

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

APRIL 4, 2013

**THURSDAY
1:30 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 - Absent
Patricia L. Archer - Absent
Daniel T. Galo, Esq.
Ronald E. Harbison, CPA

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Interim Staff Counsel
Gina A. Levesque, COE Intake Manager
James A. Poag, COE Investigator
Megan C. Rogers, COE Interim Executive Director

ADMINISTRATIVE STAFF:

Amanda Canete, Minutes Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Megan Rogers, Interim Commission on Ethics (COE) Executive Director, stated that a quorum was present.

Commissioner Manuel Farach said that electronic devices should be turned off or silenced, and that those wishing to speak should complete and submit a comment card containing the agenda item.

IV. INTRODUCTION OF NEW EXECUTIVE DIRECTOR, STEVEN CULLEN

(CLERK'S NOTE: Ms. Rogers read a letter from the COE Executive Director Cullen.)

V. APPROVAL OF MINUTES FROM MARCH 7, 2013, MEETING

MOTION to approve the March 7, 2013, minutes. Motion by Daniel Galo, seconded by Ronald Harbison, and carried 3-0. Patricia Archer and Robin Fiore absent.

VI. DRAFTING COMMITTEE UPDATE

Ms. Rogers said that:

- On February 5, 2013, the Board of County Commissioners (BCC) voted to reconvene the Palm Beach County Ethics Ordinance Drafting Committee (ODC) to discuss adding more members to the COE, and to consider term limits for existing COE members.
- The first ODC meeting would be on April 10, 2013.
- The ODC consisted of two BCC appointees, two Palm Beach County League of Cities (League of cities) appointees, a League of Cities' attorney, a County attorney, and the COE Executive Director.
- Staff's concern and position was that the appointing entities may struggle to find applicants interested in serving on the COE due to the time commitment required. Staff was seeking the COE's guidance regarding the issue.

Commissioner Ronald Harbison said that the matter regarding diversity should be directed to the entities that appoint the COE members. He said that he agreed with staff's appraisal and felt that additional members tended to make other members feel less responsible for attending meetings.

Commissioner Daniel Galo said that he did not oppose having additional COE members; however, finding qualified people was most important.

Commissioner Harbison said that term limits were acceptable; however, he was concerned about tampering with the COE's delicate structure.

VI. – CONTINUED

Commissioner Farach said that he favored term limits, and that tinkering with the COE's ordinance was dangerous.

Commissioner Harbison said that diversity existed among the five commissioners regarding how issues were studied and analyzed.

Commissioner Galo said that he would defer to the ODC to interpret diversity. He said that a perception existed that maybe the COE did not reflect a diverse personality and interest in the community, and that the ODC should evaluate the matter.

MOTION to approve staff's recommendation to the Palm Beach County Ethics Ordinance Drafting Committee. Motion by Ronald Harbison, and seconded by Manuel Farach.

Ms. Rogers said that staff has no objection to term limits.

Commissioner Galo requested separating the issues into two votes.

MOTION to approve staff's recommendation to the Palm Beach County Ethics Ordinance Drafting Committee that term limits be imposed on the Commission on Ethics. Motion by Ronald Harbison, seconded by Daniel Galo, and carried 3-0. Patricia Archer and Robin Fiore absent.

Commissioner Galo said that although he was not endorsing the increase of the COE, the ODC should evaluate the matter.

MOTION to approve staff's recommendation to the Palm Beach County Ethics Ordinance Drafting Committee on expansion of the number of members of the Ethics commission. Motion by Ronald Harbison, and seconded by Manuel Farach.

(CLERK'S NOTE: Commissioner Farach said that he seconded the motion for staff direction purposes.)

UPON CALL FOR A VOTE, the motion FAILED 2-1. Manuel Farach and Daniel Galo opposed. Patricia Archer and Robin Fiore absent.

Commissioner Farach suggested that Ms. Rogers discuss the matter with the absent commissioners and obtain their points of views.

VII. STAFF UPDATE C12-013

Ms. Rogers said that the C12-013 was initially set for final hearing on March 21, 2013. She said that the final hearing was rescheduled at the request of the advocate and Respondent's counsel for May 2, 2013.

VIII. STATUS RE: Office of Program Policy Analysis and Government Accountability (OPPAGA) REVIEW

Ms. Rogers said that:

- On March 26, 2013, staff had received a notice informing them of a review by the Office of Program Policy Analysis and Government Accountability (OPPAGA) at the direction of legislature.
- Staff, County Internal Auditor Joseph Bergeron, and Inspector General Sheryl Steckler spoke with an OPPAGA review team on April 2, 2013.
- The OPPAGA staff would review the COE's operating procedures, budget information, and the mechanisms for ensuring compliance with those existing procedures.
- The OPPAGA would prepare a high-level description of the ethics initiative and would speak with numerous community stakeholders, including the COE commissioners, respondents, and complainants that have come before the COE, the complaint process, the COE's pro bono advocate team, former COE commissioners, the former COE Executive Director, the State Attorney's Office, and the Office of the Inspector General.
- The OPPAGA staff would likely begin their initial trip to the County before the end of April.
- Once the process was complete, the OPPAGA staff would either construct a written product for publication or prepare an oral presentation for legislative leadership.
- The COE staff welcomed the review and looked forward to participating in the process.

