

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

MAY 2, 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
Patricia L. Archer
Daniel T. Galo, Esq. – Absent
Ronald E. Harbison, CPA

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Senior Investigator
Steven P. Cullen, Esq., COE Executive Director
Gina A. Levesque, COE Executive Assistant
James A. Poag, COE Investigator
Megan C. Rogers, Esq., COE Staff Counsel

ADMINISTRATIVE STAFF:

Dominique Marseille, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

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

Commissioner Farach stated that anyone wishing to speak should submit a public comment card and include the agenda item of interest. He added that all electronic devices should be turned off.

IV. STATUS RE: Office of Program Policy Analysis and Government Accountability (OPPAGA) Review

Mr. Cullen said that the OPPAGA team had been meeting with staff and that an oral report of their findings probably would take place in 30 days. He said that no issues existed with providing information to the OPPAGA team. He added that the COE Web site had links and information about the documents that were provided.

V. APPROVAL OF MINUTES FROM APRIL 4, 2013

Commissioner Farach asked whether everyone on the commission had an opportunity to review the minutes from April 4, 2013.

Commissioner Archer said that on page six of the minutes, under item IX.a., the text should read "At a coming workshop."

MOTION to approve the April 4, 2013, minutes as amended. Motion by Ronald Harbison, seconded by Patricia Archer, and carried 4-0. Daniel Galo absent.

VI. DRAFTING COMMITTEE UPDATE

Mr. Cullen said that the drafting committee met on April 10, 2013, and that staff counsel Megan Rogers had attended the meeting. He added that the drafting committee had voted no, both on term limitations and expanding the number of COE commissioners.

Ms. Rogers reported that the drafting committee was no longer in session.

Commissioner Farach said that the drafting committee would send its recommendations to the Board of County Commissioners (BCC) for further review. He added that the BCC could either accept or reject those recommendations.

Ms. Rogers said that the BCC could reject the drafting committee's recommendations, by a supermajority vote. She added that she would notify the commission when the drafting committee's recommendations were scheduled for BCC review.

VII. STATUS RE: to C12-013

Mr. Cullen said that the item C12-013 was moved to a June 2013 agenda due to an attorney conflict.

VIII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

a. RQO 13-007

Mr. Cullen said that:

- The opinion questioned whether a financial planning company (company) could continue to provide county and municipal employees, officials, and advisory board members with the same complimentary lunch and financial action-strategy plan that was available to any member of the public.
- The opinion as drafted recommended that providing a complimentary lunch and financial action-strategy plan was an acceptable practice.
- The company would be prohibited from offering gifts valued in the excess of \$100 in the aggregate to county and municipal employees, officials and advisory board members.
- The gift law provided an exception for publicly advertised offers of goods and services from a vendor, under the same terms and conditions as were available to the general public.
- Staff concluded that the company was not prohibited from providing services to County or municipal employees, and officials who were advisory board members, so long as services were offered by the same terms and conditions to the general public.

MOTION to approve staff's recommendation for the consent agenda. Motion by Robin Fiore, seconded by Patricia Archer, and carried 4-0. Daniel Galo absent.

IX. ITEMS PULLED FROM CONSENT AGENDA – None

X. PROPOSED ADVISORY OPINIONS

X.a. RQO 13-006

Mr. Cullen said that:

- A municipal attorney asked whether an official who owned a property management company that provided services to a homeowners association (HOA), was prohibited from participating or voting on a matter that may financial benefit a developer who owned more than 80 percent of the property within the HOA.
- Staff submitted the following for commission review:
 - Elected officials were prohibited from using their official position, participating, or voting on an issue that would give special benefit to themselves, their outside business, or a customer or a client of their outside business, not shared with similarly situated members of the general public.
 - No prohibited conflict of interest existed under the Code of Ethics (code).
 - An issue with the appearance of impropriety existed, since a matter was coming before the city council that involved the elected official's outside business having the developer as a customer.
 - Staff recommended that the official abstain from voting and not participate on the matter.

Commissioner Harbison said that:

- He disagreed with the conclusion of the opinion, since the developer owned 80 percent of the HOA and was a customer of the city official.
- Allowing form over substance as a basis for the commission's decisions would create loopholes in the code.

