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News Release

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Summary of Commission on Ethics Meeting Held on October 6, 2011

The Commission on Ethics (COE) took the following actions at its monthly public meeting held on October 6, 2011.

- Four (4) 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:
 - C11-015 and C11-016 were dismissed for lack of legal sufficiency.
 - C11-017 (Respondent Conrad Saddler): The COE found probable cause to believe that the Respondent violated the Palm Beach County Code of Ethics by copying and disseminating an Association of Pretrial Services Agencies (NAPSA) certification examination. A final public hearing is scheduled for February 2, 2012.
 - C11-018 (Respondent Debbie Crow): The COE found probable cause to believe that the Respondent violated the Palm Beach County Code of Ethics by receiving, using and disseminating an Association of Pretrial Services Agencies (NAPSA) certification examination. A final public hearing is scheduled for February 2, 2012.
- Twenty one (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 are published and available on the COE website at <http://www.pbcgov.com/ethics/opinions.htm>
 - **RQO 11-054 Peter Elwell:** A Town Manager asked whether municipal employees may accept discounted food from local restaurants that may be Town vendors. There is no indication that these discounts are provided as a quid pro quo in exchange for any official public action or the past, present or future performance of a legal duty.

The COE opines as follows: public employee discounts may be exempted from the gift law prohibitions applicable to vendors, provided; they are not based on the preferred treatment of the vendor by the employee or official, they apply to all other similarly situated government employees or officials, are not targeted to an individual or office, and they are not otherwise offered as a quid pro quo, or to otherwise convey a special benefit in violation of the misuse of office or voting conflicts sections of the Code of Ethics.

- **RQO 11-056 Peter Elwell:** The Town Manager of the Town of Palm Beach (the Town) asked whether Town of Palm Beach Police Department (PBPD) employees may accept emergency financial assistance grants from the Palm Beach Police Foundation (PBBF). When employees of the PBPD have suffered some personal hardship, such as a fire at their home or an uninsured medical need for themselves or their family, the PBBF has made emergency financial assistance grants to these employees. The PBBF accepts gifts and donations from the public and PBPD employees solicit on behalf of the organization. As of fiscal year 2010, the directors of PBBF manage over 1.4 million dollars in assets. In addition to the scholarship program discussed in RQO 11-081 and emergency grant aid, the PBBF provides funding for the Palm Beach Crime Watch Program and for training, equipment and other operational needs of the PBPD.

The COE opined as follows: Town employees are prohibited from soliciting donations on behalf of the PBPF from vendors or lobbyists of the Town. PBPD employees may not, in their official capacity, solicit *any person or entity* for the PBPF; to do so would *per se* constitute using one's official position to specially financially benefit themselves. No Town employee may solicit or accept any donation as a quid pro quo or other exchange for the past, present or future performance of an official act or legal duty. Emergency financial assistance grants must be reported on the employee's annual gift reporting form. Funds currently solicited by employees and directly earmarked solely for PBPD operational use are not considered gifts as defined under the code.

While not prohibited under the Code of Ethics, programs such as these may create an appearance of impropriety where large donations are given and where such a direct financial benefit is received. This is especially true if official acts of the PBPD are of a discretionary nature. In its request for an advisory opinion, the Town asked whether the potential conflicts presented by these grants, might be remedied if the PBPF funds were adopted and administered by the Town. The Commission concurs with the Town's assessment that should the Town find this program to be for a public purpose and if the Town were to directly accept the donations on behalf of its employees and distribute these donations accordingly, the transparency and accountability concerns surrounding the current program would be mitigated. Donations solicited or accepted on behalf of the public entity for use solely by the Town for a public purpose, i.e., the benefit of Town employees, are not considered gifts under the code and the gift law would therefore not apply. Any abuses in this scenario would be captured under the financial and corrupt misuse sections of the code.

- **RQO 11-057 Peter Elwell:** The Town Manager for the Town of Palm Beach asked whether the children of town employees may accept scholarship dollars from private, for-profit entities doing business within the Town. In this case, these entities do not sell, lease or lobby the Town and these scholarships are available to any college-bound Town resident or child of *any* employee of *any* business located within the municipality's borders.

