

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

OCTOBER 4, 2012

**WEDNESDAY
1:33 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
Patricia L. Archer
Daniel T. Galo, Esq.
Ronald E. Harbison, CPA – Absent

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:

Minutes Clerk Dominique Marseille, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Commission on Ethics (COE) Executive Director, Alan Johnson, Esq., stated that a quorum existed.

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

Mr. Johnson stated that the minutes from the September 12, 2012, COE meeting would be available for approval at the November 2012, meeting.

RECESS

At 1:35 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 3:37 p.m., the meeting reconvened with Commissioners Archer, Galo, Farach, and Fiore present.

IV. EXECUTIVE SESSION

IV. EXECUTIVE SESSION – CONTINUED

IV.a. C12-008

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

Complainant, Lisa Dowd, filed a Complaint on August 25, 2012, alleging a possible ethics violation involving Respondents, Al Berg, Lula Butler, and Douglas Smith, City of Delray Beach employees.

The complaint alleges respondents corruptly misused their official positions by improperly processing a City code enforcement complaint against Complainant, based upon an unspecified relationship with the Complainant's neighbor.

On September 28, 2012, after reviewing the Complaint, supporting affidavit and memorandum of inquiry, the complaint was determined by staff to be legally insufficient, and presented to the Commission on Ethics on October 4, 2012, with a recommendation of dismissal as legally insufficient.

IV. – CONTINUED

IV.a. – CONTINUED

The Commission on Ethics reviewed the complaint and memorandum of inquiry, along with a letter submitted by complainant dated October 1, 2012, and determined that there is no personal knowledge to support the allegation by Complainant, or information known or uncovered by staff inquiry to indicate that respondents acted in their official position in violation of the Code of Ethics.

Therefore, the Commission has determined that the allegations made by Complainant are not based upon personal knowledge and that the official actions taken by the respondents, Al Berg, Lula Butler, and Douglas Smith, do not constitute a violation of the Code of Ethics and dismissed the complaint on October 4, 2012, due to no legal sufficiency.

Therefore it is:

Ordered and Adjudged that the complaint against respondents Al Berg, Lula Butler, and Douglas Smith, is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on October 4, 2012. Signed: Manuel Farach, chair.

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

IV.b. C12-009 – Not discussed

IV.c. C12-010

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

Complainant, William McCray, filed a complaint on September 5, 2012, alleging a possible ethics violation involving Respondent, Edward Mitchell, West Palm Beach City Administrator.

IV. – CONTINUED

IV.c. – CONTINUED

The Complaint alleges Respondent corruptly misused his official position by sending an unsworn complaint to Complainant's employer, Palm Beach County Sheriff's Office (PBSO), using official city letter head and his official title.

On September 25, 2012, after reviewing the Complaint supporting affidavit and memorandum of inquiry the complaint was determined by staff to be legally insufficient, and presented to the Commission on Ethics on October 4, 2012, with the recommendation of dismissal as legal insufficient.

The Commission on Ethics reviewed the Complaint 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 Edward Mitchell do not constitute a violation of the Code of Ethics and dismiss the complaint on October 4, 2012, due to no legal sufficiency.

Therefore, it is:

Ordered and Adjudged that the Complaint against Respondent, Edward Mitchell, is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on October 4, 2012. Signed: Manuel Farach, chair.

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

V. PROPOSED ADVISORY OPINIONS

V.a. Request for Opinion (RQO) 12-061

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

- A County employee asked whether County Water Utilities Department (WUD) staff could receive training from a nonprofit organization, the Florida Water and Pollution Control Operator's Association (FWPCOA), when two WUD superintendents served on the FWPCOA board of directors.
- The FWPCOA was one of several organizations that provided State-required training to WUD staff.
- Staff had submitted that:
 - Since, WUD supervisors served as board members of a nonprofit organization, they were prohibited from using their official employment to benefit that organization.
 - The WUD superintendents could resign from the board and continue to organize FWPCOA training for staff, or they could continue to serve on the FWPCOA board and not oversee or approve training in their government capacity.

MOTION to approve proposed advisory opinion letter RQO 12-061. Motion by Robin Fiore, seconded by Patricia Archer, and carried 4-0. Ronald Harbison absent.

V.b. RQO 12-064

Mr. Johnson said that:

- Board of County Commissioner (BCC) Paulette Burdick had a personal policy not to accept gifts. She had asked whether she could accept and send gifts to either a charitable organization, or a County governmental department.