PROPOSED ADVISORY OPINIONS – CONTINUED

X.a. – CONTINUED

- He suggested that the commission consider having a threshold for the percentage that a shareholder could own, to be in compliance with the code.

Commissioner Fiore said that if the public official voted on the matter regarding the developer, the situation should be considered more than the appearance of impropriety. She said that the public official should be required to abstain from voting and participating in the matters. She added that a financial relationship was more than apparent between the official and the developer.

Commissioner Archer stated that the situation was impropriety and not the appearance of impropriety.

MOTION to decline staff's recommendation for RQO 13-006. Motion by Ronald Harbison and seconded by Robin Fiore.

Ms. Rogers said that staff had drafted the opinion based on the Florida Commission on Ethics' (FCOE) interpretations. She added that the developer controlled or owned a majority of the properties included in the HOA, therefore, the developer controlled who was placed on the HOA board.

Commissioner Fiore said that the commission should not base its decisions on the interpretations of the FCOE.

Commissioner Harbison suggested that the commission adopt a benchmark on how to handle matters, such as the one in front of the commission, in the future. He added that the matter concerned attribution between a controlling interest, which was the HOA, and the vendor, who happened to be a city official.

PUBLIC COMMENT: Richard Radcliffe.

(CLERK'S NOTE: The following discussion evolved between the board and Executive Director of the League of Cities [League] Richard Radcliffe.)

Commissioner Archer said that HOAs were managed by developers before they were released.

PROPOSED ADVISORY OPINIONS – CONTINUED

X.a. – CONTINUED

Mr. Radcliffe said that concern existed on how the matter would be handled since such instances were not included in the County's code.

Commissioner Fiore stated that each matter was handled on a case-by-case basis. She said that a mathematical calculation would be done on matters concerning the extent to which a client or customer was involved in a situation. She added that if the commission were careful in revising the opinion, it could be structured to not be as broad as it appeared to be.

Mr. Radcliffe said that since the county's code was evolving, the commission needed to consider new evaluations of matters.

Commissioner Farach said that the commission was not taking an official position on the matter, but was stating that the particular opinion letter was not acceptable. He said that the opportunity existed for the League and staff to have a discussion on the issue's main subject. He added that the commission could work toward achieving clarity to elected officials on the issue of attribution.

Mr. Radcliffe said that the League's board had not taken a position on the matter. He said that it was the League's desire to work with the commission, in an attempt to resolve how matters were handled.

Ms. Rogers clarified that the submission for the opinion discussed that the property was created by a developer in the 1980s and not the developer who newly purchased the properties within the HOA.

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

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PROPOSED ADVISORY OPINIONS – CONTINUED

X.b. RQO 13-008

Mr. Cullen stated that:

- A County employee asked whether it was a prohibited conflict of interest if a County employee made a bid and was awarded a contract with Palm Beach County.
- Staff submitted the following for COE review:
 - Employees were prohibited from using their official position to give or influence others to give themselves or outside business a special financial benefit.
 - The Code's section prohibited an employee or his/her outside business from contracting with his/her public employer; however, there were several exceptions to the contractual relationship prohibition.
 - The code provided an exception for contracts entered into under a process of sealed competitive bidding, where a County employee's outside business is the lowest bidder, provided that the employee does not participate in the bid specifications or determination of the lowest bidder, has not used his/her position in any way to influence the award, and has disclosed the nature of his/her interest in the business submitting the bid.
- If the County employee fully complied with all of the requirements, the Code did not prohibit the employee or his/her outside business from contracting with the County.

Ms. Rogers said that:

- The contract could potentially be with the County employee's department.
- A conflict did not exist with the situation so long as the employee was not involved in the bid specifications or process.

PROPOSED ADVISORY OPINIONS – CONTINUED

X.b. – CONTINUED

- The employee was not allowed to use his position to influence the selection of his corporation.
- The bid process would be sealed and reviewed by the County Procurement department, which was separate from the department where the employee worked.
- Coworkers of the employee may set the bid specifications for the potential contract; however, the employee would not be allowed to participate.
- The potential contract had not been put out for bid.
- The employee was in the beginning process of potentially starting a company and was seeking guidance for how he could offer services to the County without violating the code of ethics.

