceptable to us. The Commission on Ethics will, therefore, as a term of this agreement, dismiss Count Two, which is *Corrupt misuse of official position*.

Dr. Scott Swerdlin was the chairman of the Equestrian Preserve Committee.

Mr. Small interjected that Dr. Swerdlin was no longer an Equestrian Preserve Committee member.

V. – CONTINUED

Mr. Small continued by reading that:

At the time, as an advisory board of the Village of Wellington, all members of the advisory board are appointed by the Village council, and thus are under the jurisdiction of the Palm Beach County Commission on Ethics as of June 1, 2011. This complaint against Dr. Swerdlin is based around his participation on December 14, 2011, as chairman of the Equestrian Preserve Committee in which he participated in the Equestrian Village project discussion for which Equestrian Sports Productions, which is affiliated with Mark Bellissimo, was the applicant. However, Dr. Swerdlin abstained prior to a vote on the matter.

Mr. Small interjected that he had asked for further factual basis, and that the COE could view the proposed letter of reprimand. He continued reading that:

Dr. Swerdlin and his related entities did volunteer their time at the Winter Equestrian Festival and received advertising in return that exceeded \$10,000 over a 24-month period. Procedurally, after the Commission on Ethics found probable cause, this matter was set for a final hearing in which three full days have been reserved starting in October. Ongoing discovery indicates that Dr. Swerdlin, at the time of the hearing back in December, was not trying to get a financial benefit for himself or his related business, but, rather, the project was, he believed, was in the best interest of the community. After numerous discussions with Attorney Seymour and Dr. Swerdlin, the advocate is of the opinion at this time that Dr. Swerdlin understands that knowing what he knows now, that he should not have participated in the discussion on December 14, 2011; and, further, after he abstained, he should have filed the 8B voting conflict form.

Mr. Small interjected that the 8B voting conflict form (Form 8B) should have been filed since Dr. Swerdlin did have a conflict, or that he now knew he did. He continued reading that:

Advocate, therefore, does not contest or object that the Commission on Ethics finds that these violations committed were unintentional at the time they were committed.

V. – CONTINUED

Mr. Small asked that the COE accept the negotiated settlement. He said that Dr. Swerdlin would pay an allowable, total maximum fine of \$1,000; that he had prepared and would file Form 8B after the COE accepted the settlement negotiation; and that he would also accept the letter of reprimand.

Dr. Swerdlin's counsel, Brian Seymour, Esq., said that Dr. Swerdlin was present with co-counsel, William Hyland, Esq. He added that he had seen the related documents before today, and he believed that they were acceptable.

Dr. Swerdlin stated that:

- He did not intend to violate the ordinance. On December 14, 2011, he knew that Equestrian Sports Productions and Wellington Equestrian Partners were corporate entities but not that each shared a close proximity to one another.
- Had he known this information on December 14, 2011, and from what he learned in listening to the COE members and their recommendations, he would not have participated in a meeting but would have recused himself.
- He misunderstood the ordinances, and he hoped everyone could accept the fine and move forward.

Commissioner Ronald Harbison said that he believed Dr. Swerdlin was sincere, and that the appropriate course of action was taken.

Commissioner Robin Fiore said that if the COE members agreed with the facts as set forth, then Form 8B should have been filed.

Mr. Seymour said that:

- He had discussed the decision to not file Form 8B with Mr. Small and Mr. Johnson.
- If the COE had not accepted the settlement, counsel would have continued to contest the filed documents.
- The form had been filled out on his computer, and that once an address was added, it would be printed, signed, and filed.

V. – CONTINUED

Commissioner Pat Archer commented that the settlement was in everyone's best interest, and that the COE's role was to educate others in what was considered important and necessary, and a conflict. She added that a lesson had been learned, and it was time to move forward.

MOTION to accept the negotiated settlement. Motion by Robin Fiore, seconded by Pat Archer, and carried 4-0. Daniel Galo absent.

Commissioner Fiore read the following public report and final order:

In Re: Scott Swerdlin, C11-027, Public Report and Final Order.

