



Palm Beach County
Commission on Ethics
2633 Vista Parkway
West Palm Beach, FL 33411
561.233.0724

FAX: 561.233.0735

Hotline: 877.766.5920

E-mail:

ethics@palmbeachcountyethics.com

Commissioners

Manuel Farach, Chair
Robin N. Fiore, Vice Chair
Edward Rodgers
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Daniel T. Galo

Executive Director

Alan S. Johnson

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Investigator

James A. Poag, Jr.

News Release

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Contact:

Alan Johnson, Executive Director
(561) 233-0736

Summary of Palm Beach County Commission on Ethics Meeting Held on June 7, 2012

The Palm Beach County Commission on Ethics (COE) took the following actions at its monthly public meeting held on June 7, 2012:

- In connection with an advisory opinion requested by the City of West Palm Beach (RQO 11-121) and a recent city resolution (WPB Resolution 103-12) adopted in response to the opinion, the COE discussed the resolution and whether it addressed concerns voiced by the COE on past city conduct.

- The COE received a request to reconsider RQO 11-060 regarding the status of municipal pension boards. The COE heard a presentation from staff and reviewed written submissions of counsel for the pension board. The COE declined counsel's request to reconsider RQO 11-060 at this time.

- Complaint C11-027 was placed on the agenda for a scheduling update. This matter was continued until July 12, 2012.

- Thirteen (13) advisory opinions were approved; one (1) advisory opinion was tabled for review on July 12, 2012. The full opinions are published and available at: <http://www.palmbeachcountyethics.com/opinions.htm>

RQO12-032 (Revised): An elected official asked whether the Palm Beach County Code of Ethics regulates or prohibits elected officials from receiving a monthly expense allowance, established by their city commission by resolution and contained in the city personnel policy manual, *to cover travel and expense expenditures made in the performance of their official duties*. He also asked whether a record of these expenditures should be submitted by the city commissioners for purposes of transparency. Additionally, he asked whether he can use a portion of the expense stipend to make charitable contributions supporting nonprofit organizations within the community, including a school that employs his wife.

The COE opined as follows: While an elected body has great discretion as to how public monies are spent, and similar discretion in determining the public purpose of expenditures arrived at through a transparent legislative process, the individual actions of an official are subject to Palm Beach County Code of Ethics scrutiny. Unlike a salary, an expenditure stipend designated for the performance of official duties is regulated as to use. Where a process is in place that provides up front stipends for expenditures for official duties but fails to specify the nature of those official duties, there is a risk that an interpretation by an official is not in compliance with the Code of Ethics. For example, retaining these funds for personal and not official use would appear to constitute a special financial benefit to the official, and potentially be a violation of the misuse section of the Code of Ethics. Likewise, spending public funds for anything other than an official duty may constitute a violation of the Code of Ethics.

Lastly, the prohibition against using one's official position to specially financially benefit a nonprofit organization is not violated, provided that an official or their spouse is not an officer or director of the recipient organization. The COE cannot opine as to whether or not use of these funds for such a purpose is permissible under the city resolution. Nonetheless, the Code of Ethics prohibits elected officials from using their official position to specially financially benefit their spouse's employer.

RQO 12-033: A vice president of marketing and development for a local corporation asked whether members of a company's executive team are required to register as lobbyists if

they meet with elected officials or county and municipal staff from time to time.

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, and *shall include an employee whose principal responsibility to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government.* Whether or not a particular individual is captured within this definition is determined by the specific facts and circumstances surrounding the person's status and the nature of the contact between that individual and public employees and officials. When an owner or employee of a business lobbies directly on behalf of his or her business or employer, not on behalf of a principal of their business or employer, and lobbying is not their principal employment responsibility, the owner or employee is not required to register as a lobbyist.

RQO 12-034: A municipal employee asked whether she was prohibited by the Code of Ethics from making group hotel and conference center reservations in her private capacity for members of a non-governmental professional organization and receiving rewards points through a hotel rewards system for that reservation and if so, how should she report the points on her annual gift reporting form. Additionally, she asked whether her municipal employer may reimburse her travel expenses for the conference where her attendance is in her official capacity, for a public purpose, and approved by her municipal supervisor.