Commissioner Fiore suggested that the opinion letter's language be modified to state that the only way that the employee could qualify to apply for a contract was by a sealed bid process.

Ms. Rogers suggested the following changes to the opinion letter:

- Deletion of the following words in the in summary paragraph, on page one:

“However, there are several exceptions to the contractual relationship prohibition.”
- Adding in the following words on page one, at the end of the paragraph beginning with the words “The code provides”:

“The only exception that applies to the facts you have presented is entering into a contract based on a sealed bid process.”

PROPOSED ADVISORY OPINIONS – CONTINUED

X.b. – CONTINUED

Commissioner Fiore suggested that the additional sentence read, “The only manner which you could qualify to bid on this would be if it is a sealed bid process.”

Commissioner Farach suggested putting Commissioner Fiore’s wording on the second page of the letter at the end of the “In summary” paragraph.

Commissioner Archer said that the new sentence may need to also state that sealed bids be revealed by a department other than the employee’s current one. Ms. Rogers said that how the bids were revealed was not called for by the code, and that the Code required only that the employee was not involved in the bidding process.

Commissioner Fiore clarified that the additional sentence should state the following:

“Based on our review of the facts, the only circumstances under which you could contract would be if it is a sealed bid process and you have no involvement in either the specifications or the evaluation of the bids.”

Ms. Rogers read the following final modifications to the letter:

“Employees are prohibited from using their official position to give or influence others to give themselves or their outside business a special financial benefit. In addition this code section prohibits an employee or their outside business from contracting with their public employer. Based on our review of the facts, the only circumstance in which the county employee could contract with the county would be through a sealed bid process where the employee is neither setting bid specifications nor reviewing the sealed bids submitted, and has disclosed the nature of their interest in the business submitting the bid. If a county employee fully complies with these requirements the code does not prohibit the employee or their outside business from contracting with the County.”

PROPOSED ADVISORY OPINIONS – CONTINUED

X.b. – CONTINUED

MOTION to approve revised proposed advisory opinion letter RQO 13-008. Motion by Robin Fiore, seconded by Patricia Archer, and carried 4-0. Daniel Galo absent.

RECESS

At 1:15 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 6:44 p.m., the meeting reconvened with Commissioners Archer, Fiore, and Harbison present.

(CLERK’S NOTE: Commissioner Fiore requested a roll call.)

ROLL CALL

MEMBERS:

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

Mr. Cullen stated that a quorum existed.

XI. EXECUTIVE SESSIONS

XI.a. C13-008

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

Complainant, Bart Novak, filed the above-referenced complaint on February 19, 2013, alleging possible ethics violations involving respondent, Darell Bowen, the former Mayor of the Village of Wellington.

EXECUTIVE SESSIONS – CONTINUED

XI.a. – CONTINUED

The complaint contended that Mr. Bowen failed to report a gift of two tickets to attend an event held February 21, 2011, at the International Polo Club of Palm Beach valued in excess of \$100 in violation of Section 2-444 (f) Gift Reports.

Pursuant to Chapter 2, Article V, Division 8, Section 2-260.6 of the Palm Beach County Code, jurisdiction of the Ethics Commission extends to violations “committed on or after the effective date of the ordinances.” The allegations contained in the complaint involve activities alleged to have occurred in February 2011, more than three months before respondent and the Village of Wellington were subject to the Commission’s jurisdiction on June 1, 2011.

Because the alleged behavior involves a former public official who was, at the time of the alleged violation, not subject to the jurisdiction of the Commission on Ethics, the Ethics Commission dismissed the complaint on May 2, 2013, due to lack of legal sufficiency.

Therefore it is:

Ordered and adjudged that the complaint against respondent Darell Bowen is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on May 2, 2013. Signed: Manuel Farach, Chair.

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

EXECUTIVE SESSIONS – CONTINUED

XI.b. C13-007

Commissioner Archer read the following public report and final order:

Complainant, Bart Novak, filed the above-referenced complaint on February 19, 2013, alleging possible ethics violations involving respondent, Darell Bowen, former Mayor of the Village of Wellington. The complaint alleges that two (2) Codes of Ethics violations:

Count 1, alleges the respondent, while Mayor of the Village of Wellington, had his assistant use a Village issued credit card to pay for two (2) tickets from the Boys and Girls Club of Palm Beach County (BGCPBC) in order for he and his wife to attend the 24th Annual Wellington Dinner Dance “*Le Cirque!*” on December 3, 2011, in violation of Article XIII, Section 2-443 (a)(1&4), *Misuse of public office or employment*, of the Palm Beach County Code of Ethics.