Complainant, Carol Coleman, filed the above referenced complaint on December 21, 2011, alleging that the Respondent, Dr. Scott Swerdlin, violated chapter 8, article XIII, section 2-443(a), (b) and (c) of the Palm Beach County Code of Ethics when, as chairman of the Village of Wellington Equestrian Preserve Committee, Respondent substantially participated in a matter that would result in a special financial benefit to the applicant, Equestrian Sports Productions, a customer or client of his outside businesses, Palm Beach Equine Medical Centers and Palm Beach Equine Clinic. In addition, upon ultimately abstaining from the vote, Respondent failed to file a State of Florida Conflict Form 8B, and submit a completed copy to the Palm Beach County Commission on Ethics as required.

Pursuant to chapter 2, article V, division 8, section 2-258(a) of the Palm Beach County Code of Ethics, the Commission on Ethics is empowered to enforce the Code of Ethics.

Pursuant to chapter 8, article XIII, section 2-443(a), *Misuse of public office of employment, an official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action in a manner in which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:*

V. – CONTINUED

- (1) himself or herself;*
- (4) an outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business; or,*
- (5) a customer or client of the official or employee's outside employer or business.*

Pursuant to chapter 8, article XIII, section 2-443(c), *Disclosure of voting conflicts, County and municipal officials, as applicable, shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict; and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida statutes, section 112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the County Commission on Ethics. Officials who abstain and disclose a voting conflict, as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).*

As identified in section 2-443(a)(5), an official is prohibited from voting or participating in a matter that will result in a special financial benefit to a customer or client of an official's outside business or employer. A customer or client is defined as any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous 24 months, having, in the aggregate, a value greater than \$10,000.

(This space intentionally left blank.)

V. – CONTINUED

On January 30, 2012, the Complaint was determined by staff to be Legally Sufficient. On March 1, 2012, in executive session, the Commission on Ethics (COE) found Probable Cause to believe a violation may have occurred and set the matter for final hearing. On September 12, 2012, the Respondent and Advocate submitted a Negotiated Settlement, including a Letter of Reprimand, to the COE for approval. Respondent stipulates to the facts and circumstances as contained in the aforementioned Letter of Reprimand.

According to the Negotiated Settlement and based on the facts as set forth in the Letter of Reprimand, Respondent admits to the allegations contained in Counts One and Three of the Complaint that he violated section 2-443(a) and (c) of the Palm Beach County Code of Ethics. Respondent agrees to accept a Letter of Reprimand and to pay a total fine of \$1,000. Count Two is Dismissed. Pursuant to the Commission on Ethics ordinance section 2-260.1, *Public hearing procedures*, the Commission finds that the violation was intentional/unintentional. As to Count One, the Commission assesses a fine of \$500; as to Count Three, the Commission assesses a fine of \$500; and the Respondent has been issued a Letter of Reprimand.

Therefore, it is:

Ordered and Adjudged that this matter is concluded upon acceptance of the Letter of Reprimand and payment of the aforementioned \$1,000 fine.

Done and Ordered by the Palm Beach County Commission on Ethics in public session on this 12th day of September, 2012.
Manuel Farach, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the public report and final order.)

Mr. Johnson said that since the original proposed public final order said, intentional, unintentional, he requested that the COE make a specific. He added that although Mr. Small and Mr. Seymour had addressed the issue, a vote was needed on how the COE viewed the violations.

V. – CONTINUED

Commissioner Fiore said that she had misread the order containing the words, intentional, unintentional.

Mr. Small reiterated that based on the facts, the ongoing discovery, and Dr. Swerdlin's belief that a conflict now existed, he recommended a COE determination that Dr. Swerdlin's actions were unintentional. Mr. Seymour said that he agreed with Mr. Small's statement.

Mr. Johnson said that in viewing the facts and circumstances, staff believed that at the time, an actual attempt was not made to obtain a financial benefit, which weighed heavily in Mr. Small's recommendation of unintentional.

