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News Release

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Summary of Commission on Ethics Meeting Held on July 7, 2011

The Commission on Ethics (COE) took the following actions at its monthly public meeting held on July 7, 2011.

- Ten (10) Advisory Opinions were approved. Two advisory opinions were tabled and will be considered at the next COE meeting. The full opinions are published and available at <http://www.pbcgov.com/ethics/opinions.htm>
- **RQO 11-027 Mark Joyce:** A municipal employee who is the president of a local nonprofit organization asked whether he could use a municipal email system to solicit volunteers for an upcoming charity event.

The COE opined as follows: He may not use his official position, including municipal resources such as email, to give a special financial benefit to a charity of which he is an officer.

- **RQO 11-028 Leonard Rubin:** A municipal village attorney asked whether employees of a municipal golf course could accept tips in the normal course of their employment. The municipality owns and operates a country club which includes a golf course, tennis facility, pool, restaurant and lounge and banquet facility. Tips are a contemplated part of servers, golf attendants and tennis and golf professionals overall compensation package as documented by the job descriptions and compensation agreements between the municipality and these employees. In addition, these service jobs contemplate tipping as a means of compensation by custom and practice.

The COE opined as follows: The Code of Ethics does not prohibit a municipal service employee from accepting tips and gratuities for providing standard and customary services, where tips and gratuities are an officially contemplated basis for the employee's overall compensation.

- **RQO 11-029 City Commissioner Kimberly Mitchell:** A West Palm Beach city commissioner asked whether, as an elected official, she could serve on the board of directors of a local nonprofit organization and if she could continue to fund raise on behalf of the organization.

The issue was tabled and will be resubmitted at the next regularly scheduled meeting of the COE.

- **RQO 11-030 Edward Lowery:** A county department director asked whether a conflict of interest existed if a county employee who volunteers as an officer (treasurer) of a local nonprofit land trust is involved in matters where the county provides financial assistance to purchasers of foreclosed homes from that land trust. In some instances, the nonprofit land trust purchases and resells foreclosed properties to the county subsidized purchasers. Although the county employee's official position does not involve the actual grant decision-making, it does require her to initially screen applicants to determine whether they are eligible for financial assistance from the county, including potential clients of the nonprofit whom she serves as a corporate officer.

The COE opined as follows: There is an inherent conflict of interest between the county employee's duties and her position as an officer and board member of the nonprofit land trust.

- **RQO 11-031 Vice Mayor Suzanne Mulvehill:** A Lake Worth city commissioner asked whether a conflict of interest existed were she to accept employment with a local college that has contracts with her municipality. In the course of her college employment, she would provide counseling to small to medium-sized businesses and recruit companies for the college's growth acceleration program. All counseling services are provided without cost to the participating business and college staff positions are funded in part by federal grants.

The COE opined as follows: The Code of Ethics specifically exempts all government entities from the definition of outside employment. Therefore, the college, a state facility, is not an outside employer of the city commissioner, and the prohibited contractual relationship section of the code does not apply. Furthermore, because the services provided by the college are free to the public, businesses advised by the city commissioner are not customers or clients as defined by the code. So long as she does not use her official position for personal financial benefit, or otherwise corruptly use her position inconsistently with the proper performance of her public duties, employment with the college would not violate the code.

- **RQO 11-032 Chuck Elder:** The film commissioner for the Palm Beach County Film and Television Commission (FTC), a registered nonprofit corporation funded partially by public funds whose purpose is the support and expansion of the film, television, and still photography industry in Palm Beach County, asked whether complimentary tickets could be given to county commissioners and staff to attend events hosted by FTC and, additionally, whether FTC officers, directors or employees are permitted to participate in fund-raising events connected to the 6th Annual Film Florida Conference, hosted by FTC.

The COE opined as follows: First, the Code of Ethics specifically excludes "expenditures made in connection with an event sponsored by a nonprofit organization funded in whole or in part with public funds whose primary purpose is to encourage and attract tourism or other business opportunities for the benefit of Palm Beach County" from gift limit prohibitions provided that the sponsor organization does not employ a lobbyist and that the invitation to the event is made by a representative of the nonprofit sponsor who is not otherwise a vendor, lobbyist, principal or employer of a lobbyist. Therefore, tickets given within these guidelines are allowable. If the value of the tickets exceeds \$100 they must be reported.

Second, the Code of Ethics does not apply to fund-raising activities conducted by FTC directors, officers or employees provided they are not otherwise public officials or employees of the county or municipalities within the county.

- **RQO 11-033 Vice Mayor Suzanne Mulvehill:** A Lake Worth city commissioner asked whether she was permitted to use the remaining funds in her campaign account to pay for a trip to an event held as part of a municipal "sister city" program.

