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News Release

For Immediate Release

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Summary of Commission on Ethics Meeting Held on November 3, 2011

The Commission on Ethics (COE) took the following actions at its monthly public meeting held on November 3, 2011.

- Two (2) Complaints were heard in executive session. All documents pertaining to these complaints are published and available on the COE website at <http://www.palmbeachcountyethics.com/complaints.htm>. The COE took the following action:

- C11-019 and C11-020 were dismissed for lack of legal sufficiency

- Ten (10) advisory opinions were approved. Two (2) advisory opinions were discussed and tabled and will be considered at the next COE meeting. The full opinions are published and available on the COE website at <http://www.pbcgov.com/ethics/opinions.htm>

- **RQO 11-067 Gregory Miklos:** A municipal advisory board member asked whether a member of his outside business could represent a customer or client of his firm in front of his board if the board member abstained from voting and did not participate in any part of the decision-making process.

The COE opined as follows: An advisory board member or official may not use their official position to give themselves, their outside business or a customer or client of their outside business, a special financial benefit not shared with similarly situated members of the general public. Voting on a client's proposal, participating in conversations with or attempting to influence other advisory board members would constitute a misuse of office. In this context, "participate" means that a board member may not present their client's project to their board or take part in any presentation or discussion regarding the project with their fellow board members. They are not prohibited from meeting with staff or other related boards in processing a matter provided they do not use their official position to obtain a benefit. This prohibition extends to the board member, or someone using that board member's official position on their behalf.

The financial misuse and voting conflict sections of the Code of Ethics do not prohibit another person employed by the board member's outside business from representing a customer or client before the board, provided that the board member publically discloses the nature of the conflict, files the required state disclosure form, refrains from voting and does not participate in or influence the process.

- **RQO 11-076 Diana Grub Frieser:** A City Attorney asked whether advisory board members whose appointments require professional licensure authorized by state law and pursuant to city ordinance are subject to the abstention and non-participation requirements of the Palm Beach County Code of Ethics where an exemption exists for these members in Florida State Statutes.

The COE opined as follows: state law permits local governments to adopt more stringent standards of conduct than those specified in the Florida Code of Ethics provided those standards do not otherwise conflict with the state code. The Palm Beach County Code of Ethics does not ban the establishment of licensure requirements for local advisory boards, however, in certain instances it does more tightly regulate potential financial misuse of the office. Based on the facts and circumstances presented, advisory board members, regardless of any professional licensure requirements associated with their appointment, may not use their appointed office to give themselves, their outside business or a customer or client of their outside business a special financial benefit. When faced with a conflict, they must disclose, abstain, not participate and file the required conflict disclosure form 8b. While they are not prohibited from working with municipal staff in their professional capacity prior to abstention, they may not use their official position to influence staff. The Code of Ethics does not prohibit a business associate or other individual from representing a client's interests before the official's board provided the official discloses, abstains, does not participate in any way and files a conflict of interest form with the clerk and COE.

- **RQO 11-091 Jacquelyn Anderson:** A county employee asked whether the code of ethics prohibits public employees from using their public email to solicit donations and gifts on behalf of their church from other public employees. The employee is a member of the church, but is not an officer or director

The COE opined as follows: public employees are not prohibited by the code of ethics from soliciting donations from coworkers for a non-profit organization, unless they are an officer or director of the non-profit, or corruptly use their official position to give a benefit to another person in exchange for a donation. The COE cannot opine as to county policy or procedure regarding the use of county resources in this manner.

- **RQO 11-092 Jeffrey Kurtz:** A Village Attorney asked whether a municipal councilmember, whose outside business provides engineering services to Palm Beach County, may vote on inter-local agreements between the municipality she represents and her government client.

The COE opined as follows: municipal officials whose outside business or employer contracts with county government are not prohibited from voting on contracts between their government-client and the government they serve, provided that the inter-local agreement is unrelated to their business relationship with the government-client and does not otherwise give their outside business a special financial benefit. Voting on inter-local agreements that may result in a special financial benefit to their outside employer or business would violate the misuse of office provisions of the Palm Beach County Code of Ethics.

- **RQO 11-093 Kyle Grandusky:** An employee of a county vendor appointed to a county technical/professional working group by the League of Cities asked whether he may continue to serve as a member of the working group. The working group (WG) reports to the Water Resources Task Force (WRTF). While the resolution that created the WRTF specifies the membership of the WG, it does not call for the creation of the WG. The WG may only be convened at the request of the Chair of the WRTF for the purpose of answering a technical question requiring professional expertise. The WG cannot be convened by the BCC or any municipal governing body.