The COE opined as follows: Children of Town employees are not prohibited from accepting scholarships provided by local businesses that do not sell, lease or lobby the Town of Palm Beach. There is no evidence that these scholarships are provided with the intent to benefit Town employees, as scholarship funds are available to any employee of any business within the Town or any resident within the Town. In addition, since the scholarship gift is to the child and not indirectly through the Town employee, it is not a reportable gift.

- **RQO 11-062 Thomas Hernacki:** A City Councilman asked whether a conflict of interest existed were he to participate and vote to change an ordinance increasing the allowable size of boats or R.V.s parked on a single-family residential property where he owns a racing shell stored in violation of the ordinance. While the council member had alternative locations to store his racing shell without cost, the ordinance restrictions would affect his ability to store the shell on his property and thus he would receive a fair market value financial benefit should the ordinance be amended.

The COE opined as follows: Elected officials may not use their official position to give themselves a special financial benefit not shared with similarly situated members of the general public. Voting on an ordinance change that would allow the Councilman to store his racing shell on his property would provide a fair market value benefit regarding the potential need for rental space. This would constitute a prohibited special financial benefit and result in violation of the voting conflicts and misuse of office sections of the Code. The Councilman previously abstained when this issue came before the City Council and subsequently requested this opinion. Should this matter come before the Council he must once again publically disclose the nature of the conflict, file the required state disclosure form, refrain from voting and not participate in, or influence the process in any way.

- **RQO 11-063 Mark Hall:** The Police Chief of Palm Springs asked whether his department may solicit and accept donations from a Village vendor in order to refurbish a newly acquired armored vehicle.

The COE opined as follows: Since the solicitations are made and donations are used on behalf of the village of Palm Springs Police Department (PSPD) for use solely by the department in conducting its official business, these donations are not considered to be gifts under the code of ethics. Department staff is not prohibited from soliciting and accepting donations from vendors of the Town for the PSPD so long as they are doing so in their official capacity for use solely by the Village for a public purpose. However, the solicitation or acceptance of funds, while not a gift in this context, must not be based upon a quid pro quo, special privilege or treatment given, that would constitute a misuse of office.

- **RQO 11-069 Diana Grub Frieser:** The Boca Raton City Attorney asked whether city employees and officials may accept tickets, provided by the City, to attend events held at the Mizner Park Amphitheater (MPA) and if so, are they reportable gifts. The City owns and operates the MPA and leases the space to promoters for concerts and other

events. Pursuant to the lease agreements provided to promoters, the City reserves several skybox-style seating areas for City use; seats to these events are not part of an employee's or official's benefit package or employment contract.

The COE opined as follows: City officials and employees are not prohibited from accepting tickets from the City and attending events hosted at the MPA. An event promoter leasing the space from the City is not a vendor as defined by the Code of Ethics since the nature of the transaction is a lease from the City as compared to leasing or selling to the City. Even if a promoter became a vendor or service provider to the City, the balcony seats are not under the vendor's control. Since these seats are retained by the City, they are not indirect gifts from a vendor to an employee or official. However, as an event or concert provides added value to the seats themselves and should the per person value of the ticket exceed \$100, the gift must be reported as required by the Code of Ethics.

- **RQO 11-075 Connor Lynch:** A member of the Board of Directors of the Plumosa School of the Arts Foundation (PSAF) asked whether municipal mayors may participate in a "Mayor's Throwdown" at Bru's Room Sports Grill in Delray Beach. The Foundation invited three municipal mayors to act as celebrity bartenders competing to raise the most "tips" throughout the evening. In order to comply with the charitable solicitation requirements of the code, the foundation proposed placing volunteers at each tip jar in order to record any donation in excess of \$100. In addition, the tip jars would not be visible to the mayors during the course of the event and the event sponsors agreed to announce, both in print and orally, that municipal vendors or lobbyists were required to record any gift in excess of \$100 on a log provided by the sponsors.

The COE opined as follows: In addition to the bartending competition, the PSAF has an ongoing campaign to sell name plates for auditorium seats and engraved bricks placed at the entrance to the school auditorium. Both items sell for more than \$100; however, event attendees who purchase these items are required to complete a form that contains a checkbox for vendors and lobbyists to indicate that they sell, lease or lobby the municipalities involved in the fundraiser.