Commissioner Fiore stated that she had difficulty accepting that Dr. Swerdlin's actions were unintentional. She added that:

- She understood that Dr. Swerdlin's actions were an attempt to get a special financial benefit; however, the second issue was failing to file Form 8B.
- Many COE conversations occurred regarding Dr. Swerdlin being repeatedly advised by Village of Wellington attorney, Jeffrey Kurtz, Esq., not to participate or vote on the matter.
- Although Dr. Swerdlin disagreed with Mr. Kurtz, she did not conclude that the violation was unintentional but that it was erroneously intentional.
- She needed further clarification on what unintentional meant since it was difficult to determine intent.

Mr. Johnson said that:

- It was difficult to ascertain the defined meaning of intentional and unintentional.
- Philosophically, intentional meant that a person acted and intended his or her actions.
- Legally, the best meaning for unintentional came from illustrations.

V. – CONTINUED

- An example was if someone did not believe that he or she had violated a code at the time, and the facts and circumstances supported that reasonable person's belief.
- No bright line existed regarding the meaning of unintentional.
- Legal intent, which could be defined as individuals who proceeded anyway knowing that they or their outside employers would financially benefit, should be applied in the COE's determination.

Commissioner Farach said that in this circumstance, he viewed the term, intentional, at almost the criminal requirement level of a mens rea.

Mr. Johnson responded that the threshold would not be that high, although it was moving towards that level. He added that no one could know someone's intent except by the issue's facts and circumstances.

Commissioner Fiore said that under the facts and circumstances, training was provided and received by Dr. Swerdlin, and Mr. Kurtz had advised him.

Mr. Seymour said that:

- Dr. Swerdlin had received training and had reviewed its materials, but he did not understand the distinction between the two corporate entities until now.
- Dr. Swerdlin's and Mr. Kurtz' issues were more complicated partly due to the attorney/client relationship.
 - A disputed fact existed as to what Mr. Kurtz did or did not say to Dr. Swerdlin before the meeting.
 - Everyone agreed that at the beginning of the meeting, Mr. Kurtz had informed Dr. Swerdlin that if he had a conflict, he should recuse himself. Not understanding the issues, Dr. Swerdlin did not believe that a conflict existed.

V. – CONTINUED

- Additional discussion occurred after the public hearing, and Mr. Kurtz told Dr. Swerdlin that he could not tell him whether he had a conflict. At that point, Dr. Swerdlin recused him, although he did not completely understand the conflict.
- The public hearing minutes indicated that Dr. Swerdlin had participated in the process.

Commissioner Fiore said that she understood that Dr. Swerdlin had been advised not to participate in the public hearing. Mr. Seymour responded that no substantiated facts existed.

Commissioner Archer said that due to Mr. Seymour's previous statements, she believed that Dr. Swerdlin's actions were an inadvertent oversight.

MOTION to accept a finding that the violation was unintentional. Motion by Ronald Harbison, seconded by Pat Archer, and carried 3-1. Robin Fiore opposed, and Daniel Galo absent.

Mr. Seymour asked that Commissioner Fiore's reading of the word, intentional, be retroactively changed to state, unintentional.

Commissioner Farach clarified that the final order signed and issued by the COE would state, unintentional.

Mr. Johnson said that although a vote was unnecessary, the proposed letter of reprimand should be accepted and published.

Commissioner Fiore read the following letter of reprimand:

September 12, 2012. Letter to Dr. Scott Swerdlin, 13125 Southfields Road, Wellington, Florida 33414. Re: Complaint No. C11-027, Letter of Reprimand.

(This space intentionally left blank.)

V. – CONTINUED

Dear Dr. Swerdlin:

When the Commission on Ethics met in executive session on March 1, 2012, it found that probable cause existed to believe that you may have violated the Palm Beach County Code of Ethics, specifically section 2-443(a), (b), and (c). On September 12, 2012, you admitted to violating section 2-443(a) of the Palm Beach County Code of Ethics entitled, "Misuse of public office of employment" and section 2-443(c) of the Palm Beach County Code of Ethics entitled, "Disclosure of voting conflicts." The settlement agreement in this case provides for you to accept this public reprimand.

