



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
Edward Rodgers, Chair
Manuel Farach, Vice Chair

Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director
Alan S. Johnson

Executive Assistant
Gina A. Levesque

Staff Counsel
Megan C. Rogers

Investigator
Mark E. Bannon

Agenda

September 1, 2011 – 1:30 p.m.
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from August 4, 2011
- V. Gift, Outside Employment and Voting Conflict Tracking Application (Presented by ISS Department)
- VI. Memorandum of Understanding with Boca Raton Airport Authority
- VII. Memorandum of Understanding with Lake Worth CRA
- VIII. Rules of Procedure Revisions
- IX. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 11-049 b. RQO 11-063 c. RQO 11-065
 - d. RQO 11-070 e. RQO 11-071 f. RQO 11-073
- X. Items Pulled from Consent Agenda
 - a.
- XI. Children's Services Council – Proposed Advisory Opinion RQO 11-068
- XII. Proposed Advisory Opinions – Re: Charitable Organizations
 - a. RQO 11-039 (resubmitted)
 - b. RQO 11-051 (resubmitted)
- XIII. Proposed Advisory Opinions
 - a. RQO 11-035 b. RQO 11-037(resubmitted)
 - c. RQO 11-047 d. RQO 11-050 e. RQO 11-052
 - f. RQO 11-053 g. RQO 11-055 h. RQO 11-060
 - i. RQO 11-062 j. RQO 11-064 k. RQO 11-066
 - l. RQO 11-072
- XIV. Executive Director Comments
- XV. Public Comments
- XVI. Adjournment

MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS (COE)

I. CALL TO ORDER: August 4, 2011, at 3:08 p.m., in the Commission Chambers, 6th Floor, Governmental Center, West Palm Beach, Florida.

II. ROLL CALL

MEMBERS:

Judge Edward Rodgers, Chair
Manuel Farach, Esq., Vice Chair – Arrived later
Dr. Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart, Esq. – Absent

STAFF:

Alan S. Johnson, Esq., COE Executive Director
Gina A. Levesque, COE Administrative Assistant
Megan C. Rogers, COE Staff Counsel
Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

Judge Edward Rodgers stated that three Commission on Ethics (COE) members constituted a quorum.

Commission on Ethics Executive Director Alan Johnson, Esq., stated that Bruce Reinhart was out of town, and that Manuel Farach would arrive between 3:15 p.m. and 3:30 p.m.

III. INTRODUCTORY REMARKS

Judge Rodgers said that:

- If anyone wished to speak, a comment card containing the agenda item should be filled out.
- Public comment was limited to three minutes, and should be relevant to the agenda item.
- Public comment would be presented at this time, and Kurt Bressner could speak.

(CLERK'S NOTE: See Mr. Bressner's comments under item VIII.)

IV. APPROVAL OF MINUTES FROM JULY 7, 2011

MOTION to approve the July 7, 2011, minutes. Motion by Dr. Robin Fiore, and seconded by Ronald Harbison.

Mr. Johnson said that:

- Staff was working with the Clerk & Comptroller's Office (Clerk) regarding protocol to better serve the COE.
- Staff had reviewed the minutes, and the Clerk's staff reviewed them twice.
- The Clerk's staff should be thanked for their hard work, along with the COE's staff.
- An ethics pocket guide was now available for County employees, elected officials, and advisory board members.
 - ☐ Copies would be sent to all municipalities and various County departments.
 - ☐ The County's Graphics and Printing Division published the guide as a County function with no cost to the COE.
 - ☐ The COE's administrative staff should be thanked.

Judge Rodgers requested that Mr. Johnson or his staff write a letter to the Board of County Commissioners (BCC) or to the Graphics and Printing Division's department head, thanking them for their work.

Mr. Johnson stated that John Johnson was the graphics manager, and he would send a letter out tomorrow.

UPON CALL FOR A VOTE, the motion carried 3-0. Manuel Farach and Bruce Reinhart absent.

(CLERK'S NOTE: For continuation of item IV., approval of minutes, see page 3.)

(CLERK'S NOTE: Mr. Farach joined the meeting.)

RECESS

At 3:13 p.m., the chair declared a recess to take up the executive session.

V. EXECUTIVE SESSION (3:15 P.M. – 4:00 P.M.)

V.a. Page 6

V.b. Page 5

V.c. Page 4

(CLERK'S NOTE: For discussion of the final orders on V.a. – V.c., see pages 4-6.)