The direct or indirect solicitation or acceptance of otherwise prohibited gifts in excess of \$100 from vendors and lobbyists is not prohibited, so long as the gift is transparent, not obtained with public resources and is not from vendors with a pending application before their municipality. A log of these gifts must be transmitted to the COE within 30 days of the event. In addition, a gift of any value may not be given in exchange for the past, present, or future performance of an official act or legal duty.

- **RQO 11-077 Elizabeth Harfmann:** A county employee asked whether employees may use their public email to invite co-workers to a charity event and whether they may sell raffle tickets associated with the event during their lunch breaks or other non-government time. The employees interested in soliciting on behalf of the "Help Lizzie Heal" Event are not on the board of directors or officials of the non-profit charity, nor do they plan to solicit vendors or lobbyists of the county. None of the raffle prizes are provided by vendors or lobbyists of the county.

The COE opined as follows: The Code of Ethics does not prohibit employees from participating in and soliciting other county employees in conjunction with a fundraising event. While a public employee may not use their county email to solicit charitable contributions in excess of \$100 from vendors or lobbyists, the code does not prohibit employees from using their email to publicize events or solicit donations from co-workers. County or municipal governments may have policies and procedures that address the personal use of public email aside from the code of ethics; responsibility for interpretation and enforcement of county or municipal policies or procedures remains with an employee's supervisor or department head.

- **RQO 11-078 William Lapp:** A Palm Beach County resident and applicant for an advisory board position asked whether a conflict of interest would exist if he were to serve on a County advisory board that may review grant proposals from non-profit entities for which he serves on the board of directors or proposals from an entity where his wife is the executive director.

The COE opined as follows: An advisory board member may not use his or her official position to give their spouse, their spouse's outside employer, or a nonprofit organization of which they or their spouse or domestic partner are an officer or director a special financial benefit not shared with similarly situated members of the general public. Voting, participating or attempting to influence other board members or staff to benefit one of these persons or entities would constitute a misuse of office. In addition, an official may not specially financially benefit his or her spouse, or the spouse's outside business or employer.

- **RQO 11-079 Peter Elwell:** The Town Manager for the Town of Palm Beach asked whether children of Town employees may accept educational scholarships provided by the Palm Beach Country Club Foundation and Palm Beach Day Academy. The Palm Beach County Club Foundation is a registered 501(c)3 non-profit and scholarship

dollars are funded through membership dues. The Palm Beach Day Academy reserves a limited number of student positions for full tuition scholarships awarded to town employees. Both programs are available exclusively to Town employees; however, neither entity is a vendor or lobbyist who sells, leases or lobbies the Town of Palm Beach.

The COE opined as follows: Town employees are not prohibited from accepting scholarship dollars on behalf of their children from the Palm Beach County Club Foundation and Palm Beach Day Academy, provided that there is no quid pro quo or special treatment or privileges given to either organization in exchange for these scholarships. Unlike the scenario presented in RQO 11-057, here scholarship eligibility is contingent upon a parent's status as a public employee. Therefore, should the value of a scholarship exceed \$100, scholarship funds must be reported on the parent's annual gift reporting form.

- **RQO 11-080 Peter Elwell:** The Town Manager for the Town of Palm Beach asked whether children of Town employees may accept educational scholarships sponsored by the Palm Beach Civic Association and the Citizen's Association of Palm Beach, but administered by the Town. Neither organization is a vendor or lobbyist who sells, leases or lobbies the Town of Palm Beach. The Town's human resources department accepts applications from candidates and a selection committee comprised of the Town's Director of Human Resources and one representative from each of the sponsoring organizations award the scholarships. Scholarships are funded with membership dues; there is no fundraising associated with these scholarships.

The COE opined as follows: Town employees are not prohibited from accepting scholarship dollars on behalf of their children from the PBCA and the CAPB, however should the value of these scholarships exceed \$100 they must be reported. No Town employee may use their official position to secure a scholarship for their child.

- **RQO 11-081 Peter Elwell:** The Town Manager of the Town of Palm Beach (the Town) asked whether the Town police, fire-rescue and paramedics personnel may participate in fundraising events on behalf of several scholarship programs where their children may be eligible to receive scholarship dollars from those funds. These programs include the Palm Beach Police Foundation (PBPF), the local Fraternal Order of Police Lodge (FOP) and the Palm Beach Firefighters and Paramedics Education Fund (PBFPEF).