Chapter 8, article XIII, section 2-443(a), *Misuse of public office of employment. An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action in a manner which he or she knows, or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:*

- (1) himself or herself;*
- (4) an outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business; or*
- (5) a customer or client of the official or employee's outside employer or business.*

Chapter 8, article XIII, section 2-443(c), *Disclosure of voting conflicts. County and municipal officials, as applicable, shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict, and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida statutes, section 112.3143.*

V. – CONTINUED

Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the County Commission on Ethics. Officials who abstain and disclose a voting conflict, as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

The facts are as follows:

You were the Chairman of the Equestrian Preserve Committee (the Committee), an advisory board of the Village of Wellington. On December 14, 2011, the Committee met to discuss and vote on planning and zoning amendments for the proposed Equestrian Village Project (the Project). A Project applicant was Equestrian Sports Productions (ESP), and the Project was presented at the hearing by Mr. Mark Bellissimo on behalf of Wellington Equestrian Partners (WEP). Mr. Bellissimo is the Managing Member of WEP and Chief Executive Officer of ESP. ESP is a wholly owned subsidiary of WEP. ESP produces the 12-week Winter Equestrian Festival (the Festival) as well as other equestrian events. You are the manager/owner and registered agent of Palm Beach Equine Medical Centers and Palm Beach Equine Clinic. Palm Beach Equine Medical Centers and/or Palm Beach Equine Clinic have been the official veterinarians for ESP events since 2009. As the official veterinarians, your staff is on site at the Festival 5 days per week for 12 weeks, on an average of 10 hours per day for the Festival, as well as similarly serving during the summer and early fall for other ESP programming. In addition, your businesses provided ESP with equine ambulance services during these events. For these services, you receive advertising at ESP events at no charge. The value of the services you provided to ESP exceeded \$10,000 for the 24 months preceding the December 2011 meeting making ESP a “customer or client” of your outside business.

V. – CONTINUED

Because of the closely knit relationship between ESP and WEP - that ESP is a wholly owned subsidiary of WEP, and that Mr. Bellissimo ran and publically advertised both companies in such a manner as to make them effectively interchangeable in terms of identity and purpose - WEP also meets the definition of your “customer or client” creating a conflict of interest. The Palm Beach County Code of Ethics prohibits you from voting or participating in a matter that would result in a special financial benefit for you, your outside business or a “customer or client” of your outside business.

Prior to and during the Committee meeting on December 14, 2011, you had been advised by Village of Wellington Attorney Jeffrey Kurtz that you had a potential conflict of interest: You received a copy of the State Conflict of Interest Form 8B as well as a copy of the relevant sections of the Palm Beach County Code of Ethics on December 13, 2011. At the start of the meeting, Mr. Kurtz advised all members that if anyone had a conflict of interest in the Project, they were required to abstain and not participate in the discussion prior to the vote. Notwithstanding your conflict of interest, you did not at that time abstain. You presided over the public hearing during the presentation by Mr. Bellissimo, his agents, and members of the public. After the close of testimony, you were advised of the conflict, and after being advised that a vote was required, then stepped down and did not further participate or vote. You knew or should have known that WEP, and by extension ESP, would receive a special financial benefit and never have participated in the meeting. Subsequently, you have failed to file a State Conflict of Interest Form 8B with the Palm Beach County Commission on Ethics as required under the Palm Beach County Code of Ethics.

Your actions constituted two violations of the Palm Beach County Code of Ethics.

The Commission on Ethics is of the strong belief that all public employees and officials are responsible for making sure their actions fully comply with the law and are beyond reproach. As a public official, you are an agent of the people and hold your position for the benefit of the public. The people’s confidence in their government is eroded when they perceive that official actions may be based upon private goals rather than the public welfare.

V. – CONTINUED

Violations of the Palm Beach County Code of Ethics contribute to the erosion of public confidence and confirm the opinion of those who believe the worst about public officials.

You are hereby admonished and urged to consider the letter and spirit of the Palm Beach County Code of Ethics and apply them in all future actions as a member of any public body to which you may be a part.

Sincerely, Manuel Farach, Chairman, Palm Beach County Commission on Ethics.