RECONVENE

At 4:00 p.m., the meeting reconvened with Manuel Farach, Dr. Robin Fiore, Ronald Harbison, and Judge Rodgers present.

IV. – CONTINUED

Judge Rodgers stated that item IV. would be reopened for Mr. Farach's comments.

Regarding the July 7, 2011, minutes, Mr. Farach stated that:

- Page 4, the words, from the public comment rule, should be inserted in the motion between the words, final hearing, and the word, involving.
- Page 8, the word, onto, should be replaced with the word, into, in the sentence that began, The COE would work with the County.
- Page 19, the word, abusive, should be replaced with the words, abuse of, in the sentence that began, On one hand.
- Page 20, the sentence that began, Mr. Farach stated, should add the words, and give a special benefit to that board, after the words, elected official.

MOTION to approve the July 7, 2011, minutes as amended to include the changes made by Mr. Farach. Motion by Ronald Harbison, seconded by Dr. Robin Fiore, and carried 4-0. Bruce Reinhart absent.

(CLERK'S NOTE: Items V.a. – V.c. were presented at this time.)

V.c. C11-014

Judge Rodgers read C11-014's final order:

Complainant, Pamela Lazarus, a Village of Tequesta employee, filed the above-referenced complaint on June 27, 2011, alleging possible ethics violations involving respondent, Jason Taylor, a Village of Tequesta employee. The complaint alleges that Jason Taylor on or about April 20, 2011, misused his position, his authority, as a Village employee by sending email on the Village mail system to fellow employee – Village employees, regarding a business owned and operated by his wife. Pursuant to chapter 2, article V., division 8, section 2-258(a) of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the County Code of Ethics. Misuse of the public office for financial benefit is prohibited pursuant to article III., section 2-443(a)(7) of the Palm Beach County code. On July 26, 2011, after initial inquiry into the matter, the complaint was determined by staff to be legally insufficient and presented to the Commission on Ethics on August 4, 2011, with a recommendation of dismissal as legally insufficient. According to the complaint, the alleged misconduct occurred prior to June 1, 2011, the date that the Code of Ethics and the Commission on Ethics ordinance became effective in the municipalities within Palm Beach County. Therefore, the Commission on Ethics lacked jurisdiction in this matter. The Commission on Ethics reviewed the investigative report and determined that the commission lacked jurisdiction to investigate the alleged respondent, Jason Taylor, violated section 2-443(a) of the Palm Beach County Code of Ethics and dismissed the complaint on August 4, 2011, due to no legal sufficiency. Therefore, it is ordered and adjudged that the complaint against the respondent, Jason Taylor, is hereby dismissed. Done and ordered by the Palm Beach County Commission on Ethics in public session on August 4, 2011.

Mr. Johnson clarified that the respondent was Jason Turner.

V.c. – CONTINUED

Judge Rodgers reread the first sentence of C11-014:

Complainant, Pamela Lazarus, a Village of Tequesta employee, filed the above-reference complaint on June 27, 2011, alleging possible ethics violations involving respondent, Jason Turner, a Village of Tequesta employee.

V.b.

Judge Rodgers read C11-012's final order:

Complainant, Pamela Lazarus, a Village of Tequesta employee, filed the above-referenced complaint on June 27, 2011, alleging a possible ethics violation involving respondent, Derick Velez, an employee of the Village of Tequesta. The complaint alleges that Derick Velez on or about May 17, May 22, June 1, June 4, June 8, June 13 and June 20, 2011, misused his position and authority as a Village employee by sending seven emails to Village employees using the Village email system regarding a fundraising event for a nonprofit corporation of which he and his wife are officers and directors, and soliciting donations for this nonprofit entity improperly by using the Village email system. Pursuant to chapter 2, article V., division 8, section 2-258(a) of the Palm Beach County code, the Commission on Ethics is empowered to enforce the County Code of Ethics. Misuse of the public office for financial benefit is prohibited pursuant to article XIII., section 2-443(a,) of the Palm Beach County Code. Use of public resources for solicitation of charitable contributions from vendors, lobbyists, principals or employers of lobbyists of a municipality for nonprofit organizations is prohibited under article XIII., section 2-444(h)(3) of the Palm Beach County Code. On July 5, 2011, the complaint was determined by staff to be legally sufficient. The matter was investigated and presented to the Commission on Ethics August 4, 2011, with a recommendation of no probable cause. The Commission on Ethics reviewed the investigative report, determined that the investigation provided no reasonably trustworthy facts and circumstances for the commission to conclude that the respondent, Derick Velez, violated section 2-443(a) or section 2-444(h)(3) of the Palm Beach County Code of Ethics and dismissed the complaint on August 4, 2011, due to no probable cause.

