



Palm Beach County  
Commission on Ethics  
2633 Vista Parkway  
West Palm Beach, FL 33411  
561.233.0724  
FAX: 561.233.0735  
Hotline: 877.766.5920  
E-mail:

[ethics@palmbeachcountyethics.com](mailto:ethics@palmbeachcountyethics.com)

**Commissioners**

Edward Rodgers, Chair  
Manuel Farach, Vice Chair  
Robin N. Fiore  
Ronald E. Harbison  
Bruce E. Reinhart

**Executive Director**

Alan S. Johnson

**Staff Counsel**

Megan C. Rogers

**Executive Assistant**

Gina A. Levesque

**Investigator**

Mark E. Bannon

# News Release

For Immediate Release

Contact:

September 6, 2011

Alan Johnson, Executive Director  
(561) 233-0736

## Summary of Commission on Ethics Meeting Held on September 1, 2011

The Commission on Ethics (COE) took the following actions at its monthly public meeting held on September 1, 2011.

- Nineteen (19) advisory opinions were approved. Two (2) advisory opinions were discussed and tabled and will be considered at the next COE meeting. The full opinions will be published on Wednesday, September 7<sup>th</sup> and available at <http://www.pbcgov.com/ethics/opinions.htm>
  - **RQO 11-049 Virginia Sayer:** A Palm Beach County veterinarian asked whether she may continue to provide low-cost vaccination and spay/neuter surgeries for cats and dogs at local area stores, one of which is a vendor of Palm Beach County.

The COE opined as follows: The employee's outside business is not prohibited from providing pet vaccination services at a store that sells or leases goods to the county, so long as she provides the vendor with adequate consideration for use of their space, so as to avoid the receipt of a prohibited gift in excess of \$100 annually, in the aggregate. Previously, this issue was addressed in RQO 10-015, under the gift law contained in the pre-referendum code, which did not contain an annual aggregate limitation.

- **RQO 11-065 Steve Jerauld:** The fire chief of Palm Beach County asked whether Palm Beach County and municipal fire rescue personnel may participate, while on-duty, in the annual Muscular Dystrophy Association (MDA) 2011 "Fill the Boot Drive" without violating the Code of Ethics. Annually, fire rescue personnel from the county and municipal departments join 300 communities statewide in a fund-raising event to benefit the MDA. Known as the "Fill the Boot Drive," on-duty fire rescue personnel volunteer to stand at traffic intersections within their response zones so that motorists can donate by placing currency and spare change into fire rescue boots. Based upon past events, donations are usually limited to loose change or single dollars bills and anything larger than \$20 would be very unusual.

The COE opined as follows: Firefighters and paramedics are not prohibited from participating in the annual MDA Boot Drive provided that any solicitation or donation in excess of \$100 from a person or entity that the employee or official knows, or should know, is a vendor, lobbyist or principal of a lobbyist who lobbies, sells, or leases to their county or municipal public employer, complies with the reporting requirements contained in §2-444(h) of the Code of Ethics. If a fund-raising participant is offered a donation in excess of \$100 from a donor who they recognize as a lobbyist or vendor of their county or municipal public employer, that particular gift would need to be logged (submitted within 30 days) and could not be accepted while on duty.

- **RQO 11-070 Mark Swanson:** A county employee asked whether he may attend a vendor-sponsored event at an upcoming conference in Orlando, Florida. The county has approved his attendance at this conference and will be paying his travel expenses and registration fee.

The COE opined as follows: A public employee may not accept anything of value as a quid pro quo or in exchange for the past, present or future performance of his or her job. Otherwise, employees may accept up to \$100 in the aggregate over the course of the calendar year from a vendor, lobbyist, principal or employer of a lobbyist who sells, leases or lobbies their government employer. Should the value of the event exceed \$100, the employee must reimburse the vendor the value in excess of \$100. While accepting these gifts may not be prohibited by the code, the COE expressed its concern that an appearance of impropriety may exist where an employee who recommends vendors to the county accepts gifts of any value from those vendors, regardless of the fact that the employee may not be the ultimate decision maker.

- **RQO 11-071 Dot Bast:** A Delray Beach employee asked whether she was permitted to attend an educational seminar and receive travel and related expense reimbursement from a vendor of Delray Beach. Her attendance is for educational purposes and in her official capacity as a top manager of the city.