(CLERK'S NOTE: The clerk added the language as printed in the letter of reprimand.)

(CLERK'S NOTE: The following verbiage read by Commissioner Fiore was not contained in the letter of reprimand.)

Therefore, it is:

Ordered and Adjudged that this matter is concluded upon acceptance of the Letter of Reprimand and payment of the aforementioned \$1,000 fine.

Done and Ordered by the Palm Beach Commission on Ethics in public session on this 12th day of September 2012.

RECESS

At 2:17 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 5:47 p.m., the meeting reconvened. At the chair's request for a roll call, Commissioners Pat Archer, Robin Fiore, Daniel Galo, and Ronald Harbison were present.

Commissioner Fiore said that the agenda was being revised to read other orders later in the meeting.

Mr. Johnson suggested taking up the consent agenda, and he would review the proposed advisory opinion letters for possible postponement to the October meeting.

Commissioner Fiore said that item IX.e. contained public comment and would be presented after the consent agenda.

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

VI. Pages 22-25

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VII.a. Request for Opinion (RQO) 12-060

MOTION to approve the consent agenda. Motion by Ronald Harbison, seconded by Pat Archer, and carried 5-0.

VIII. ITEMS PULLED FROM CONSENT AGENDA – None

IX. PROPOSED ADVISORY OPINIONS

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

IX.e. RQO 12-063

Staff Counsel, Megan Rogers, Esq., said that:

- A Town of Palm Beach (Town) attorney had asked whether an employee of a corporation that owned property within a study-area district could serve on an advisory board that was created to review potential development proposals for that district; and if so, whether the employee could participate and vote on recommendations submitted to the Town.
- Fifteen property owners could be affected by changes in the Town's study-area legend. The changes could significantly impact property values; however, it was unknown whether the advisory board was recommending them.

IX.e. – CONTINUED

- Staff had evaluated how many people could gain from the advisory board's decision. Based on the State's Code of Ethics (Code), the COE had previously opined that more than 100 people lessened the likelihood of a violation occurrence.
- In reviewing whether a person's gain was remote and speculative, staff had recommended that under the County's Code, a conflict would exist if contingencies resulted in a potential, immediate benefit.
- A potential, financial benefit could result from the advisory board's vote on a recommended property change. Since publishing RQO 12-063, additional information narrowing the issue was submitted by an advisory board member.
- Staff's recommendation was to follow a best-practices track that said a possible, potential contingency could be seen that stemmed directly from the advisory board member's vote; therefore, he should resign and not participate.
- No property owners were appointed to the advisory board.

Commissioner Archer commented that an advisory board member's recommendation may or may not be accepted and voted on. She expressed her concern that the COE would be denying a class of people its right to participate in discussions leading to a final decision.

Ms. Rogers said that:

- A recent Supreme Court opinion considered that a vote was the public's right, and that it was not protected by free-speech requirements.
- The County Code's language led staff to opine that participation was similar to a vote.
- A member of the Town council or the advisory board could resign at any time and contribute to discussions regarding the issue.

Commissioner Archer commented that persuading people to serve on approximately 20 municipal advisory boards would be difficult since they would be prevented from upholding their own rights.

IX.e. – CONTINUED

Ms. Rogers stated that RQO 12-063 differed from previous precedent on similar situations since staff also considered the State COE's recent opinion regarding the remote and speculative nature of advisory board votes.

(CLERK'S NOTE: Commissioner Farach allowed comment by Michael Pucillo, Town council member and chair of the Royal Poinciana Way Study Committee RPWSC.)

Mr. Pucillo said that the facts surrounding the issue were somewhat different than those previously considered by the COE. He explained how the RPWSC was formed, and that the citizen members represented a cross section of the community. He stated that the property owner's proposal was not the best approach or in the Town's best interest.

Mr. Pucillo said that after analyzing the Town's code, he suggested a Planned Urban Development (PUD) concept.

Commissioner Fiore requested that Mr. Pucillo focus on the extent to which someone should serve on this type of committee when an opportunity existed to benefit his or her employer or customer.