The COE opined as follows: The Commission on Ethics (COE) jurisdiction is limited to municipal and county employees, officials, and advisory board members. Here, while the technical/professional working group reports to a County advisory board, it is not an advisory board created by the county or a municipality. Moreover, as an appointee of the league of cities and not the Board of County Commissioners or municipality within the county, the WG member is not an official as defined by the code of ethics. Accordingly, he is neither an official, nor an advisory board member and is not subject to the provisions of the code.

- **RQO 11-094 Jennifer Ray:** A municipal employee asked whether her family may participate in fundraising efforts on behalf of "Project Graduation", an all-night drug and alcohol free celebration for high school seniors. In past years, volunteers have signed onto a letter to local businesses soliciting funds. Several of the donors are vendors of the municipality that she, her husband and son serve.

The COE opined as follows: the Code of Ethics prohibits public employees from participating in charitable fundraising in the following circumstances:

- Public officials or employees who have a dependent child eligible to receive a financial benefit may not use their official public position or title, directly or indirectly, to specially financially benefit their child.
- Public officials and employees may not solicit or accept anything of value because of the performance of an official act, or the past, present or future performance or violation of a legal duty.
- Public officials and employees may not solicit a gift of any value from a vendor, lobbyist, principal or employer or a lobbyist who sells, leases or lobbies the municipality they serve for their *own personal benefit, the benefit of their relatives or household members or the benefit of another employee.*
- Public employees are not prohibited, in their personal capacity, from soliciting or accepting donations for the benefit of their children, from persons and entities who are not vendors, lobbyists, principals or employers of lobbyists who sell, lease or lobby the City, as long as there is no quid pro quo or other benefit given for an official act or performance of a public duty, and so long as they do not use their official position or title if they or their children are eligible for a special financial benefit.

- **RQO 11-095 Amanda Liebl:** The Youth Program Director of the City of Boca Raton asked whether the City Recreation Services Department may charge food vendors at the City's Annual Winter Children's Fair based on a percentage of their sales and charge other non-food vendors a fixed cost per booth.

The COE opined as follows: the jurisdiction of the Commission on Ethics (COE) is limited to the Countywide Code of Ethics. When a City makes a policy determination, the COE will not opine as to the suitability of the policy or procedure unless a section of the code is implicated.

- **RQO 11-096 Cale Curtis:** A municipal finance director asked whether the current town attorney who resigned his position effective December 31, 2011 may meet for lunch with Town employees or officials to discuss the RFQ process to select his replacement where the current contract is with the attorney's law firm and not specifically with the attorney himself.

The COE opined as follows: an employee may not use his or her official position to obtain a financial benefit not shared by similarly situated members of the general public, for himself or his outside business or employer. A contract for services or a renewal of a service contract is of financial benefit to an applicant. Therefore, a contract employee of the Town with a pending application before the Town may not discuss the application with officials or employees unless all other applicants are given the same opportunity, in the same manner as the employee. This extends to an application submitted by the employee's outside business or employer.

- **RQO 11-097 James Walley:** A municipal police officer asked whether he was required to report a gift of discounted tickets to a charity function, valued in excess of \$100 when the tickets were provided to him by a fellow police officer and if so, whether the gift reporting requirement applies to all non-exempt gifts given during the fiscal year, but prior to the effective date of the Code of Ethics.

The COE opined as follows: a municipal employee is not required to report a gift motivated by a personal friendship or social relationship provided the gift is not given by a vendor, lobbyist, principal or employer of a lobbyist who sells, leases, or lobbies their municipality. The requirement to report gifts is procedural and all municipal officials and employees, not required to report under state law, must complete and submit an annual gift disclosure report with the COE no later than November 1, 2011 for the preceding year ending September 30, 2011. Substantive violations of the gift law involving municipal employees or officials occurring prior to June 1, 2011, cannot be prosecuted under the code, however, unless exempted; all gifts with a value in excess of \$100 received during this period must be reported.

- **RQO 11-098 Henry Esformes:** A County public safety employee asked whether he could accept a \$15 gift card from a client of his department in appreciation of services provided in the course of his public employment.

The COE opined as follows: Section 2-444(c) of the Palm Beach County Code of Ethics specifically prohibits an employee from accepting a gift of any value because of "an official action taken" or "duty performed." The assistance provided was in the employee's official capacity and therefore he is prohibited from accepting the gift certificate.

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