VIII. – CONTINUED

Commissioner Farach said that:

- He did not know how the COE could be more transparent, and that anyone could request any information by contacting Ms. Rogers.
- He was concerned that the OPPAGA would not disclose who requested the review.
- The COE and its ethics initiative have been commended by the National Association of Counties. The COE has been frugal with the County's dollars and has given over 250 advisory opinions in three years.

Commissioner Galo said that the COE should be more transparent when evaluating allegations. He said that perhaps the OPPAGA was reviewing the COE's protocols.

Commissioner Farach said that the ordinance included that executive sessions had to be done in the "shade" of the Florida Sunshine Law.

Commissioner Harbison said that:

- The State COE followed the same protocol regarding executive sessions.
- Probable cause hearings were done in executive session to protect the respondent from being wrongfully excoriated.
- It was not appropriate for the public to comment during the commissioners' deliberations.

Commissioner Farach said that three final hearings were scheduled; two were settling, and the last was waiting for a resolution.

Commissioner Harbison said that final hearings were an uncommon occurrence.

Commissioner Galo said that many decisions to ultimately resolve cases were invisible to the public, and that may have raised concern.

Commissioner Harbison said that the public could listen to executive sessions on tape.

VIII. – CONTINUED

Commissioner Farach said the COE had always been transparent, and that it was his suggestion to employ pro bono advocates to prosecute cases.

Commissioner Harbison said that no precedence was there for the OPPAGA's review. He commented that an employee from Senator Abruzzo's office had applied for the COE Executive Director's position. He said that the candidate was not selected, and a week later, Senator Abruzzo requested a COE review.

Ms. Rogers said that staff had begun the process of implementing a system that would make available to the public, the COE Executive Director's e-mails that were not subject to the "shade" of the Code of Ethics.

Commissioner Farach questioned whether subpoenas were necessary to request COE information. Ms. Rogers answered that they were not, and that the public could ask any staff member for information.

IX. PROPOSED ADVISORY OPINIONS

IX.a. Request for Opinion (RQO) 13-005

Ms. Rogers said that:

- A town councilman asked whether he was prohibited from participating in a workshop to discuss the creation of a fiber network by the Town of Jupiter (Jupiter).
- Staff had submitted the following:
 - Jupiter currently had a contract with ATT for fiber services.
 - ATT was not interested in maintaining its Jupiter relationship and encouraged the town council to consider creating an independent fiber utility to connect the town's facilities to reduce ATT dependence.
 - At a coming workshop, town staff would present a plan to expand existing fiber services to local businesses.
 - The councilman was employed with Florida Power and Light (FPL), a wholly-owned subsidiary of NextEra Energy (NextEra). NextEra also owned FPL FiberNet (FiberNet).

IX.a. – CONTINUED

- The FPL and FiberNet were separate companies that did not share a board of directors, an address, or employees, or provide similar services.
- The councilman was compensated by FPL and not by FiberNet or NextEra. FiberNet would not be considered the councilman's outside employer based on the County's Code of Ethics.
- The councilmember was not prohibited from voting or participating in the workshop.

MOTION to approve proposed advisory opinion letter RQO 13-005. Motion by Ronald Harbison, and seconded by Daniel Galo.

Commissioner Farach said that the COE had previously said that if two separate entities were involved, they would be considered as the same entity.

Ms. Rogers said that:

- In previous cases, ownership was shared.
- This situation was different since the entities were completely separate.
- There was umbrella ownership; however, there was a separation of identities.

Commissioner Farach said that in this case, legal or factual basis was not sufficient to disregard the corporate entity.

Ms. Rogers said that staff did not see a conflict; she added that if he was employed by NextEra, there may be a conflict since a financial benefit between the various entities would exist.

UPON CALL FOR A VOTE, the motion carried 3-0. Patricia Archer and Robin Fiore absent.

RECESS

At 2:30 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 5:05 p.m., the meeting reconvened with Commissioners Farach, Galo, and Harbison present.

X. EXECUTIVE SESSIONS

X.a. C13-009

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

Complainant, Barbara Ready, filed a complaint on March 1, 2013, alleging a possible ethics violation involving Respondent, Jerry Taylor, who was a Boynton Beach City Commissioner at that time.

The Complaint alleges Respondent misused his public office or position by using his former title "Mayor" in campaign literature as a candidate for Mayor of the City of Boynton Beach.

On March 27, 2013, 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 April 4, 2013, with a recommendation of dismissal as legally 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, Jerry Taylor, do not constitute a violation of the Code of Ethics and dismissed the Complaint on April 4, 2013, due to no legal sufficiency.

X.a. – CONTINUED

Therefore, it is:

Ordered and adjudged that the complaint against Respondent, Jerry Taylor, is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on April 4, 2013. Signed by Manuel Farach, Chair.