Mr. Pucillo said that it was important to explain that the corporation's employee did not seek an RPWSC appointment, and that it was highly speculative that the corporation would benefit from the property transaction.

Commissioner Fiore stated that a problem could exist if people served on countywide advisory boards to protect their interests.

Mr. Johnson said that a Town council waiver could not be passed for the RPWSC appointee; however, he could serve as a participatory, non-voting member.

Ms. Rogers clarified that by County Code, a board created by a local municipal governing body for advisory purposes was defined as an advisory board.

Mr. Johnson stated that the issue began as an unfiled complaint, and that staff's goal was to prevent complaints by bringing them before the COE as advisory opinions.

IX.e. – CONTINUED

MOTION to approve proposed advisory opinion letter RQO 12-063. Motion by Daniel Galo, seconded by Robin Fiore, and carried 4-1. Pat Archer opposed.

(CLERK'S NOTE: Item IX.a. was presented at this time.)`

IX.a. RQO 12-058

Mr. Johnson stated that:

- A member of a city's historical preservation advisory board asked whether she could participate and vote in a matter to which she objected involving proposed construction located in a vacant lot adjacent to her home.
- If she was required to abstain from voting, the member asked whether she may attend and participate as an individual homeowner.
- The member resided within the historical district and owned a contributing historical property.
- The construction project required the quasi-judicial preservation board's approval of a certificate of construction appropriateness.
- Staff had submitted that:
 - An economic benefit or loss existed that was not so remote and speculative in nature as to remove the special financial benefit.
 - Under the County's Code, not only could someone not vote, he or she could not participate.
 - A Supreme Court decision had determined that individuals spoke on behalf of constituents when serving on boards or in official positions; therefore, personal, free speech no longer existed.
- The issues contained a nuance that prevented the item from being placed on the Consent Agenda.

IX.a. – CONTINUED

Commissioner Farach said that he agreed with the Supreme Court's decision, and with staff's decision not to place the item on the Consent Agenda.

MOTION to approve the proposed advisory opinion letter RQO 12-058. Motion by Ronald Harbison, and seconded by Pat Archer.

Commissioner Archer commented that the member's spouse could voice his personal opinion.

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

IX.b. RQO 12-059

Mr. Johnson stated that:

- The issues involved the same board and same individuals as RQO 12-058.
- The member asked whether she could hire out as a personal consultant to the persons submitting plans for board review.
- Staff recommended that:
 - She could not solicit that she was on the board. If she had a customer or client, she could not participate or vote on an individual issue.
 - Hiring herself out as a consultant and knowing that a future conflict may exist was not violative of the County's Code but possibly of State law if it was recurring.
- Staff agreed with the City of Lake Worth's attorney that no conflict existed since the board member/consultant would be absent during board discussions and would not be voting on the matter.

MOTION to approve proposed advisory opinion letter RQO 12-059. Motion by Daniel Galo, seconded by Robin Fiore, and carried 5-0.

MOTION TO POSTPONE

Ms. Rogers and Mr. Johnson suggested that items IX.c. and IX.f. be postponed until the next meeting.

MOTION to postpone items IX.c and IX.f. until the next meeting. Motion by Robin Fiore, seconded by Daniel Galo, and carried 5-0.

IX.c. RQO 12-061 – Not Discussed

IX.d. RQO 12-062 (attached requested submission)

Ms. Rogers stated that:

- A City of Boca Raton (Boca Raton) attorney asked whether the County's Code prohibited employees and officials from soliciting sponsorships from persons or entities who did not sell, lease, or lobby Boca Raton where the sponsorship may personally benefit a Boca Raton official or employee.
- The attorney had also asked that if such action was prohibited, whether Boca Raton could solicit non-vendor sponsorships, provided that it adopt a resolution at a public meeting declaring that a Very Important Person (VIP) reception attended by Boca Raton officials and employees served a public purpose.
- Staff submitted that:
 - The County's Code did not prohibit officials and employees from soliciting or accepting gifts from non-vendor local businesses provided the gifts were not solicited or accepted as a quid pro quo or in exchange for an official action taken or a legal duty performed.
 - Gifts provided by nonvendors and nonlobbyists to State-reporting individuals must be reported pursuant to all standards and requirements imposed under State law regarding gift reporting.
 - Pursuant to the County's Code, other officials and employees who may be local reporting officials were required to report gifts over \$100 unless one of several exceptions applied.
- The situation involved a nonvendor providing Boca Raton with two separate gifts: \$12,000 cash, and a VIP tent.

