



Palm Beach County
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News Release

For Immediate Release
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May 4, 2012
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Summary of Commission on Ethics Meeting Held on May 3, 2012

The Palm Beach County Commission on Ethics (COE) took the following actions at its monthly public meeting held on May 3, 2012:

- In connection with ongoing countywide audits of training compliance pursuant to §2-446 of the Code of Ethics, the COE discussed whether and in what context independent constitutional officers and their employees are required to adhere to the Code of Ethics when they are appointed or assigned by law to be a member of a county, regional, state or municipal board, commission or committee. The COE heard a presentation from staff and reviewed written submissions from the Sheriff's Office along with public comment.
- Staff prepared a brief presentation on how the COE can better reach out to the public through social media outlets including Facebook, Twitter and YouTube.

The COE took the following action:

One complaint was heard and dismissed in executive session. All documents pertaining to complaint C12-002 are published on the COE website at <http://www.palmbeachcountyethics.com/complaints.htm>.

The COE heard and rejected a proposed settlement agreement pertaining to complaint C11-027. The COE will review this matter again on June 7, 2012.

Seven (7) advisory opinions were approved; one (1) advisory opinion was tabled for review on June 7, 2012. The full opinions are published and available at: <http://www.palmbeachcountyethics.com/ethics/opinions.htm>

RQO 12-025: A lobbyist whose firm lobbies on behalf of private individuals and businesses asked two questions of the COE regarding the countywide Lobbyist Registration Ordinance, effective April 2, 2012. First, whether landscape architecture firm staff members who meet with Palm Beach County staff members for the purpose of asking technical questions related to a project are "lobbying" and, therefore, "lobbyists," as defined in the lobbyist registration ordinance. Second, when a registered lobbyist attends a meeting and is assisted by several staff members, including engineers, for the purpose of assisting him or answering technical questions, must accompanying staff members also register as lobbyists.

The COE opined as follows: A lobbyist is *any person who is employed and receives payment, or who contracts for economic consideration for the purpose of lobbying on behalf of a principal.* Lobbying is defined as *seeking to influence a decision through oral or written communication or an attempt to obtain the goodwill of an official or employee with respect to the passage, defeat or modification of any item*

which may foreseeably be presented for consideration to the advisory board or governing body. Whether or not a particular individual is captured within these definitions is determined by the specific facts and circumstances of the contact between that individual and public employees and officials. Purely ministerial or administrative functions, as may be provided by an assistant to a lobbyist, may not rise to the level of lobbying. However, where an engineer, employed by a firm contracted by a principal to lobby government, directly negotiates or otherwise actively participates in a discretionary matter, including matters regarding technical requirements, that foreseeably will come before a board or commission for decisional action, he or she would likely fall within these definitions.

RQO 12-026: A municipal elected official asked whether she may initiate a proclamation declaring May 20-26, 2012, as Small Business Week in her municipality, concurrently with the United States Business Administration's National Small Business Week. In addition to her position as a city commissioner, she holds a position as a certified business analyst for the Small Business Development Center (SBDC) at Palm Beach State College (PBSC) and works with small business clients of SBDC.

The COE opined as follows: The Code of Ethics does not prohibit an official from initiating a general proclamation declaring May 20-26, 2012, as Small Business Week, notwithstanding the official's employment position with PBSC, provided that her actions do not specially financially benefit her in a manner not shared with similarly situated members of the general public, or result in a *quid pro quo* benefit in exchange for a public action.

RQO 12-027: A municipal elected official asked whether as a city commissioner she may meet with a vendor of the city to assist their development as a small business in the context of her outside employment as a certified business analyst for the Small Business Development Center (SBDC) at Palm Beach State College (PBSC) and whether such a meeting will result in a conflict of interest should this company appear before the city commission in the future.

The COE opined as follows: While the financial misuse of office section of the Code of Ethics prohibits an elected official from using their official position to specially financially benefit themselves, their outside business or employer or a customer or client of their outside business or employer, the code specifically excludes other government entities in the definition of outside employer.

PBSC does not constitute an outside employer as defined by the code. By extension, the small business in question is a client of PBSC, a government entity. It does not qualify as a customer or client of an outside employer for purposes of financial misuse of office. Therefore, unless there is a special financial benefit to the elected official personally, or a corrupt use of an official's position for their personal benefit or the benefit of others, inconsistent with the proper performance of their office, the code does not prohibit an official from assisting the small business, a current vendor of the city, under the facts and circumstances described here. While there may be no per se prohibited conflict of interest created under the Code of Ethics, even where the small business is a current or potential future vendor of the city, there may be an appearance of impropriety, especially if the small business vendor appears before the official in the future.

RQO 12-028: A municipal elected official asked for an expedited advisory opinion pursuant to Commission on Ethics Rule of Procedure 2.6 as to whether he may participate in a fundraising event as a "celebrity chef" for the benefit of the Delray Beach Public Library Association, Inc., a 501 (c)(3) non-profit organization.

The COE opined as follows: The Code of Ethics does not prohibit elected officials from participating and using their official title in charitable fundraising events, provided neither they nor their spouse or domestic partner is an officer or director of the organization. Any solicitation or acceptance of donations in excess of \$100 from a person they know, or should know with the exercise of reasonable care, is a vendor, lobbyist, principal or employer of a lobbyist of their municipal government, must be transparently recorded and submitted to the COE in accordance with the charitable solicitation requirements of the code.

RQO 12-030: The coordinator of the Drowning Prevention Coalition of Palm Beach County asked whether her department may accept booth space at *Sunfest* donated by a local swim school, for the purpose of handing out drowning prevention literature to the public.

The COE opined as follows: An employee may not use his or her official position to obtain a special financial benefit for him or herself, a spouse or domestic partner or their outside business or employer, as well as a number

of additional persons or entities with whom the official has some financial or fiduciary relationship. No member of the Drowning Prevention Coalition (DPC) staff has such a relationship with Small Fish, Big Fish Swim School. Because the donated booth space will be used on behalf of DPC, a county department, for use “solely by the county in conducting its official business,” it is not considered to be a gift under the Code of Ethics. Therefore, gift prohibitions and reporting requirements of the Code of Ethics do not apply.

RQO 12-031: A county employee asked what her obligations are as an employee, under the Palm Beach County Code of Ethics, in addressing a personal financial dispute between herself, the Palm Beach County Workforce Alliance and Florida Atlantic University, where her county supervisor serves on the board of directors of Workforce Alliance.

The COE opined as follows: County employees are prohibited from using their official position directly or indirectly to give themselves a special financial benefit. This includes using their position to influence others to obtain such a benefit. In addition, an employee may never corruptly use their official position to obtain any benefit, for anyone, inconsistent with the proper performance of their public duties. This includes using one’s official title or using public resources, such as county email, to negotiate a resolution.

RQO 12-039: A municipal councilmember requested an expedited advisory opinion as to whether he, as an attorney in his professional capacity, may represent a client’s project before his city’s Historic Preservation Board. The city council appoints all municipal advisory board members but has no operational control over the board’s staff, decisions or findings.

The COE opined as follows: An elected official is not prohibited from appearing before city advisory boards in his professional capacity as an attorney. That being said, were he to use his official position in *any way* to give a special financial benefit to himself, his outside business or a customer or client of his outside business, such action would constitute a misuse of office. Similarly, were he to use his elected office to corruptly benefit an advisory board member in exchange for securing support for his client’s project, he would be in violation of §2-443(b) corrupt misuse of official position. The elected official is subject to §2-443(c), voting conflicts, should any aspect of this project come before his city commission.

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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