V.b. – CONTINUED

Therefore, ordered and adjudged that the complaint against the respondent, Derick Velez, is hereby dismissed. Done and ordered by Palm Beach County Commission on Ethics in public session on August 4, 2011. Signed by Edward Rodgers, chair.

V.a.

Judge Rodgers read C11-011's final order:

Complainant, David Floring, filed the above-referenced complaint on June 6, 2011, alleging a possible ethics violation involving respondent, Jose Rodriguez, the elected mayor of Boynton Beach. The complaint alleges that Mayor Rodriguez misused his position and authority, obtaining a special financial benefit by having residential property owned by a Florida corporation of which he is an officer and director assessed below the actual use value of the property by the Palm Beach County Property Appraiser's Office resulting in an improper property tax rate for this property. Pursuant to chapter 2, article V., division 8, section 2-258(a) of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the County Code of Ethics. Misuse of public office for financial benefit is prohibited pursuant to article XIII., section 2-443(a)(7) of the Palm Beach County Code. On July 26, 2011, after initial inquiry into the matter, the complaint was determined by staff to be legally insufficient and presented to the Commission on Ethics on August 4, 2011, with a recommendation of dismissal as legally insufficient. The Commission on Ethics reviewed the memorandum of inquiry and determined that the complainant has no personal knowledge that the respondent, Jose Rodriguez, used his official position to obtain a special financial benefit in violation of section 2-443(a) of the Palm Beach County Code of Ethics and dismissed the complaint on August 4, 2011, due to no legal insufficiency. Therefore, ordered and adjudged that the complaint against respondent, Jose Rodriguez, is hereby dismissed. Done and ordered by the Palm Beach County Commission on Ethics in public session on August 4, 2011. Signed by Edward Rodgers, chair of the commission.

(CLERK'S NOTE: Item VII. was presented at this time.)

VII. FORM 8B CONFLICT OF INTEREST DISCLOSURE (MANUEL FARACH)

Mr. Johnson stated that:

- Form 8B for Mr. Farach had been previously filed with the Clerk.
- Form 8B was added to the agenda for public disclosure in a public meeting.

(CLERK'S NOTE: For continuation of item VII., see page 7. The numeric order of the agenda was restored.)

VI. PUBLIC COMMENT – None

VII. – CONTINUED

Mr. Johnson said that Mr. Farach had fulfilled his disclosure obligation during the July 7, 2011, COE meeting by making public disclosure, then filing the appropriate form.

Commission on Ethics Administrative Assistant Gina Levesque stated that a requirement on the form was for it to be publicly read upon completion.

Judge Rodgers explained that the COE was attempting to determine when a COE member could abstain from voting.

Mr. Farach said that:

- He had filled out Form 8B because of a possible direct, financial interest regarding a July 7, 2011, agenda item before the COE.
- He had previously performed work for the Forbes Company, and he had abstained from any discussion and vote regarding the agenda item.

VII. – CONTINUED

- He read the following disclosure:

I do not currently represent the Forbes Company, but have done so in the past. Although I have no current plans to do so, there's a possibility I may be retained as an attorney to represent it in the future on some matters. Accordingly, in an abundance of caution, I abstained from any vote on July 7 agenda item, XII.h.; that is to say, RQO 11-034, a request for opinion brought before the Commission on Ethics at the request of the Forbes Company.

- Form 8B was true and complete, and the signature on it was his.

Mr. Johnson said that:

- Since Form 8B was a State form, there were two different conflict of interest alternatives that went beyond the County's Code of Ethics (Code).
- The State allowed advisory board members to participate on certain advisory boards, although they may have a conflict, which was when Form 8B should be read into the record.
- The following State's Form 8B language went beyond what was allowed by the County's Code: If you make no attempt to influence the decision except by discussion at the meeting.
- The COE should follow the letter of the law for Form 8B, and any future forms regarding the nature of the conflict should be read into the record at the next meeting.