IX.d. – CONTINUED

- The VIP tent was solicited by Boca Raton’s event organizer to benefit those attending. The nonvendor would retain total control of the tent.
- As currently written, the County’s Code stated that a nonvendor can give an elected official anything.
- Boca Raton’s attorney had referenced a previous City of West Palm Beach advisory opinion, which contained a different factual scenario regarding the tent issue.
 - Boca Raton believed that the solicited distributors of donated beer or food were classified as donors.
 - Staff clarified in RQO 12-062 that city-solicited donations from the public or businesses, did not create a vendor relationship.

Commissioner Fiore stated that complaints could still be made regarding what occurred in the VIP tent, and that the COE would need to review those facts and circumstances.

MOTION to approve proposed opinion letter RQO 12-062. Motion by Daniel Galo, seconded by Pat Archer, and carried 5-0.

IX.e. Pages 15-18

IX.f. **RQO 12-064** – Not Discussed

Mr. Johnson requested that the public orders be read. He said that letters of instruction were similar to advisory opinion letters, and that reading them was unnecessary since they would be published online.

(CLERK’S NOTE: Commissioner Harbison left the meeting, and item VI. was presented at this time.)

VI. EXECUTIVE SESSIONS

VI.a. C12-006

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

Complainant, Michael H. Nelson, filed the above-referenced Complaint on July 24, 2012, alleging a possible ethics violation involving Respondent, John J. Greene, Councilman for the Village of Wellington. The Complaint alleges Respondent fraudulently obtained a parking decal from Palm Beach Polo and Country Club (Polo) and after affixing the access decal did, on multiple occasions, visit a resident in Polo numerous times who had partially financed Respondent's bid for elected office and had land-use issues scheduled to come before the Village Council in the future. Further, Complainant alleges that the access decal has significant value and was obtained in violation of the Palm Beach County Code of Ethics (the Code) gift law sections.

On August 16, 2012, after reviewing the Complaint, supporting affidavit, and memorandum of inquiry, as well as RQO 12-045, an advisory opinion previously requested by the Respondent, the Complaint was determined by staff to be Legally Insufficient, and presented to the Commission on Ethics on September 12, 2012, with a recommendation of dismissal as Legally Insufficient.

The Commission on Ethics reviewed the Complaint, RQO 12-045, and memorandum of inquiry and determined that there is no allegation by Complainant, or information known or uncovered by staff inquiry to indicate that Respondent acted in his official position in violation of the Code of Ethics. Therefore, the Commission has determined that the actions taken by the Respondent, John J. Greene, do not constitute a violation of the Code of Ethics, and dismissed the Complaint on September 12, 2012, due to No Legal Sufficiency.

Therefore, it is:

Ordered and Adjudged that the Complaint against Respondent, John J. Greene, is hereby Dismissed.

VI.a. – CONTINUED

Done and Ordered by the Palm Beach County Commission on Ethics in public session on September 12, 2012. Manuel Farach, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the public report and final order of dismissal.)

VI.b. C12-004

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

Complainant, Derrick McCray, filed the above-referenced Complaint on May 31, 2012, alleging a possible ethics violation involving Respondent Addie Greene, Mangonia Park Councilwoman. The Complaint alleges that Councilwoman Greene misused her position and authority, in part, by using her official position to obtain waivers of municipal water utility late fees.

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 Palm Beach County Code of Ethics. An official may not use her official position in a manner which she knows or should know with the exercise of reasonable care will result in a special financial benefit to her, not shared with similarly situated members of the general public.