The COE opined as follows: A Delray Beach employee is not prohibited from accepting travel expense reimbursement from vendors of Delray Beach, so long as she obtains a waiver from the City Council. The reimbursement thereby becomes transparent and subject to public input and scrutiny. Other than travel expenses, an employee may not accept a gift in excess of \$100 from a vendor, lobbyist, principal, or employer of a lobbyist who lobbies, sells or leases to the city.

- **RQO 11-073 Gerry Franciosa:** A Delray Beach advisory board member asked whether he was permitted to accept tickets valued at \$300 to attend a local charity event from a local attorney who lobbies his advisory board.

The COE opined as follows: Advisory board members may not accept a gift valued in excess of \$100 dollars, in the aggregate, over the course of the calendar year from a lobbyist who lobbies their municipal board or related department. If a gift exceeds the \$100 limit, an advisory board member may still accept the gift or attend the associated event, but must reimburse the donor the amount in excess of \$100 within 90 days of the gift as provided by state statute.

- **RQO 11-039 Keith Davis (resubmitted from August 4):** A village attorney asked whether a municipality may hold a charity fund-raising event on behalf of a nonprofit that benefits public safety officers, using off-duty firefighters and certain on-duty municipal staff to solicit and run the event. A municipal employee and a village council member serve on the board of this nonprofit, and donations will be solicited from vendors of the municipality. The event will include raffles, door prizes and silent auctions. All money raised will be deposited into the nonprofit's account. However, 75% of the funds raised will be redistributed to other local nonprofits approved by the Village Council.

The COE opined as follows: A municipality may organize and hold charitable events to benefit nonprofit organizations of their choosing, so long as there is no quid pro quo or other special consideration given by officials or employees to any donor for their participation and so long as no person or entity with a pending application for approval or award currently before the municipal legislative body is solicited for a donation. Village employees or officials who serve on the board of a charity that stands to financially benefit from the village event may not use their official position or title to assist in this effort and must abstain from voting if this matter comes before their board or the municipal legislative body. The village may assign staff members and use municipal resources provided that they are not connected with solicitation of donations from municipal vendors, lobbyists, principals and employers of lobbyists.

- **RQO 11-051 Bill Greene (resubmitted from August 4):** A town councilman asked whether as a director of a Florida nonprofit corporation, he was permitted to solicit donations and hold fund-raising events for the nonprofit while serving on the Town Council. The councilman also anticipated eventually receiving compensation from the nonprofit organization.

The COE opined as follows: The revised Code of Ethics does not prohibit an employee or official, or any other person or entity on their behalf, from soliciting contributions on behalf of a nonprofit charitable organization as defined under the IRS code. This includes solicitations and donations in excess of \$100 from vendors and lobbyists of the town. However, these

solicitations may only be made if a solicitation log is maintained and filed with the COE, no vendors with pending applications are solicited and municipal personnel and resources are not used to solicit town vendors/lobbyists.

Notwithstanding, an elected official, advisory board member or employee may not use their official position or employment in any way to specially financially benefit a charity where they serve as an officer or director, including the use of their official title in soliciting donations. Officials may not vote or participate in any matter that will result in a special financial benefit to themselves or their outside business or employer. Where the official contemplates receiving a financial benefit as a director of a charity, he must take great care in using his official position, as this may result in a violation of the misuse and conflicts sections of the code, as well as the prohibition against soliciting for one's own personal gain.

- **RQO 11-068 Thomas Sheehan:** The general counsel for the Children's Services Council (CSC), an independent taxing authority established under §125.901, Florida Statutes, requested an opinion as to the duties and responsibilities of a CSC Council member (designated by state statute as a Palm Beach County Commissioner – Steven Abrams) under the Code of Ethics. In addition, the GC asked how voluntarily coming within the jurisdiction of the COE would affect the duties and responsibilities of other CSC Council members and staff.

The CSC enabling statute contemplates the role of the CSC to *allocate and provide funds for other agencies in the county which are operated for the benefit of children*. Grants and other donations are solicited through the CSC by CSC staff for this purpose. In addition, CSC has established a fund-raising arm, Resource Development Initiative (RDI), a collaborative effort between CSC and the United Way or Palm Beach County, and a CSC-created 501c3 non-profit charitable corporation, the Prevention Partnership for Children, Inc. (PPC). According to CSC counsel, the PPC organization is created to accept funds from donors who do not generally fund or donate to government entities.