VIII. APPLICABILITY OF SECTION 2-444(5)(g) TO UNIFORMED FIREFIGHTER AND PARAMEDIC EXTRA-DUTY DETAILS

Mr. Johnson stated that:

- Staff had received a letter from the Fire Chiefs Association of Palm Beach County (FCAPBC).

VIII. – CONTINUED

- The issue involved whether official law enforcement overtime or extra-duty detail provisions waiving the required submission of part-time outside employment, the conflict of interest waiver (waiver) forms, extended to similar uniform extra-duty detail work performed by County and municipal fire rescue employees.

Dr. Fiore requested that the letter be submitted as part of the official meeting documents.

Mr. Johnson stated that he would also file staff's response to Fire Chief Martin DeLoach, vice president of the FAPBC. He added that the COE should request that the clerk accept the document by receiving and filing it.

Judge Rodgers requested that the minutes clerk include the July 7, 2011, letter as part of the record.

Mr. Johnson continued:

- Uniformed fire rescue personnel performed uniform extra-duty detail work at public and private events.
- The extra-duty detail work was either contracted or administered by the applicable County or municipal fire rescue departments.
- The records were maintained by the departments in a manner similar or identical to those administered by police agencies.
- Fire Chief DeLoach wrote that the extra-duty detail work was provided in a similar fashion, often working side by side with our law enforcement partners.
- Staff provided several appellate cases.

- One case, *Los Olas Tower Company versus City of Fort Lauderdale*, 742 So.2d 308, stated:

In statutory construction, a literal interpretation need not be given the language used, when to do so would lead to an unreasonable conclusion or defeat the legislative intent or result in a manifest incongruity.

VIII. – CONTINUED

- Staff recommended that the Code's construction, section 2-444(5)(g), that exempted uniform extra-duty detail work, be extended to uniformed firefighters as well as police officers.
- Union contracts were administered by the County or the municipality with union negotiation. Maintenance of the extra-duty detail records was a ministerial task, but it required that firefighters fill out the waiver form if they were not included in the exemption. To exempt or treat firefighters equal to police officers would mean that the County or the municipality would be administering the union contracts in the same manner as currently being administered.
- The County or the municipality was not always the employer of the firefighter's extra-duty detail work. From his understanding of the Ethics Ordinances Drafting Committee (EODC), some of the extra-duty detail work was administered by the County or the municipality, but that work was not considered to be a contract specifically entered into with the police agencies.
- Technically, under the Code, even if the extra-duty detail work was contracted with the County or a municipality, it would not be considered another governmental entity but an outside employer.

Former City of Boynton Beach Manager Kurt Bressner stated that he had been a former member of the EODC. He explained that the EODC had sent surveys to all municipal managers requesting information regarding their external security detail procedures. The survey's feedback, he said, led to the EODC's conclusion that the municipality's activity volume was extensive, and approving each waiver form on a case-by-case basis would have been unduly burdensome. He clarified that the exemption for the official law enforcement overtime or extra-duty detail work was under the Code's section 2-443, not section 2-444.

Mr. Johnson stated that the Code's specific section was 2-443(e)(5)(g).

Mr. Bressner said that had the EODC been provided similar information regarding municipal firefighters, he believed the EODC would have also included them under section 2-444 since they also performed either external site security, fire watches, or were involved in community events. He recommended that the COE could 1) issue some type of interim directive allowing inclusion of fire departments under the exemption in 2-443(e)(5)(g), or 2) request that a new EODC be formed to amend the ordinance's language.

VIII. – CONTINUED

Palm Beach County League of Cities (League) Executive Director Richard Radcliffe stated that it was an obvious EODC oversight that firefighters were excluded from section 2-443(e)(5)(g), and the League concurred with staff's report. He added that under section 2-443(e)(5)(g), municipalities were not responsible for payment of a firefighter's extra-duty detail work; they were simply authorizing the waiver.

Mr. Bressner clarified that based on the survey results, in most cases, service providers paid for the extra-duty detail work; and in most cases, the municipalities served as the billing agent for the services, then paid the officer for the detail work. He said that in many cases, the compensation could be included as pensionable income, depending on whether the income was included on tax forms 1099 or W-2; and collective bargaining agreements would govern how those matters were handled. He added that the EODC should have used the words, public safety, for fire rescue and police in section 2-443(e)(5)(g).