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

- Public officials or employees who are officers or directors of a non-profit organization, or who have a dependent child who may become eligible to receive scholarships, or are participants in any ongoing program established by these organizations, may not use their official public position or title, directly or indirectly, to specially financially benefit themselves, their children or the charitable organization.
- 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 or their relatives or household members*.

Town employees are not prohibited from soliciting or accepting donations for scholarship programs from persons and entities who are not vendors, lobbyists, principals or employers of lobbyists of the Town, so long as there is no quid pro quo or other benefit given for an official act or the past, present or future performance of a public duty, and so long as they do not use their official position or title if they are *eligible for or receiving grant benefits*.

While not prohibited under the Code of Ethics, programs such as these may create an appearance of impropriety where large donations are given and where such a direct financial benefit is received. This is especially true of the official acts of the PBPD and PBFR are of a discretionary nature. In its request for an advisory opinion, the Town asked whether the potential conflicts presented by these scholarships, might be remedied if the scholarship programs were adopted and administered by the Town. As in the companion opinion, RQO 11-056 (PBPF emergency grants), the Commission concurs with the Town's assessment that should the Town find this program to be for a public purpose and if the Town were to accept the donations on behalf of its employees and oversee the distribution of the scholarship dollars, the transparency and accountability concerns surrounding the current program would be mitigated. Donations solicited or accepted on behalf of the public entity for use solely by the Town for a public purpose, i.e., the benefit of Town employees, are not considered gifts under the code and the gift law would therefore not apply. Any abuses in this scenario would be captured under the financial and corrupt misuse sections of the code.

- **RQO 11-082 Shelley Vana:** A Palm Beach County Commissioner asked whether she may accept two tickets to the Business Development Board Gala at the Breakers on Palm Beach (BDB Gala) from Mr. Kenneth Kahn, President of LRP Publications, Inc. Neither Mr. Kahn nor his company, LRP Publications, sell, lease or lobby Palm Beach County. The tickets are valued at \$250 each.

The COE opined as follows: County officials are not prohibited from accepting a ticket, pass or admission to a public event, or an expenditure made in connection with an event sponsored by a nonprofit organization funded in whole or in part with public funds whose primary function is to encourage and attract business opportunities to Palm Beach County, provided that, if the ticket value exceeds \$100, they are not given by a vendor or lobbyist of the county. The BDB Gala is both a public ticketed event and is hosted by an entity that fits within the gift prohibition exception and the donor is not a vendor or lobbyist. Because the total value of the tickets is \$500, they are a reportable gift and must be reported on the State of Florida Quarterly Gift Disclosure Form. A copy of this form must be submitted to the Palm Beach County Commission on Ethics.

- **RQO 11-083 Bill Orlove:** The Vice-Mayor of the City of Boynton Beach asked whether he may solicit donations, using his official position, from local businesses on behalf of a City-sponsored event. In order to promote the City as a wedding destination, the City is sponsoring a wedding sweepstakes where the winner will receive an all-inclusive wedding package. In association with this event, the Vice-Mayor plans to solicit donations of wedding related goods and services from local businesses. All donations will be accepted by the City through their Recreation Department for the purpose of this City event. Some prizes may be from City vendors and exceed \$100 in value.

The COE opined as follows: The Code of Ethics does not prohibit employees or officials from soliciting donations from local businesses in their official capacity, so long as the donations are given to the City for use in conducting its official business, including a City sponsored event, and not based on any *quid pro quo* or other improper reason.

- **RQO 11-084 Thomas Masters:** The Mayor of the City of Riviera Beach asked whether members of the City Council may direct funds provided by Waste Management (WM), a City vendor, to charitable events, not-for-profit organizations or City functions or projects. Each City Councilperson individually determines which organization or program will receive a donation from WM to the city or charity. The total funds available to the council, pursuant to the City's contract with WM, totals \$90,000 annually.

The COE opined as follows: The Code of Ethics prohibits any member of a local governing body, or mayor if not a member of a local governing body, or anyone on his or her behalf, from soliciting or accepting, directly or indirectly, any gift of a value of more than \$100 annually, from any person or entity who is a vendor of a municipality. This prohibition does not apply to gifts solicited or accepted by municipal officials on behalf of the municipality *for use solely by the municipality for a public purpose*.