V. – CONTINUED

V.b. – CONTINUED

- Staff recommended that:
 - Transferring a gift to another entity did not alter the fact that a gift had been received.
 - If the gift was from a vendor, lobbyist, or a principal of a lobbyist, who lobbied, sold, or leased to the County, and the value exceeded \$100 annually in the aggregate, she would be prohibited from accepting that gift even if the acceptance was to transfer it to a charity.
 - The Commission on Ethics (board) had determined previously that a gift from any source that was given to a BCC member on behalf of the County and used solely for a public purpose was a specific exemption and not considered a gift under the County's Code of Ethics.
 - She could pass anything to a charitable organization as long as there was no quid pro quo, which would be a misuse of office but not violative of the gift law.
 - If she passed a gift to a charitable organization, she needed to maintain and submit transparency according to the code's provisions in section 2-444(h). It should be noted that section 2-444(h) only referred to solicitation of gifts and not to acceptance.
 - No gift could be solicited or accepted as a quid pro quo for official actions, special consideration, or an exchange for the past, present, or future performance of an official act or legal duty.

Commissioner Fiore commented that the process of giving gifts to charities should not be under the purview of a particular commissioner, but, rather, voted on or distributed according to a proposed or existing policy. She added that an individual commissioner's charity choice was not the right procedure if the gift was intended for a public purpose.

V. – CONTINUED

V.b. – CONTINUED

Mr. Johnson said that:

- The public-purpose intention only applied to gifts that were transferred or donated to the County itself.
- The Ethics Ordinance Drafting Committee added an exception that an individual could solicit gifts for charitable organizations as long as it was transparent, logged, and not accepted from someone with a pending bid proposal.
- Gifts presented to Commissioner Burdick as personal gifts and not to the County itself could be used by a County department.
- A distinction existed how a gift could be presented to a commissioner. Staff saw no functional difference in the permitted actions of an elected official actively soliciting vendors and lobbyists for a charity, versus an official receiving a gift and giving it away to charity but keeping a transaction log as if it was a solicitation.
- Any gift given to an elected official through solicitation or gratuitously had to be logged transparently and submitted to the COE for online publication.

MOTION to approve the proposed advisory opinion letter RQO 12-064. Motion by Patricia Archer, seconded by Daniel Galo, and carried 4-0. Ronald Harbison absent.

V.c. RQO 12-065

Ms. Rogers stated that:

- Village of Wellington (Wellington) Councilman John Greene asked whether he was permitted to accept a gift from a long-time personal friend and Wellington resident, Neil Hirsch.

V. – CONTINUED

V.c. – CONTINUED

- At the time Mr. Greene requested an opinion, Mr. Hirsch was serving on a civic organization board that may or may not have been considered the employer of a lobbyist. The board did not need to reach that determination since Mr. Hirsch resigned prior to giving Councilman Greene the gift of a stay at his home.
- The board advised Councilman Greene that he was not prohibited from accepting the gift so long as Mr. Hirsch was not a principal or an employer of a lobbyist.
- Councilman Greene moved into Mr. Hirsch's guest house on June 9, 2012, and moved out August 15, 2012. He had prepared his State gift reporting form reflecting a \$44 per night rate for staying at Mr. Hirsch's home.
- Mr. Hirsch had two matters that came before the Wellington council during Councilman Greene's stay. The matters dealt with the equestrian preserve project, and Mr. Hirsch's Black Watch Farms home, where a portion of his property was the subject of ongoing litigation over a potential Wellington council reconsideration of a previously approved site plan and development permit.
- Mr. Greene asked Wellington's attorney, Jeffrey Kurtz, for clarification whether an ongoing conflict of interest existed based on the past gift that he had received from Mr. Hirsch.
- Staff recommended that:
 - Unless an official used his or her office to corruptly secure a special benefit for another, no prohibition existed against voting or participating in matters involving a personal friend where no financial, fiduciary, or familial relationship was between the parties as prohibited in section 2-443(a), sections 1-7.

V. – CONTINUED

V.c. – CONTINUED

- During Councilman Greene's temporary stay at Mr. Hirsch's home, whether or not the elected official and resident may have been considered members of the same household, the elected official did not vote or participate on any matter involving that resident.
- No issue existed involving residents, so no conflict of interest under the financial misuse section of the Code existed.

MOTION to approve proposed advisory opinion letter RQO 12-065. Motion by Patricia Archer, seconded by Robin Fiore, and carried 4-0. Ronald Harbison absent.