Count 2 alleges that respondent, after accepting tickets valued in excess of \$100, respondent failed to file a gift disclosure form, in violation of Article XIII, Section 2-444 (f)(1), *Gift law*, of the Palm Beach County Code of Ethics.

Pursuant to Chapter 2, Article V, Division 8, Section 2-258 (a) of the Palm Beach County Code of Ethics, the Commission on Ethics (COE) is empowered to enforce the county code of ethics. Chapter 8, Article XIII, Section 2-443 (a), *Misuse of public office or employment* prohibits any official or employee from using his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. Section 2-444 (f) (1), *Gift reports for officials and employees identified by State law as reporting individuals*, requires state reporting individuals to report gifts in accordance with state law and file a copy of each report with the COE.

EXECUTIVE SESSIONS – CONTINUED

XI.b. – CONTINUED

After obtaining sworn statements from material witnesses and documentary evidence the complaint was determined by staff to be legally sufficient on April 15, 2013. Information obtained during the inquiry was adopted into the investigation and presented to the Commission on Ethics on May 2, 2013. At that time, the Commission conducted a hearing. The Commission reviewed and considered the Memoranda of Inquiry, Memoranda of Investigation, Memoranda of No Probable Cause and the oral statement of the advocate. At the conclusion of the hearing the Commission on Ethics made a finding of no probable cause since Darell Bowen complied with all state reporting requirements by reducing the amount of the gift with reimbursement under state reporting requirements. Although the action is permitted under state law, it is contrary to the transparency that the ethics process is designed to produce with respect to the reporting of gifts under the Code of Ethics.

Therefore, it is:

Ordered and adjudged that the complaint against respondent, Darell Bowen, is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in executive session on this 2nd day of May, 2013. Signed by:
Manuel Farach, Chair.

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

Commissioner Fiore stated that the documents related to the COE executive sessions would be posted on the COE Web site the following day. She added that recorded sessions of the meeting would be available the following week.

EXECUTIVE SESSIONS – CONTINUED

XI.c. C13-001

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

Complainant, Mark Bellisimo, filed the above-referenced complaint on January 8, 2013, alleging a possible violation of the Palm Beach County Code of Ethics involving respondent, Robert Margolis. The complaint alleges that, respondent, Robert Margolis, received gifts prohibited by the code of ethics. The complaint further alleges that the gifts were given by principles of lobbyists who lobbied the Village, and/or that respondent accepted these gifts in exchange for his votes on important development matters before the Village of Wellington Council.

Pursuant to Chapter 2, Article V, Division 8, Section 2-258 (a) of the Palm Beach County Commission on Ethics Ordinance, the Commission on Ethics is empowered to enforce the county code of ethics. After obtaining sworn statements from material witnesses and documentary evidence the complaint was determined by staff to be legally sufficient on March 14, 2013.

Information obtained during the inquiry was adopted into the investigation and presented to the Commission on Ethics on May 2, 2013, with a recommendation that probable cause exists to believe that a violation of the code of ethics 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, with regard to the allegations concerning Mr. Neil Hirsch, we find that there are reasonably trustworthy facts and circumstances for the Commission on Ethics to believe that the respondent may have violated Sections 2-444(a)(1) and 2-444 (e) of the Palm Beach County Code of Ethics.

EXECUTIVE SESSIONS – CONTINUED

XI.c. – CONTINUED

Additionally, with regard to the allegations concerning Ms. Victoria McCullough, the Commission finds there are no reasonably trustworthy facts and circumstances for the Commission on Ethics to believe that the respondent violated Sections 2-443 (a)(1) and 2-444 (e) of the Palm Beach County Code of Ethics.

Therefore, it is:

Ordered and adjudged that probable cause exists and the complainant against the respondent, Robert Margolis, will be set for final hearing within 120 days from this date. A final hearing date will be coordinated between the parties.