X.b. C13-005

Commissioner Harbison read the public report finding no probable cause and final order of dismissal as follows:

Complainant, J. Jerome Taylor, filed the above-referenced Complaint on February 1, 2013, alleging a possible ethics violation involving Respondent, Rodney Roberts, appointed member of the Riviera Beach Housing Authority.

The Complaint alleges that on November 13, 2012, Respondent voted on RBHA Resolution #2012-12 to provide a five hundred (\$500) dollar loan to the Comprehensive AIDS Program of Palm Beach County (CAP), Respondent's outside employer, in violation of Section 2-443(a) Misuse of public office or employment and (c) Disclosure of voting conflicts of the Palm Beach County Code of Ethics (the Code).

Pursuant to Chapter 2, Article V, Division 8, §2-258(a) of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics.

The Memorandum of Probable Cause and Memoranda of Inquiry and Investigation, adopted by reference were presented to the Commission on Ethics on April 4, 2013. At that time, the Commission conducted a hearing. The Commission reviewed and considered the Memoranda of Inquiry, Investigation and No Probable Cause, recommendation of staff, as well as an oral statement of the Advocate. At the conclusion of the hearing, the Commission on Ethics found no probable cause exists, and the Complaint was dismissed.

X.b. – CONTINUED

Complainants must keep in mind that §2-260.4 of the Commission on Ethics ordinance authorizes the COE to award costs and fees incurred by the COE or the Respondent if the COE determines that the complaining party filed a frivolous or groundless complaint, or a complaint with malicious intent and with the knowledge that the complaint contains one or more false allegations, or with reckless disregard for whether the complaint contains material false allegations.

Therefore, it is:

Ordered and adjudged that the complaint against Respondent, Rodney Roberts, is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on April 4, 2013. Signed by Manuel Farach, Chair.

X.c. C13-004

Commissioner Harbison read the public report and finding of probable cause as follows:

Complainant, Bart Novak, filed the above-referenced Complaint on January 30, 2013, alleging a possible violation of the Lobbyist Registration Ordinance involving Respondent, Dean Turney. The Complaint alleges that on December 18, 2012, Respondent, Dean Turney, failed to register as a lobbyist, in violation of Section 2-353.

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 Lobbyist Registration Ordinance. The ordinance requires that prior to lobbying, all lobbyists shall register with County administration. After obtaining sworn statements from material witnesses and documentary evidence, the Complaint was determined by staff to be legally sufficient on March 22, 2013.

X.c. – CONTINUED

Information obtained during the inquiry was adopted into the investigation and presented to the Commission on Ethics on April 4, 2013, with a recommendation that probable cause exists to believe that a violation of the Lobbyist Registration Ordinance had occurred. At that time, the Commission conducted a Probable Cause hearing. The Commission reviewed and considered the inquiry and investigative reports, documentary submissions, recommendation of staff, as well as oral statements of the Respondent and Advocate. At the conclusion of the hearing, the Commission on Ethics determined that probable cause exists in this matter.

Accordingly, we find that there are reasonably trustworthy facts and circumstances for the Commission on Ethics to believe that the Respondent may have violated Section 2-353 of the Palm Beach County Lobbyist Registration Ordinance.

Therefore, it is:

Ordered and adjudged that probable cause exists and the complaint against Respondent, Dean Turney, will be set for final hearing within 120 days from this date. Said final hearing date will be coordinated between the parties.

Done and ordered by the Palm Beach County Commission on Ethics in public session on April 4, 2013. Signed by Manuel Farach, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the public report and final order of dismissal, the public report finding no probable cause and final order of dismissal, and the public report and finding of probable cause.)

XI. INTERIM EXECUTIVE DIRECTOR COMMENTS

XI.a.

DISCUSSED: Ethics Awareness Month.

Ms. Rogers said that March was Ethics Awareness Month, and that the COE had held Countywide events. She said that the group organization, yourpbc.org, would be holding events throughout the rest of the week.

XI.b.

DISCUSSED: COE and Staff Appreciation.

Ms. Rogers said that she thanked the COE for the opportunity to serve as the Interim Executive Director. She thanked County staff for her training and the experience.

Commissioner Farach said that Ms. Rogers had done an extraordinary job.

XII. COMMISSION COMMENTS

XII.a.

DISCUSSED: New COE Executive Director.

Commissioner Harbison said that he looked forward to meeting and working with the new Executive Director.

XII.b.

DISCUSSED: COE Interim Executive Director Appreciation.

Commissioner Galo thanked Ms. Rogers for doing a great job in the interim position.

XIII. PUBLIC COMMENTS – None

XIV. ADJOURNMENT

MOTION to adjourn. Motion by Daniel Galo, seconded by Ronald Harbison, and carried 3-0. Robin Fiore and Patricia Archer absent.

At 5:16 p.m., the chair declared the meeting adjourned.

APPROVED:

A handwritten signature in blue ink, consisting of several loops and flourishes, is written over a horizontal line. The signature is positioned to the left of the text 'Chair/Vice Chair'.

Chair/Vice Chair