V.d. RQO 12-067

Ms. Rogers said that:

- The issue dealt with lobbyist expenditure reports which were due on November 1, 2012.
- A registered lobbyist requested clarification whether calculation and disclosure of expenses in his/her annual lobbyist expenditure report related to personal travel to and from meetings where lobbying occurred should be done.
- Staff submitted that:
 - Personal travel by a lobbyist to and from a meeting with County and municipal officials or employees were not reportable expenditures requiring disclosure on the expenditure report provided that the lobbyist was not offering travel to an employee, official, or others for lobbying purposes.
 - The lobbyist registration ordinance said that specific exclusions from the definition of expenditure and reporting requirements were a lobbyist or principal's salary, office overhead expenses, and personal expenses for lodging, meals, and travel.

V. – CONTINUED

V.d. – CONTINUED

- A lobbyist's personal travel from one place to another, no matter how it was accomplished, without performing lobbying activities or providing services to an official or employer, would not be considered an expenditure for reporting requirement purposes.

MOTION to approve proposed advisory opinion letter RQO 12-067. Motion by Robin Fiore, seconded by Daniel Galo, and carried 4-0. Ronald Harbison absent.

V.e. RQO 12-068

Mr. Johnson stated that since additional issues could arise regarding RQO 12-068, staff added subsection C, disclosure of voting conflicts, to the analysis. He said that potential code violations could include misuse, corrupt misuse, or a voting conflict.

Ms. Rogers said that:

- An elected official asked whether she was prohibited from participating in a homeowner's association effort to clean up a lake adjacent to her residential development.
- Town of Mangonia Park (town) Commissioner Addie Greene owned a lakeside property located within the Tiffany Lake Homeowner's Association.
- Based on the property appraiser's records, the lake was owned by businesses located on its opposite side.
- The lake had fallen into disrepair. Before the matter came to Commissioner Greene's attention, the lake's owners attempted to transfer ownership to the town. It was declined.
- Although business owners cleaned up their portion of the property.
- Commissioner Greene was solicited to assist other residents in cleaning up the particular property, and she inquired how she could appropriately assist with the cleanup.

V. – CONTINUED

V.e. – CONTINUED

- Staff submitted that:
 - Due to Commissioner Greene's property being one of 36 lakeside homes, she was prohibited from using her official position directly or indirectly to give herself a special financial benefit.
 - Commissioner Greene was not prohibited from personally taking action and/or assisting her neighbors and other community members in her personal capacity in a manner consistent with that of other members of the public.
 - Commissioner Greene could go to the town's code enforcement similar to other town residents to complain that maintaining standards that were set by the town were not kept. She could not go in her official capacity and send a code enforcement officer over to find the property owners.
 - The situation would be a special financial benefit to Commissioner Greene. If she used her official position to clean up the lake for her own benefit, it would be helping to increase her property values.
 - She was prohibited from voting or participating in any matter that came before the city council dealing with the lake property cleanup.
- Commissioner Greene began to form a committee of citizens to go forward in the cleanup of the lake, and indicated that speaking with code enforcement would be one of the mechanisms that the committee would pursue.
- Commissioner Greene could vote within the committee as long as she did not do it using her official capacity as a Commissioner.
- The committee that Commissioner Greene would represent could be categorized as a civic organization.

V. – CONTINUED

V.e. – CONTINUED

- If Commissioner Greene were to represent the committee in front of the town board in her official capacity, she would be in violation of a misuse of office.

Commissioner Archer expressed concern about the proposed advisory opinion letter not being clear on what Commissioner Greene was unable to do.

Ms. Rogers said that she could edit the proposed advisory letter to clarify what type of committee on which Commissioner Greene was able to serve.

At Commissioner Fiore's suggestion to remove all but the footnotes, Ms. Rogers said that the accompanying footnote could be replaced with the words, See also with footnote 4.

Ms. Rogers stated that:

- Certain rights were lost and kept as an elected official.
- One of the rights that were not lost was one's property rights as a homeowner or resident of a town.
- Commissioner Greene walked a thin line in preventing or obtaining a code violation concerning the matter.

Mr. Johnson said that a person's use of his/her office versus his/her personal capacity should be separated. He said that Commissioner Greene could not speak about the lake issue in front of the council she served or as a private citizen in front of that council.

Commissioner Farach inquired how Commissioner Greene, the official, could separate herself from Addie Greene, the individual, when going to code enforcement, since the code enforcement officer technically worked for Commissioner Greene.

Commissioner Fiore commented that Commissioner Greene could go to code enforcement by following the normal procedures, and not receive a priority for her request.

V. – CONTINUED

V.e. – CONTINUED

Ms. Rogers stated that the proposed letter's language was updated to include a nonprofit or civic organization, and the suggested prohibitions by Commissioner Archer.