The COE opined as follows: A public employee who is an officer or director of a professional organization must take great care not to use their public position to give a special financial benefit to themselves or the organization. Public employees are not prohibited from attending conferences and being reimbursed by their public employer in their public capacity, provided their attendance is for government purposes and has been approved by the employee's supervisor. Commercial rewards points for official business, where costs are reimbursed by a public employer, may not be personally accepted by a public employee for their private benefit. However, public employees are not prohibited from accepting hotel rewards points accrued in their personal or private capacity. Where a public employee receives additional hotel rewards points for arranging conference accommodations in their private capacity, they may accept those points and are not required to report the value of the rewards so long as the reward dollars are given in consideration of their agreement with the hotel.

RQO 12-035: A filed candidate running for elected office asked whether he may participate in a request for qualifications (RFQ) and ultimately enter into a contract with the municipality he seeks to serve. He also asked whether if elected, he would have a conflict should the contract be ongoing.

The COE opined as follows: A candidate for city commission is not considered an official as defined by the Palm Beach County Code of Ethics (the Code). However, if elected, the candidate becomes an official when he or she assumes office. An official may not enter into a contractual relationship with the city. While an existing contract may continue until completed, any changes, renewals or alterations to the contract would be prohibited.

RQO 12-036: A municipal employee, who is the program supervisor of a village-operated travel club, asked whether she could accept a two-night stay at an Orlando resort in her official capacity, and if so, whether members of her family may accompany her on this official fact-finding trip.

The COE opined as follows: A public employee is not prohibited from accepting a two-night stay at a resort hotel, so long as it is in performance of her public duties and for a public purpose as program supervisor of the village travel club. Under those circumstances, it is not considered a gift. However, an employee may not use his or her official position to provide a special financial benefit to his or her relatives as specified in §2-443(a)(3) of the Code of Ethics. Employees are prohibited from accepting a gift of any value in exchange for the performance of an official action or legal duty. Therefore, were a family member to accompany a public employee on an official fact-finding trip, the employee or family member would need to reimburse the amount of value received by the accompanying family member within 90 days to eliminate the financial benefit.

RQO 12-040: A municipal advisory board member and potential appointee to the Northwood/Pleasant City Community Redevelopment Agency Advisory Board, asked whether the Palm Beach County Code of Ethics prohibits his outside employer, Chase Bank, from contracting with the city.

The COE opined as follows: Municipal advisory board members are not prohibited from having a contractual relationship with the municipality they serve, provided that the subject contract or transaction is disclosed at a public meeting of the municipal governing body and their advisory board *provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.*

Independent or dependent districts, known as community redevelopment agencies (CRA), are not advisory boards as defined by the Code of Ethics. These entities are independent of county and municipal government and as such are not within the jurisdiction of the Commission on Ethics (COE). To the extent that a CRA advisory board member is appointed by the CRA and not a municipal governing body, the advisory board member is, likewise, not under COE jurisdiction.

RQO 12-041: A municipal advisory board member asked whether she has a conflict of interest, as a director of a nonprofit civic organization, should the organization advocate a position on a matter before her board.

The COE opined as follows: As appointed officials, advisory board members are prohibited from using their official position to give a financial benefit, not shared with *similarly situated members of the general public*, to a civic organization that they serve as an officer or director. Voting on a matter, participating in conversations or attempting to influence fellow board members would therefore constitute a misuse of office. The prohibition extends to the advisory board member or someone using the member's official position on their behalf. Should such a conflict arise, advisory board members *must publicly disclose the nature of the conflict*, file the required state disclosure form, refrain from voting and not participate in, or influence the process.

However, if the issue does not involve a financial benefit to the members of the civic organization, or the benefit is shared with similarly situated members of the general public, and there is no *quid pro quo* or other corrupt use of office, then the board member is not prohibited from participating.

RQO 12-042: A municipal employee asked whether the municipality she serves could require her to sign a city *outside employment request form* in addition to the standard conflict of interest waiver form as provided by the Commission on Ethics.

