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News Release

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Summary of Commission on Ethics Meeting Held on March 1, 2012

The Palm Beach County Commission on Ethics (COE) took the following actions at its monthly public meeting held on March 1, 2012.

Three complaints were heard in executive session. All documents pertaining to complaints C11-027 and C11-028 are published on the COE website at <http://www.palmbeachcountyethics.com/complaints.htm>. The COE took the following action:

C11-026: The COE tabled this matter for further review.

C11-027: The COE issued a public report and finding of probable cause. After review of staff's investigation, documentary submissions, written response of the respondent and the oral statements of the respondent and advocate, the Commission on Ethics determined that there are reasonably trustworthy facts and circumstances to believe that Dr. Scott Swerdlin, chairman of the Wellington Equestrian Preserve Committee, may have violated §2-442(a), §2-443(b), and §2-443(c) of the Palm Beach County Code of Ethics. A final hearing was set for June 15, 2012.

C11-027: After reviewing staff memoranda of inquiry and no legal sufficiency, the COE determined that the actions taken by the respondent, Village of Wellington Attorney Jeffrey Kurtz, do not constitute a violation of the Code of Ethics and dismissed the complaint due to no legal sufficiency.

Six (6) advisory opinions were approved. Three (3) advisory opinions were tabled and will be considered at the next COE meeting. The full opinions are published and available at: <http://www.palmbeachcountyethics.com/ethics/opinions.htm>

RQO 11-118: An assistant county attorney asked whether the contingent fee prohibition, as contained in the Palm Beach County Code of Ethics, applies in bond underwriting matters to investment or financial advisors, underwriters, investment banks, credit enhancers, sureties, bond, underwriter or issuer's counsel, bank or disclosure counsel, title insurers or ratings agencies, where the normal and customary compensation for these services are contingent upon an action or decision of government.

The COE opined as follows: When acting in the normal course of their profession, financial services professionals involved in the public issuance of bonds are not prohibited from contractual arrangements or compensation contingent upon the closing of the subject transaction. This arrangement is ordinary and customary in the

bond underwriting industry. Bond underwriting professionals are regulated by state and federal law and compensation paid under this sort of contract comes from the monies financed.

RQO 11-121: A city ethics officer asked whether procedures in place regarding solicitation of vendor donations for a City of West Palm Beach-sponsored 4th of July event which includes a “VIP tent” area not open to the public are in compliance with the revised Code of Ethics.

The COE opined as follows: Based upon the facts and circumstances submitted, the solicitation by public employees of vendor contributions to a city-sponsored event is not prohibited by the code if the contributions are solicited or accepted on behalf of the city for use solely by the city for a public purpose. Donations such as these are excluded from the definition of gift. However, the solicitation of donations from city vendors by city employees in order to provide city employees and officials and their invited guests a VIP area not open or available to the public is prohibited by the Code of Ethics.

RQO 12-007: A Palm Beach County Fire Rescue employee asked whether unsolicited gift cards given by a homeowners association to Palm Beach County Fire Rescue (PBCFR) employees at a specific PBCFR station serving the residents in that area, used by station personnel to purchase food items for preparing meals for on duty employees at the station, is either prohibited or reportable as a gift by the gift law portion of the PBC Code of Ethics.

The COE opined as follows: The Code of Ethics does not prohibit the distribution of unsolicited gift cards donated by residents of a homeowners association as a holiday gift to a particular PBCFR station for the collective use by its employees, where the gifts are not from vendors or lobbyists of their government employer, and are not in exchange for the past, present or future performance of an official act or legal duty or otherwise constitute a quid pro quo for an official action. If the individual value of the gift per employee (total value divided by the number of employees) exceeds \$100, the gift must be reported by each individual employee pursuant to the requirements of the Code of Ethics.

RQO 12-008: A county employee asked whether she could accept two tickets with a face value of \$125 each to a banquet given by a nonprofit trade organization that lobbies the Palm Beach County government where she would receive a plaque honoring her work in creating a countywide “universal building permit application.”

The COE opined as follows: County and municipal employees are not prohibited from accepting an award for civic or professional achievement. The code prohibits employees from accepting a gift with a value in the annual aggregate of more than \$100 from a lobbyist or principal of a lobbyist who lobbies the employee’s government entity. Therefore, should the value of the tickets to the event exceed \$100, the employee must return the difference to the organization.

RQO 12-009: A municipal police chief asked whether police department employees could attend a nonprofit organization-sponsored employee awards dinner and if so, what is required of the nonprofit sponsor and of his employees. Furthermore, as the nonprofit raises money for the police department for training and equipment, college scholarships, condolence gifts, and employee achievement awards, are there any limitations on how the nonprofit can raise those dollars?

The COE opined as follows: Public employees, or any person or entity on their behalf, are prohibited from soliciting a gift of any value from a vendor, lobbyist, principal or employer or a lobbyist who sells, leases or lobbies their public employer, if the solicitation is for their own personal benefit, the benefit of their relatives or household members or the benefit of another employee.

This prohibition does not extend to soliciting or accepting donations from persons and entities who are not vendors, lobbyists, or principals or employees who sell lease or lobby their public employer, as long as there is no quid pro quo or other benefit given for the past, present or future performance an official act or legal duty. Gifts in excess of \$100 are to be reported on an employee’s annual Palm Beach County gift reporting form, unless one of several exceptions apply: The definition of “*gift*”, specifically excludes awards for professional or civic achievement and accordingly do not have to be reported. Similarly, the solicitation of donations specifically earmarked to a public department for use solely by the government for a public purpose would not constitute a gift under the code. Therefore, the nonprofit is not prohibited from soliciting vendor and lobbyist donations for training and equipment, so long as those donations are specifically solicited and earmarked for the operational needs of the police department as compared to an employee’s personal use.

RQO 12-010: A municipal vendor asked whether her employer, Branch Banking & Trust Company (BB&T), may offer banking benefits, including fee waivers, and other discounted services to employees of municipalities who are BB&T customers and, if prohibited or limited by the ethics code, whether offering these same benefits to all county or municipal employees, regardless of whether their government employer is a BB&T customer, would change the result.

The COE opined as follows: As a vendor of a particular municipality or municipalities, BB&T is prohibited under the PBC Code of Ethics from offering a personal benefit to officials and employees of those municipalities, if the value of the benefit is greater than \$100 annually in the aggregate for the individual employee or official, or if any benefit is offered as a quid pro quo for an official public action or the past, present or future performance of any legal duty. However, a similar offer *to all local governmental employees, regardless of whether their public employer is a banking customer of BB&T*, would not be prohibited by the gift law under the exception for publicly advertised offers made available to the general public.

A detailed explanation of all agenda items is available at the COE's website:

<http://www.palmbeachcountyethics.com/ethics/meetings.htm>

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