The COE opined as follows: Political contributions are not regulated by the Code of Ethics and are subject to specific regulation under state and federal law. The Code of Ethics neither prohibits nor authorizes the use of these funds.

- **RQO 11-034 Thomas Cairnes:** A local businessperson asked whether he or his employer were prohibited from providing complementary lunches to municipal officials or employees or from inviting them to attend charity events within the municipality. The business is neither a vendor nor a does it employ lobbyists within the municipality.

The COE opined as follows: So long as the business is not a vendor, or a lobbyist, principal or employer of a lobbyist who sells, leases or lobbies the municipality, and there is no “quid pro quo” or special treatment or other privilege obtained by the business or any of its employees in exchange for lunches or tickets to charitable events, the Code of Ethics does not prohibit these gifts. Gifts in excess of \$100 must be reported by the official or employee pursuant to the code, or Florida Statute for those who are state reporting individuals.

- **RQO 11-036 Richard Gathright:** A deputy building director for Palm Beach County asked if doing volunteer work with Habitat for Humanity of Palm Beach County (HFH) or its Family Support Committee violated the Code of Ethics. Neither the deputy director nor his spouse is an officer or director of HFH. The official duties of the Deputy Director include supervision of personnel in building, plan review, inspection activities, and enforcement of building codes. Volunteer activities with HFH include helping to build homes, partnering with prospective families, screening prospective homeowners and providing mentoring to HFH clients. HFH is not a county vendor. It must comply with municipal and/or county building code requirements.

The COE opined as follows: Since the deputy director is not an officer or director of HFH, there is no prohibited financial conflict of interest created under the code. However, the deputy director may not use his official position corruptly to secure a special benefit for HFH or their prospective clients. *Corruptly means done with a wrongful intent and for the purpose of obtaining a benefit for anyone in a manner inconsistent with the proper performance of his or her public duties.*

- **RQO 11-037 Peter Elwell:** A municipal town manager asked whether a prohibited conflict of interest would arise if a town building official was 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 issue was tabled and will be re-submitted at the next regularly scheduled meeting of the COE.

- **RQO 11-038 Jim Kuretski:** A municipal councilman asked whether being employed by a publicly regulated utility presented an inherent conflict of interest where customers of the utility appear before the town council in most, if not all decision-making matters. Based upon a franchise agreement with the town, all businesses and residential property owners within the municipality who use electrical power supply services, purchase those services from the councilman’s outside employer, Florida Power and Light. The public utility has similar if not identical contracts with the county and most municipalities within the county.

The COE opined as follows: Because all residents and businesses appearing before the town council are required to purchase their power from the official’s outside employer, a regulated public utility, they are similarly situated and there is no inherent conflict merely because a person or entity is a customer or client of that utility. Additionally, the utility is the sole source of electric supply within the town and therefore the official’s

employment with the utility company would not constitute a prohibited contractual relationship under the “sole source” exception to the prohibition. Notwithstanding, he must be careful not to use his official position to obtain a special financial benefit for himself or his outside employer.

- **Craig Spatara 11-045:** A county employee asked whether he was required to file an outside employment waiver if his outside employer was a municipal government agency, the West Palm Beach Police Department.

The COE opined as follows: The Code of Ethics specifically exempts all government entities from the definition of outside employment. As such, he is not prohibited from accepting part-time employment with the municipal government and is not required to complete an outside part-time employment conflict of interest waiver.

- The Commission on Ethics voted to formally adopt rules allowing for public comment on all matters before the commission except quasi-judicial probable cause and final hearings. The chairman will have the discretion to make decisions regarding time, place and decorum during public comment.
- The Commission on Ethics formally revised its rules regarding the withdrawal of an advisory opinion request to reflect the revisions to the COE ordinance effective June 1, 2011. The new rule allows a submission to be withdrawn up to 10 days before the matter comes before the COE. Notwithstanding the withdrawal of the request, all public records, including draft responses, will be maintained by the COE as a public record.
- The Commission on Ethics voted to submit a second request to the Florida Attorney General for a formal advisory opinion as to whether a commissioner may abstain from a vote in a complaint proceeding where bias, prejudice or affinity of a non-financial nature may violate the due process rights of an accused.
- The Commission on Ethics heard a presentation by Palm Beach County staff regarding the institution of a vendor list of all current vendors of Palm Beach County Government. The list may be publicly accessed through the PBC website www.pbcgov.com and will be linked through the Ethics Commission website as well. <http://www.palmbeachcountyethics.com/lobbyists.htm>
- The Palm Beach County Ethics Initiative has been chosen by the National Association of Counties (NACo) to receive the 2011 Achievement Award for innovation in government. The award will be presented at the annual NACo meeting in Multnomah County, Oregon on July 17, 2011.

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

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