The COE opined as follows: The Palm Beach County Code of Ethics (the Code) prohibits municipal and county employees and officials from entering into contracts or transactions with their public employer, directly or indirectly through the public employee's outside business or employer. However, an exception to this prohibition exists within the Code for public employees seeking part-time employment. This exception requires a waiver and is necessary only when the outside employer has contracts or conducts transactions with the city. The code does not prohibit a municipality from adopting more stringent policy rules and regulations with regard to outside employment.

RQO 12-043: A municipal elected official asked about her obligations under the Code of Ethics as an owner of a company that does business with other entities within the city.

The COE opined as follows: Elected officials are prohibited from using their office to give a special financial benefit, not shared with *similarly situated members of the general public*, to themselves, their outside business, or a customer or client of their outside business. A customer or client is defined as a person or entity to which your outside business has supplied goods or services valued in excess of \$10,000, in the aggregate, over the previous 24 months. Voting on your customer or client's proposal, participating in conversations or attempting to influence City staff or fellow commission members would constitute a misuse of office. The prohibition extends not only to the elected official but also to someone using the official's position on their behalf. In addition, an elected official may never use their official position to secure any benefit for themselves or others as a *quid pro quo* or with a wrongful intent, in a manner inconsistent with the performance of their public duties.

RQO 12-044: A county employee asked whether Palm Beach County employees may host a chili cook-off and solicit supplies/ingredients and raffle prizes from vendors in order to fund a Palm Beach County-sponsored event, in conjunction with the Palm Beach County School Board, to benefit school children within the county.

The COE opined as follows: When acting in their official capacity, Palm Beach County employees are not prohibited from soliciting and accepting donations from county vendors, lobbyists, principals and employers of lobbyists on behalf of Palm Beach County, provided that donations are accepted solely by the county and used for a public purpose.

RQO 12-045: A municipal elected official asked whether he may accept temporary housing from a personal friend who is a director of a civic organization that employs a lobbyist compensated by a third party, and if so, whether the value of the housing is reportable under the Palm Beach County Code of Ethics (the Code).

The COE opined as follows: Where a personal friend/donor is a director of a civic organization, and the organization is a *principal* or *employer* of a lobbyist, elected officials are prohibited from accepting a gift, even if from a personal friend, of a value in excess of \$100, annually in the aggregate. Under the Code, elected officials, identified by state law as reporting individuals, are only required to report gifts pursuant to state law and file a copy of the report with the Palm Beach County Commission on Ethics (COE).

RQO 12-046: A municipal police officer asked whether volunteers who participate in town police department programs are subject to the Palm Beach County Code of Ethics, including mandatory ethics training.

The COE opined as follows: The Palm Beach County Code of Ethics (the Code) applies to all county and municipal employees. Paid employees or contract employees performing a government function are clearly within the jurisdiction of the Code. Volunteers are within the definition of employee if they have the ability to exercise discretionary power as a government functionary. Therefore, all employees, including volunteers who may exercise such discretionary power, must complete mandatory ethics training. However, volunteer participants in a community education or outreach programs that are not given authority to exercise discretionary power or otherwise act in an official capacity are not considered county or municipal employees within the meaning of the Code.

RQO 12-047: A municipal advisory board member asked whether her service on the board created a conflict of interest should a customer or client of her outside business, who is a personal friend, give her Christmas or birthday gifts.

The COE opined as follows: Gifts given to officials in excess of \$100, computed annually and in the aggregate, are only prohibited if accepted from a vendor, lobbyist, principal or employer of a lobbyist who lobbies an advisory board member's board or the department over which the board exercises authority. Notwithstanding this limitation, a gift of any value may not be accepted in exchange for the past, present or future performance of an official public action or legal duty.

Otherwise, gifts are regulated to the extent that a single gift with a value in excess of \$100 is subject to an annual gift reporting requirement. Depending upon the facts and circumstances, there is no requirement to report gifts from a personal friend or co-worker motivated by a personal or social relationship rather than an attempt to obtain the goodwill or otherwise influence the official in the performance of his or her official duties.

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

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