First, as the only CSC Council member who is currently otherwise subject to the jurisdiction of the COE, the county commissioner does not participate in fund-raising activities, either directly, or indirectly by name or title. CSC, RDI and PPC fund raising is done entirely by CSC staff. CSC Council members are only made aware of solicitations and grant activity by way or annual reports or occasional updates on grant proposals or funding collaborations. When funds are solicited directly by RDI, foundations or other donors usually request a list of council members. However, when RDI staff solicits a contribution for other nonprofit organizations, neither the council members' names nor titles are provided. In addition, solicitations made by RDI on behalf of itself or other nonprofit organizations do not involve vendors or lobbyists who lobby, sell or lease to CSC.

The COE opined as follows: With regard to Palm Beach County Commissioner Abrams, he is not directly or indirectly (through name or title) involved in CSC solicitations. In addition, CSC does not solicit from vendors or lobbyists of CSC. CSC is another governmental entity and is mandated to allocate and provide funds to other agencies for the benefit of children. In that regard, CSC is in a unique position as funds solicited are, by definition, *solicited by public employees on behalf of the public entity in performance of their official duties for use solely by the public entity for a public purpose*. The fact that CSC may ultimately be a pass-through for other nonprofit entities for the benefit of children is a fact that is contemplated in the state enabling statute as a core governmental function of the CSC. Therefore, grants and donations in this context are not considered gifts per §2-444(g)(1)e. of the Code of Ethics.

This interpretation would apply to other council members and staff should the CSC voluntarily come under the jurisdiction of the COE. Other than the exclusion of gift law prohibitions and regulations regarding CSC grants and donations, all other provisions dealing with financial and corrupt misuse of office, voting conflicts, contractual relationships, travel expenses, honesty in applications, disclosure of confidential information, anti-nepotism, and non-interference with investigations of the COE would be applicable.

- **RQO 11-035 Bonnie Jensen:** An attorney for the Palm Tran Pension Board asked whether the board was under the jurisdiction of the COE, and to the extent that trustees are subject to the code, what their duties and responsibilities are regarding attendance at pension board conferences. Palm Tran is a county department and its employees are paid by the Palm Beach County Board of County Commissioners. However, the Palm Tran Pension Board (PTPB) was not created by the BCC, nor is any of its members appointed by the BCC. PTPB members regularly attend continuing education seminars and conferences where they may receive advertising materials, raffle prizes or complimentary registration from vendors of the pension plan who are not vendors of the county.

The COE opined as follows: The PBPT is not a county advisory board; it was not created by the BCC and its trustees were not appointed by the BCC. However, all trustees of the PBPT are employees of Palm Beach County. Effective July 1, 2011, by state statute, local government sponsors of defined benefit plans may not reduce contributions required to fund the normal cost of the plan. Accordingly, employee-trustees' decisions impact the county budget. Furthermore, employees are paid a county salary while engaged in PBPT activities. Therefore, the Commission on Ethics finds there to be sufficient nexus between a trustee's public employment and the PBPT to place them within the jurisdiction of the Code of Ethics dealing specifically with financial and corrupt misuse of office issues as they relate to their position both with the county and PTPB.

Code sections involving acceptance of travel expenses and acceptance or solicitation of prohibited gifts apply only where the travel expenses or gifts involve vendors, contractors, bidders, proposers, service providers and lobbyists, as applicable, who do business with Palm Beach County, including Palm Tran, Inc. Jurisdiction does not extend to those doing business exclusively with PBPT. However, any non-prohibited gift accepted by a Palm Tran, Inc. employee in excess of \$100 is reportable pursuant to the annual reporting requirements of the Code of Ethics.

- **RQO 11-037 Peter Elwell (resubmitted from July 7):** A municipal town manager asked whether a prohibited conflict of interest would arise if a town building official were required to review and give final approval to work completed by his brother whose company has been hired to perform the work of a resident inspector. Resident inspectors are hired by private construction projects to ensure that all work is done properly and in accordance with town building codes. Resident Inspectors file weekly reports with the town building official. At the conclusion of the project, the town building official completes a final inspection of the work and, if appropriate, issues a certificate of completion or occupancy as applicable for the project.

The COE opined as follows: There is no prohibited conflict of interest per se under the code so long as the municipal employee does not use his official position to give his brother, his brother's company, or the landowner who employed his brother's company, a special financial benefit not shared by similarly situated residents employing other resident inspectors. The COE normally would not opine as to whether to prevent the appearance of impropriety, the town manager should have the resident inspector report to a different town official. However, based upon the strong appearance of impropriety in this case, we concur with the town's proposal that in cases involving this company in the role of resident inspector, the resident inspector should report directly to the director of Building and Zoning or another building official.