MOTION to approve proposed advisory opinion letter RQO 12-061 as amended to include the changes as discussed. Motion by Daniel Galo, and seconded by Patricia Archer.

Commissioner Farach requested that the words, may violate, be changed to, will violate, in the last sentence of the paragraph that began, Under the facts.

Commissioner Galo said that the board would be saying that "something" in the future, would be a violation, when the future had not yet occurred; however, he would amend the motion.

AMENDED MOTION to change the words "may violate," to "will violate." The maker and seconder agreed and the motion carried 4-0. Ronald Harbison absent.

VI. REVISIONS TO RULES OF PROCEDURE

VI.a. Section 2.9 – Publication of Advisory Opinions

Mr. Johnson stated that:

- Although the item was previously before the board, a decision had not been reached.
- No practical application existed in Palm Beach County regarding the particular code; therefore, staff had reviewed sources in May and June 2012.
- In section 2-260.9, a general statement was promulgated establishing jurisdiction to interpret the Code through advisory opinions and specific procedures.

VI. – CONTINUED

VI.a. – CONTINUED

- A review of section 2.9 revealed a redaction protocol that was inconsistent with the County's current process and use.
- Staff requested that:
 - A review of the protocol and an amendment to the rules be made.
 - The 2.9 publication of advisory opinions be amended to include the first line that currently existed, and that each advisory opinion issued by the board be numbered, dated, and published.

MOTION to approve staff's proposed changes to the Rules of Procedure for rule 2.9. Motion by Robin Fiore, seconded by Patricia Archer, and carried 4-0. Ronald Harbison absent.

VI.b. **Section 4.2 – Dismissals: No Legal Sufficiency**

Mr. Johnson requested that the item be tabled until November 2012 so that he could review staff's recommendation on legal sufficiency.

Commissioner Fiore said that if the board found a complaint to be legally insufficient, it did not mean that it could not be submitted but that it did not meet Code requirements. She suggested that the board not be dismissive of the complaints that turned out to be legally insufficient.

Mr. Johnson requested that the item be withdrawn until further notice.

By the board's consensus, the item was withdrawn until the November 2012 meeting.

VI.c. **Section 4.6.1 – Referral to Other Authorities**

Mr. Johnson said that:

- Item VI.c. was a recommendation to revise the rules and procedures.
- The referral to other authorities and the Code's technical language did not sufficiently provide the board with a process.

VI. – CONTINUED

VI.c. – CONTINUED

- Concern existed that if the board referred a complaint to a prosecutorial body such as the State Attorney's Office, while in session it may inadvertently be compromising investigation into a matter.
- Proposed section 4.6.1. regarded a referral to other authorities for prosecution. Currently, section 2-260(h) of the Code was used, which said that the board could refer complaints to the state attorney, any appropriate official, or agency that had the authority to initiate prosecution.
- Staff recommended that the language be changed to, The Commission on Ethics or the executive director on behalf of the commission, shall refer a matter to the state attorney or any other appropriate official or agency having authority to initiate prosecution when deemed appropriate.
- He could notify the board about a complaint being referred to the authorities provided that no communication existed between the board members.
- Staff could report and communicate with each commissioner individually.

Commissioner Archer said that without making a referral public, it would be important that the commissioners be notified when a referral was made by the executive director.

Commissioner Fiore said that she supported having the chair and the executive director consult on referrals with board involvement to ensure proper staff supervision.

Commissioner Galo said that the board's concern should not be toward the intake process since a referral was just calling a police officer or his or her equivalent to state that law enforcement needed to investigate.

Mr. Johnson said that:

- The concern was not only about the intake process, but about what would happen if a referral was set for a final hearing.

VI. – CONTINUED

VI.c. – CONTINUED

- It would not be harmful to institute a notification process for planning purposes.
- The chair's referral notification should not be public record.
- Notifying the other commissioners would be communicating between the commissioners, which was not allowed.
- It would be better to state: The executive director shall notify the commissioners of any matter referred to authorities.

Commissioner Farach said that the board's transparency meant that everything was done publicly except for executive session matter, which became public record once a finding was made that a violation did or did not occur. He said that the referral process could be open to the public so that the board could be judged on whether they handled matters correctly or incorrectly.

Mr. Johnson said that:

- Anything discussed in executive session became public record once it was completed.
- The referral process would involve him sending a letter to an appropriate authority, which would eventually become public record.
- As far as the board's proceedings, unless there was a request to stay by the prosecuting arm, the referral would go to final hearing or through the process of discovery.
- Public disclosure would happen as soon as the prosecution for the referral was declined or filed.

