



**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
Ronald E. Harbison
Daniel T. Galo
Patricia L. Archer

Executive Director

Alan S. Johnson

Staff Counsel

Megan C. Rogers

Executive Assistant

Gina A. Levesque

Senior Investigator

Mark E. Bannon

Investigator

James A. Poag, Jr.

News Release

For Immediate Release
Contact:

December 7, 2012
Alan Johnson, Executive Director
(561) 233-0736

Summary of Palm Beach County Commission on Ethics Meeting Held on December 6, 2012

The Palm Beach County Commission on Ethics (COE) took the following actions at its monthly public meeting held on December 6, 2012.

The COE heard three complaints in executive session. All documents pertaining to complaints C12-011, C12-013 and C12-014 are published on the COE website at <http://www.palmbeachcountyethics.com/complaints.htm>.

C12-011: re: Wes Blackman, the COE made a finding of no probable cause and dismissed the complaint.

C12-013: The COE issued a public report and finding of probable cause. After review of staff's investigation, documentary submissions 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 Marlene Ross, Commissioner for the City of Boynton Beach, may have violated §2-443(b) of the Palm Beach County Code of Ethics.

C12-014: re: Michael Nelson, the COE made a finding of no probable cause and dismissed the complaint.

Seven (7) advisory opinions were approved. The full opinions are published and available at: <http://www.palmbeachcountyethics.com/opinions.htm>

RQO 12-072: A Palm Beach County Commissioner asked whether she was prohibited by the Palm Beach County Code of Ethics (the Code) from soliciting contributions from other governmental entities, members of the public and/or local businesses for her weekend radio show. Furthermore, she asked whether it was appropriate for her to use her Palm Beach County email as a County Commissioner to publicize her Sunday morning program.

The COE opined as follows: Elected officials are prohibited from using their official position to give themselves a special financial benefit, not shared with similarly situated members of the public. An elected official is prohibited from soliciting anything of value for their personal benefit in their official capacity. This applies to the official, as well as anyone soliciting on their behalf. However, an elected official is not prohibited from soliciting donations or advertisers for a radio program in their private capacity, so long as the official does not solicit or accept donations in excess of \$100 from vendors, lobbyists, principals or employers of lobbyists, who vend, lease or lobby the official's governmental entity.

RQO 12-073: A non-profit director asked whether complimentary tickets may be given to local elected officials to attend the "River of Grass Gala", hosted by the Arthur R. Marshall Foundation for the Everglades (the Foundation) at the Colony Hotel on December 8, 2012 where tickets are supplied directly by the Foundation.

The COE opined as follows: elected officials are not prohibited from accepting a ticket, pass or admission in connection with public events related to official county or municipal business, if furnished by a non-profit sponsor organization of the event, provided that the sponsor organization does not employ a lobbyist, and further provided the ticket is given to the elected official by a representative of the organization who does not otherwise sell, lease or lobby the official.

Should the foundation choose to provide complimentary tickets to local elected officials and the combined value of the tickets exceeds \$100, the official or employee will need to report

the gift pursuant to Section 2-444 of the Code, or as required under §112.3148, Florida Statutes. The public official or employee may not use his or her official position to offer a benefit to an organization or any sponsor of the event in exchange for the tickets.

RQO 12-074: A City employee asked whether she may accept tickets from a close personal friend when the tickets were given to the friend by the friend's brother who has a pending bid application with the City.

The COE opined as follows: The gift prohibitions of the Code apply to gifts given by a personal friend who is not a vendor where the gift is originally provided by a vendor, bidder or proposer with the intent to benefit the public employee. Factors to consider include the nature of the relationship between the vendor and 3rd party, the control retained by the donor/vendor over the gift, the nature of the relationship between the 3rd party and the public employee or official and the nexus between the gift donor and the public employee's department, official duties and responsibilities, among other factors. No employee or public official may accept an indirect gift or benefit that is intended to influence the conduct of the employee or official in the manner in which they perform their public duties.

The specific facts and circumstances surrounding a particular gift will determine whether or not the gift is considered an indirect prohibited gift provided with the intent to benefit the public employee. Based upon the unique facts and circumstances presented here, the employee is not prohibited from accepting a ticket from her friend to attend an upcoming concert.

RQO 12-075: A Town Attorney asked whether an elected official who serves as the chairman of the board of a private company is prohibited from voting on changes to a zoning variance unrelated to the official's board or company. The variance is opposed by an entity owned in part by a compensated board member of the official's private sector employer.

The COE opined as follows: Elected officials are prohibited from using their official position, participating or voting on an issue that would give a special financial benefit to themselves, their outside employer *or anyone who is known to the official to work for that outside employer*, not shared with similarly situated members of the general public. Based on the facts presented the elected official is prohibited from voting on this matter.

RQO 12-076: A County employee asked whether he is prohibited by the Code of Ethics from contracting with Palm Beach County, his governmental employer.

The COE opined as follows: Public employees are prohibited from using their official position to give or influence others to give themselves or their outside business a special financial benefit. In addition, the Code prohibits a public employee or their outside business from contracting with the government they serve. However, there are several exceptions to this prohibition. Specifically, the code provides an exemption for contracts entered into under a process of sealed, competitive bidding, where a public employee's outside business is the lowest bidder, and provided that the employee has not participated in the bid specifications or determination of the lowest bidder, has not used his or her position in any way to influence the award, and has disclosed the nature of his or her interest in the business submitting the bid.

RQO 12-078: A Palm Beach County advisory board member asked as a member of a non-decisional, purely advisory board, whether the Palm Beach County Code of Ethics prohibits the board member's outside employer, Morgan Stanley Smith Barney, from contracting with the County.

The COE opined as follows: As a member of a non-decisional, purely advisory board, a County advisory board member's employer is not prohibited from having a contractual relationship with the County provided that the subject contract or transaction is disclosed at a public meeting of the Palm Beach County Board of County Commissioners (BCC) and the advisory board at issue *provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.*

If the board member's advisory board *does* provide regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction, the board member must obtain a waiver from the BCC before entering into the contract or transaction.

RQO 12-079: A Palm Beach County Commissioner asked whether he was prohibited from accepting tickets valued in excess of \$100 where the tickets were provided by Palm Beach County pursuant to a sponsorship agreement with a non-profit organization.

The COE opined as follows: A County Commissioner is not prohibited from accepting tickets provided to Palm Beach County pursuant to a contract between the event's non-profit sponsor and Palm Beach County, where the event's non-profit sponsor does not sell, lease or lobby Palm Beach County. County Commissioners are identified by state law as reporting individuals and are therefore required to adhere to all standards and requirements imposed under state law regarding the reporting of gifts.

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