- **RQO 11-047 Mark Hall:** The chief of police for the Village of Palm Springs asked about reporting requirements and gift law obligations for various items he received while attending a statewide police chief's conference. His registration fee for the conference was paid for by the village. However, he personally paid the attendance fee for his family. He received a discounted hotel rate as negotiated by the conference organizers. While at the conference, he won a Blu-ray disc player valued at \$120 in a raffle and visited a "hospitality suite" with his wife valued at \$8.50. Neither the raffle nor the hospitality suite was sponsored by a vendor of Palm Springs. As part of the program, the chief and his family accepted tickets, valued at \$50 per person, to attend a "NASCAR night" presented by Motorola, a vendor of Palm Springs. Finally, at an awards banquet hosted by the statewide police chief's association, Palm Springs received an award for "Excellence in Policing", including a wall plaque and a check for \$1,000 payable to the police department. The value of the banquet was estimated to be \$55.47 per guest, but the chief paid for his family to attend and the association is not a vendor, principal, or employer of lobbyists who lobby Palm Springs.

The COE opined as follows: Any gift received by an employee in association with a conference related to their public position that is valued at greater than \$100, is either a reportable or prohibited gift. Registration fees paid by a municipality for an employee to attend a conference in their official capacity are specifically excluded from the definition of a "gift" and are not reportable. Discounted hotel rates received in conjunction with conference attendance and part of a negotiated group rate are similarly not reportable gifts. The gift of the Blu-ray player and attendance at a hospitality suite, while reportable if valued at over \$100 are not prohibited because they were not provided by a vendor, lobbyist, principal or employer of a lobbyist who sells, leases or lobbies his public employer. However, gifts valued over \$100, in the aggregate, over the course of the calendar year, given by a vendor, lobbyist, principal or employer of a lobbyist are prohibited. Notwithstanding, if the employee accepts tickets or gifts in excess of \$100 from a vendor, lobbyist, principal or employer of a lobbyist, the violation can be remedied by reimbursing the vendor or lobbyist the amount in excess of \$100 within 90 days. At all times, a gift of any value may not be accepted as a quid pro quo for official action, or in exchange for the past, present, or future performance or non-performance of an employee's public or legal duties.

- **RQO 11-050 Valencia Y. Stubbs:** A municipal city attorney asked whether a sitting council member must abstain from voting on the re-appointment of her son as a trustee for a municipal firefighters’ pension trust fund. The trustee position is voluntary and unpaid.

The COE opined as follows: The Code of Ethics specifically allows such appointments by a council in municipalities with fewer than 35,000 residents to boards without land-planning or zoning responsibilities. Since the trust board does not have land-planning or zoning responsibilities, and the population of the city is less than 35,000, the appointment is not prohibited.

- **RQO 11-052 Mark Hall:** The chief of police for the Village of Palm Springs asked whether Palm Springs employees may accept a 15% discount from a local restaurant that is not a vendor and does not lobby Palm Springs.

The COE opined as follows: public employees and official are not prohibited from accepting a discount from a local restaurant that is not a vendor, employer or principal of a lobbyist doing business with or lobbying their municipal government so long as there is no *quid pro quo* or special privilege or treatment given to the restaurant in exchange for, or because of the discount.

- **RQO 11-053 Peter Elwell:** A town manager asked whether awards given to employees for outstanding performance or employee tenure are considered gifts for the purposes of gift disclosure requirements, and if the gifts themselves may be donated by a nonprofit organization that is not a vendor, lobbyist or a principal or employer of a lobbyist of the town.

The COE opined as follows: Employee awards for “outstanding performance” or recognition for length of service to the town, are excluded from the definition of “gifts” and are exempt from all prohibitions and reporting requirements of the Gift Law. Notwithstanding, the Code of Ethics prohibits sponsorship of these awards by a nonprofit organization if such sponsorship is based on any *quid pro quo* arrangement or the receipt of any special benefit resulting from an official act.

- **RQO 11-055 Peter Elwell:** A town manager asked whether town employees could accept gifts donated to the town and distributed to employees through the use of a “blind draw” raffle.

The COE opined as follows: Town of Palm Beach employees are not prohibited from accepting gifts that have been donated to the town, so long as the persons donating the items are not vendors, lobbyists, or principals or employers of lobbyists and the gift is not accepted in exchange for the performance or non-performance of a legal duty or an official public action. If the gift is valued at more than \$100, it must be reported on the employee’s annual gift reporting form.