Commissioner Farach proposed that a referral be given an individual complaint number.

VI. – CONTINUED

VI.c. – CONTINUED

Mr. Johnson said that no provision existed in the current ordinance to allow for that process. He said that he would research the rules, and if allowed, the proposed process would be attached to a referral provision in the Code.

Commissioner Farach said that the complete decision-making should be open for public inspection.

Commissioner Galo commented that if the board's COE executive director saw a criminal act, as a citizen, he had an obligation to report it.

Commissioner Fiore clarified that if the executive director believed that a criminal act may have taken place, he should contact the chair for oversight purposes.

Commissioner Farach said that the board's responsibility was to ensure that a referral was done properly.

Mr. Johnson requested tabling the item to allow staff time to determine whether there was any other vehicle that could be used, since he thought that executive sessions would work for the process. He said that if he used an executive session for referrals, the sessions would have a fictitious numbers that would be attached to the file; however, a public part of the file would not exist until the referral was either returned or it became public record. He said that he wanted to adhere to a 119 exception to a public record requirement.

MOTION to table VI.c. Motion by Robin Fiore, seconded by Patricia Archer, and carried 4-0. Ronald Harbison absent.

VII. EXECUTIVE DIRECTOR COMMENTS

(CLERK'S NOTE: Mr. Johnson requested that the board allow Ms. Rogers to speak.)

VII. – CONTINUED

VII.a.

DISCUSSED: Social Media.

Ms. Rogers said that:

- The board was live on Twitter and Facebook, and today's meeting had been tweeted live.
- People could either follow the COE meetings on Channel 20 or on Twitter feed from mobile phones or on desktop computers.
- People could find and choose to like the board at www.facebook.com/pbccoe and on its Twitter handle, PBCCOE.
- Both Facebook and Twitter links would be available on the board's website.
- For one week, the COE's Facebook page would feature a daily profile of the board's five commissioners for Facebook fans.
- Staff was developing an audience and building access to new community members that may not have seen the board's website or watched its meetings on Channel 20.

VII.b.

(CLERK'S NOTE: The following comments were made at the end of the meeting.)

DISCUSSED: Palm Cards.

Ms. Levesque said that she had created new palm cards, and that she had samples for the board to review.

Mr. Johnson said that the palm cards would be distributed to governmental entities, employees, officials, and to the public.

VII. – CONTINUED

VII.b. – CONTINUED

Commissioner Fiore suggested that the Twitter and Facebook pages be displayed on the palm cards and that the words, write us, on the cards should be changed to, email us.

Ms. Levesque said that she would add Commissioner Fiore's suggestions along with a correction on Commissioner Archer's name to the County Graphics Department for the cards production.

VIII. COMMISSION COMMENTS

VIII.a.

DISCUSSED: Palm Beach Post's (Post) Symposium on Ethics.

Commissioner Farach said that he and Commissioner Galo had attended a Post symposium that addressed the ethics initiative in the county. He said that attendants expressed a high level of interest. Palm Beach County League of Cities Executive Director Richard Radcliffe, Inspector General Sheryl Steckler, and Marty Rogol had attended the symposium, he informed his colleagues.

Commissioner Galo said that enforcing County ethics through supervision of transactions by municipalities was well received by those in attendance. He said that many people supported the board.

VIII.b.

DISCUSSED: National Ethics Day.

Commissioner Farach asked Mr. Johnson whether National Ethics Day would be held in the month of November.

Mr. Johnson said that National Ethics Day was held in March, and that staff had begun the planning process for the next event.

(CLERK'S NOTE: VII.B. was done at this time.)

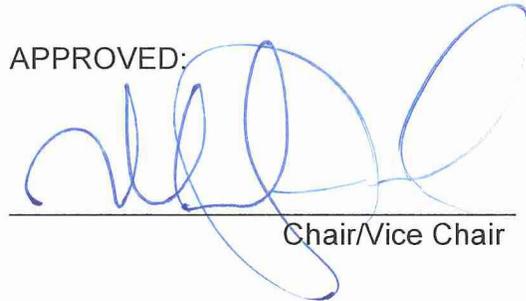
IX. PUBLIC COMMENTS – None

X. ADJOURNMENT

MOTION to adjourn. Motion by Patricia Archer, seconded by Robin Fiore, and carried 4-0. Ronald Harbison absent.

At 5:35 p.m., the chair declared the meeting adjourned.

APPROVED:

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

Chair/Vice Chair