On July 20, 2012, the Complaint was determined by staff to be Legally Sufficient. The Memorandum of Probable Cause and Memoranda of Inquiry and Investigation, adopted by reference, were presented to the Commission on Ethics on September 12, 2012. At that time, the Commission conducted a hearing. The Commission reviewed and considered the Memoranda of Inquiry, Investigation and Probable Cause, recommendation of staff, oral statements of the Respondent and Advocate. The Commission also reviewed article V, section 2-260.3 of the Commission on Ethics ordinance. At the conclusion of the hearing, the Commission on Ethics dismissed the case with a Letter of Instruction because the alleged violation was inadvertent, unintentional, or insubstantial.

VI.b. – CONTINUED

Therefore, it is:

Ordered and Adjudged that the Complaint against Respondent, Addie Greene, is hereby Dismissed, and a Letter of Instruction is to be issued in this case.

Done and Ordered by the Palm Beach County Commission on Ethics in public session on September 12, 2012. Manuel Farach, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the public report and final order of dismissal.)

VI.c. C12-007

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

Complainant, Alan S. Johnson, Executive Director of the Commission on Ethics, filed the above referenced Complaint on August 16, 2012, alleging a possible ethics violation involving Respondent, Rafael Abadia, Chairman of the Palm Beach County CARE Council. The Complaint alleges that Chairman Abadia misused his position and authority by participating and voting on an issue regarding the allocation of grant funds to a specific Peer Mentoring program for which he intended to apply for employment, as well as participating in the health care provider bid selection process which resulted in a portion of these funds being allocated to his subsequent employer.

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 Palm Beach County Code of Ethics. An official may not use his official position in a manner which he knows or should know with the exercise of reasonable care will result in a special financial benefit to him, not shared with similarly situated members of the general public.

VI.c. – CONTINUED

On August 16, 2012, the Complaint was determined by staff to be Legally Sufficient. The Memorandum of Probable Cause and Memorandum of Inquiry, adopted by reference, were presented to the Commission on Ethics on September 12, 2012, with a recommendation that although there is No Probable Cause to believe there was a code of ethics violation, the facts and circumstances warrant a Dismissal with a Letter of Instruction to the Respondent. At that time, the Commission conducted a hearing. The Commission reviewed and considered the Memorandum of Inquiry and Probable Cause, recommendation of staff, as well as oral statements of the Respondent and Advocate. The Commission also reviewed article V, section 2-260.3 of the Commission on Ethics Ordinance. At the conclusion of the hearing, the Commission on Ethics determined that there was No Probable Cause to believe that a violation had occurred; however, a Letter of Instruction would be appropriate under the circumstances presented.

Based on the facts and circumstances surrounding the alleged violation, the Commission finds that the alleged violation was inadvertent and unintentional, and that the public interest would not be served by proceeding further.

Therefore, it is:

Ordered and Adjudged that No Probable Cause exists, and the Complaint against Respondent, Rafael Abadia, is hereby Dismissed, and a Letter of Instruction is to be issued in this case.

Done and Ordered by the Palm Beach County Commission on Ethics in public session on September 12, 2012. Manuel Farach, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the public report and final order of dismissal.)

X. EXECUTIVE DIRECTOR COMMENTS

X.a.

DISCUSSED: Thanks and Appreciation.

Mr. Johnson thanked everyone for participating in the long meeting and for the COE's wise decisions.

XI. COMMISSION COMMENTS

XI.a.

DISCUSSED: COE Meeting An Interesting Experience.

Commissioner Archer commented that the meeting was an interesting experience, and that she looked forward to many more.

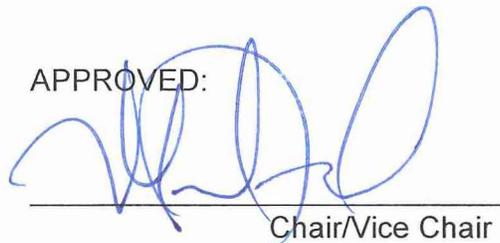
XII. PUBLIC COMMENTS – None

XIII. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Daniel Galo, seconded by Pat Archer, and carried 4-0. Ronald Harbison absent.

At 7:10 p.m., the chair declared the meeting adjourned.

APPROVED:



Chair/Vice Chair