Done and ordered by the Palm Beach County Commission on Ethics in public session on May 2, 2013. Signed: Manuel Farach, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the public report and finding of probable cause.)

XI.d. C13-002

Commissioner Harbison read the following public order and finding of no probable cause:

Complainant, Mark Bellisimo, filed the above-referenced complaint on January 8, 2013, alleging a possible violation of the Palm Beach County Code of Ethics involving respondent, John Greene. The complaint alleges that, respondent, John Greene, received gifts prohibited by the code of ethics. The complaint further alleges that these gifts were given by principals of lobbyists who lobbied the Village and/or that respondent accepted these gifts in exchange for his votes on development matters before the Village of Wellington Council.

EXECUTIVE SESSIONS – CONTINUED

XI.d. – CONTINUED

Pursuant to Chapter 2, Article V, Division 8, Section 2-258 (a) of the Palm Beach County Commission on Ethics Ordinance, the Commission on Ethics is empowered to enforce the county code of ethics. After obtaining sworn statements from material witnesses and documentary evidence the complainant was determined by staff to be legally sufficient on March 14, 2013.

Information obtained during the inquiry was adopted into the investigation and presented to the Commission on Ethics on May 2, 2013, with a recommendation that probable cause exists to believe that a violation of the code of ethics 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 no probable cause exists in this matter.

Accordingly, we find that there are no reasonable trustworthy facts and circumstances for the Commission on Ethics to believe that the respondent may have violated Sections 2-444 (e), 2-443 (a)(1) and 2-443 (b) of the Palm Beach County Code of Ethics.

Therefore, it is:

Ordered and adjudged that no probable cause exists and the complaint against respondent, John Greene is dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on May 2, 2013. Signed: Robin N. Fiore, Vice Chair.

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

XII. EXECUTIVE DIRECTOR COMMENTS

XII.a.

DISCUSSED: Goals for the Commission on Ethics.

Mr. Cullen said that:

- Investigator James Poag had submitted his resignation to pursue another opportunity.
- An advertisement was posted on the County's employment Web site for an investigator position with the COE.
- His short-term goals for the COE included updating training modules and the volunteer advocate program so that staff could better serve the commission and the community.
- His long-term goals included:
 - The COE pursuing grant opportunities that would help the business of the commission; and,
 - Increased COE interaction with the magnet schools in the county that had legal magnet programs.
- The COE's physical office would relocate at the end of June 2013 to the old historic courthouse in downtown West Palm Beach.
- He had an open-door policy; and would like to be notified of any improvements that the COE staff could make.

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XIII. COMMISSION COMMENTS

XIII.a.

DISCUSSED: Well Wishes and Suggestions.

Commissioner Harbison welcomed Mr. Cullen to the COE, congratulated James Poag on his work with the commission, and wished Mr. Poag well in his new endeavors.

Commissioner Harbison said that clear standards needed to be identified with regard to pro bono advocacy and the commission's selection of a trainer for advocates. He suggested that staff design training to educate newly elected public officials on their new obligations required under the Code.

Commissioners Fiore and Harbison thanked Ms. Rogers for her work as Interim Executive Director.

XIII.b.

DISCUSSED: Appreciation.

Commissioner Archer thanked Ms. Rogers for her work, wished Mr. Poag well in his future work, and welcomed Mr. Cullen.

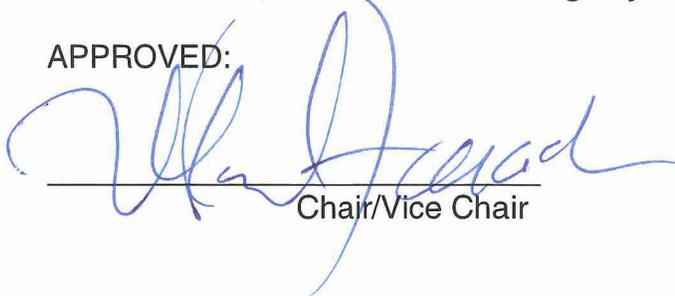
XIV. PUBLIC COMMENTS – None

XV. ADJOURNMENT

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

At 7:08 p.m., the vice chair declared the meeting adjourned.

APPROVED:



Chair/Vice Chair