Under the system created by the City, these “discretionary funds” never become a part of the City of Riviera Beach (RB) general revenue, and instead are given by Waste Management directly to various organizations under the direction of a single elected official. Where monies are never made a part of the City account, but are expended for a specific non-governmental use by a vendor at the direction of a single elected official, these funds are considered a transfer of value within the Code of Ethics. These donations are not made a part of the City account, are not for use solely by the municipality for a public purpose and as such, are not exempt from the vendor-gift prohibition. Therefore, the current system of direct distribution of funds by Waste Management to any non-City entity or program in this manner is prohibited by the Code of Ethics.

- **RQO 11-085 Lisa Tropepe:** A Municipal Council member, who contracts with other municipalities to provide engineering services, asked whether it violates the Palm Beach County Code of Ethics to supervise and provide engineering services for a municipal construction project where her step-son is an employee of a construction company also working on the project. The Council member is a shareholder of an engineering firm that enters into contracts to design and oversee certain engineering projects for municipal and other local government agencies. For two smaller municipalities within Palm Beach County, the firm is retained as “Town Engineer.” For these municipalities, the company reviews applications for building permits and supervises ongoing maintenance and construction of public facilities.

The COE opines as follows: When a firm is contracted by a local governmental entity to design and oversee a specific project and where the firm has no power to determine what specific contractor is engaged by the municipality to complete that project, the engineer is a vendor of the municipality, not a contract employee. Where an engineer is designated Town Engineer to review and oversee all engineering projects within the municipality, the engineer is performing a government function as contemplated by the Code and is therefore considered a contract employee. As a contract employee, the official

is prohibited from taking or influencing others to take any official action that would give their step-son's employer a "special financial benefit" not available to other similarly situated contractors.

Finally, an elected official may not enter into contracts to provide goods or services to the government they serve unless one of several exceptions applies. Elected officials are prohibited from voting on or participating in any matter that would give a special benefit to their outside employer, outside business, step-son or his employer.

- **RQO 11-086 James M. Reid:** A Palm Beach County Fire Rescue employee asked whether County employees may participate as a group in the Florida or Powerball Lotteries and if so, may they email scanned copies of lottery tickets via the county email system.

The COE opined as follows: The Palm Beach County Code of Ethics does not prohibit county employees from playing the Florida or Powerball lotteries, both of which are authorized and sanctioned lottery systems by the State of Florida, either individually or as a group. Further, the use of county email to send personal messages as described does not reach the level of being a corrupt misuse of official position under these facts. The COE cannot opine as to whether such actions are prohibited, limited or regulated by County or Fire Rescue Department Policy.

- **RQO 11-087 Karen Marcus:** A Palm Beach County Commissioner asked whether she may submit a letter in support of a grant proposal submitted by a North County healthcare non-profit organization in her official capacity. The non-profit is soliciting grant funds from three healthcare foundations, one of which is a county vendor.

The COE opined as follows: Elected officials are not prohibited from soliciting grant funding using their official title on behalf of nonprofit entities, provided that they or their spouse or domestic partner are not officers or directors of the non-profit recipient and any grant monies received from a vendor, lobbyist or principal or employer of a lobbyist of Palm Beach County are recorded in accordance with the transparency requirements of the Code of Ethics. Should an elected official lend their name and official title to a fundraising effort for the benefit of a nonprofit entity where they serve as an officer or director, such action would *per se* constitute using one's elected office to specially financially benefit that nonprofit.

- **RQO 11-088 Joe Panella:** A municipal advisory board member, who is employed by a vendor of the municipality he serves, asked whether he may continue to serve as an advisory board member.

Staff submits the following for COE approval: It does not violate the Code of Ethics (and no conflict waiver of the governing body is required) for an employee of a municipal vendor to serve on an advisory board, provided that the advisory board provides no regulation, oversight, management, or policy-setting recommendations regarding the municipality's contracts or transactions with the board member's outside employer. In order to comply with the transparency requirements of the Code of Ethics, advisory board members whose outside employer has contracts with the government they serve, must disclose this conflict at a duly noticed public meeting of the municipal council.

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

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