- **RQO 11-060 Bob Sugarman:** Counsel to a municipal pension plan asked whether retirement system trustees are subject to the jurisdiction of the COE and if so what are the trustees’ duties and responsibilities regarding retirement system related seminars and conferences. The City of Boca Raton Police and Firefighters’ Retirement System (BRPFRS) consists of 4 trustees appointed by the City Council, and 4 city employees, elected by union employees.

The COE opined as follows: Employees and officials of the pension plan are required to comply with the Palm Beach County Code of Ethics. BRPFRS is not an advisory board under the code, because it is authorized by state statute rather than local ordinance. Therefore, trustees are not advisory board members. However, because 4 trustees are appointed by the City Council, they are considered “officials.” All employee-trustees must comply with the Code of Ethics as public employees for the city and in certain circumstances, when acting in an official capacity as a trustee for the city.

Because the BRPFRS itself is state authorized and independent of the city, it is not subject, through the city, to the jurisdiction of the COE. Any application of the code of ethics to trustees who are city employees or officials extends only to the limitations and prohibitions involving solicitation or acceptance of gifts from vendors, lobbyists, and principals and employers of lobbyists who lobby, lease or sell to the city, not BRPFRS. However, no gift may be accepted in exchange for the past, present or future performance of their official duties as employees or as officials of the city. Travel reimbursement from vendors of the city may be accepted provided the trustee obtains a waiver from the City Council (no reporting requirement if properly waived). There is no prohibition or waiver requirement if the travel reimbursement is from vendors, lobbyists, etc. of BRPFRS. However, any non-prohibited gift in excess of \$100 must be reported on an annual gift report.

- **RQO 11-064 Steve Bordelon:** A director of a county department asked whether employees may accept discounted mobile phone packages provided by the four major carriers when the discounted rates are available to all government employees, both county and statewide. Three of the wireless carriers, AT&T, Verizon and Sprint are vendors of the county.

The COE opined as follows: Employees are not prohibited from accepting cellular phone discounts, provided that the discount is not based on preferred treatment of the vendor by the employee, the discount applies to all similarly situated government employees or officials, and it is not otherwise offered as a quid pro quo or means to convey a special financial benefit in violation of either the financial or corrupt misuse of office sections or, for officials receiving similar discounts, the voting conflicts section of the code.

- **RQO 11-066 Martin DeLoach:** The fire chief of Palm Beach Shores asked whether the uniformed extra-duty detail outside employment provisions of the Code of Ethics applied equally to law enforcement and fire rescue agencies.

The COE opined as follows: Uniformed fire rescue extra-duty details that are contracted or administered by municipal public safety agencies provide the same service in the same manner as police agency extra duty details. The intent of §2-443(e)(5)g is to provide for a waiver of the outside employment provisions for uniformed extra duty or overtime details where the public agency maintains transparent records and administers or maintains the contracts. Although the code refers only to law enforcement details, to exclude fire rescue details performing the same function and operating in the same manner would result in the “manifest incongruity” discussed by the 4<sup>th</sup> District Court of Appeal in *Las Olas Tower Company v. City of Fort Lauderdale*. In its decision, the court noted that where public policy is not violated broad discretion is permitted to an administrative body interpreting the legislative intent of a provision. Therefore, for purposes of the exception and waiver provisions, both law enforcement and fire rescue uniformed details are exempted from the prohibitions enumerated in subsection (d), contractual relationships.

- **RQO 11-072 Amy Stepper:** A municipal employee who supervises and administers a city public arts program asked whether she may receive compensation from a local chamber of commerce for selecting artists to participate in an annual arts festival in her personal, non-city time.

The COE opined as follows: The municipal employee may participate in this event. Although the chamber of commerce offer was made based upon her municipality’s membership in the North Palm Beaches Cultural Alliance, she has not been invited to judge the event because of her official position, but because of her expertise and proficiency in the field. Her participation will be on personal and not public time. Moreover, by participating in the program she will have the opportunity to be exposed to innovative local and national artists, in turn benefiting her public employer.

- The Commission on Ethics viewed a presentation by the Palm Beach County Information System Services Department (ISS) regarding implementation of a countywide public tracking system for gift reporting, outside employment waivers and voting conflict reports to be publicly available on the COE website. [www.palmbeachcountyethics.com](http://www.palmbeachcountyethics.com)
- The Commission on Ethics reviewed two memoranda of understanding between the COE and the Boca Raton Airport Authority and the Lake Worth Community Revitalization Agency. Both independent agencies have asked to come within the jurisdiction of the COE and Code of Ethics.

A detailed explanation of all agenda items is available at <http://www.palmbeachcountyethics.com/ethics/meetings.htm>

###