Judge Rodgers stated that:

- The COE did not have authority over municipalities, but someone could be found not guilty of violating a Code ordinance by interpreting the waiver as necessary, using common sense.
- The ultimate cure should come from legislative enactment.
- He did not believe that the COE could issue an administrative order.

Mr. Bressner suggested that all fire rescue agencies request an advisory opinion on an interim basis, and request that the COE approve embracing the concept of including them in the same ordinance language. Doing so would provide some legislative overview of the ordinance's intent, he added.

Mr. Johnson clarified that:

- The COE members would be providing only an interpretation of the ordinance and not an advisory opinion, nor would they be establishing law.
- Staff was recommending that the Code's intent on public policy was in keeping with interpreting any public service contract that was administered or contracted by the public entity.
- A vote on the interpretation may be necessary.

VIII. – CONTINUED

- If an advisory opinion request was submitted, the COE could provide an advisory opinion.

Judge Rodgers stated that the COE members were not legislators; and the legislature, the unions, the municipalities, and the County were also involved.

Palm Beach County Fire Rescue Chief Steve Jerauld stated that special detail work occurred almost daily. He added that all fire rescue agencies had an ongoing, common concern regarding whether the agencies would be violating the ordinance by not submitting the waivers.

Judge Rodgers stated that the COE should treat the issue with common sense as was done in the Las Olas Tower Company case. He stated that he agreed with the suggestion to submit a motion amending the ordinance to include the firefighters due to a scrivener's error.

Mr. Jerauld responded that the union supported an ordinance modification to include fire rescue.

Mr. Harbison suggested that procedurally, until a new EODC formed to discuss ordinance issues, the COE could vote that its interpretation regarded public safety rather than police.

Dr. Fiore stated that she agreed with Mr. Harbison's suggestion, and that the oversight was due to a scrivener's error.

Mr. Bressner suggested that rather than request that the EODC reconvene, the County Attorney's Office (CAO) could work with the COE's legal staff to prepare a Code amendment embracing the public safety concept for approval by the BCC.

Mr. Johnson stated that:

- It was inappropriate to refer to the oversight as a scrivener's error.
- The EODC referendum required a cumbersome process of reappointing a seven-member drafting committee to reassemble for 30 days for a specific change.

VIII. – CONTINUED

- Based on the July 7, 2011, letter, staff could submit an advisory opinion for COE approval at next month's COE meeting.
 - The advisory opinion would include how these contract types were administered and whether the process was identical to the law enforcement contract for extra-duty detail work.
 - Union and municipal concerns would be addressed in the advisory opinion.
 - The advisory opinion would be a COE interpretation of the law.
 - The COE should have something in writing besides the July 7, 2011, letter, before voting on the matter.

Mr. Farach stated that a strict interpretation of police was not intended. The COE could not interpret a statute or an ordinance in a way that would lead to an absurd result, he added.

Fire Chief DeLoach stated that many fire chiefs were looking for guidance regarding the COE's Code.

Judge Rodgers suggested tabling the item until staff could bring back a recommendation at the next COE meeting.

Mr. Johnson responded that:

- Staff would work with the CAO and County staff to determine whether the referendum allowed an expedited revision.
- He did not believe that the BCC had authority to amend the ordinance, absent the EODC's authority. The referendum provided for a specific protocol on any amendments.
 - The EODC would need to reconvene to address the particular amendment.
 - The EODC had 30 days to report the findings, which would then be placed on the agenda.

VIII. – CONTINUED

- ☐ The process may take up to four months.
- In the interim, staff could work on the recommendations while requesting the reconvening of the EODC to address the loophole issue.

Mr. Johnson clarified that a receive-and-file motion was necessary to file the July 7, 2011, letter, and the June 8, 2011, response.

MOTION to receive and file the July 7, 2011, letter and the June 8, 2011, response submitted by Alan Johnson. Motion by Ronald Harbison, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

Dr. Fiore stated that she opposed the formation of a new EODC to address the situation.

Mr. Johnson replied that he had meant to say that when the time came, the EODC could reconvene since requests would probably be made within the next year to bring back specific Code sections.

Mr. Harbison stated that he agreed with Dr. Fiore, and that he wanted to find a procedural solution and provide relief to the agencies.

City of West Palm Beach Ethics Officer Norman Ostrau clarified that he was representing himself in a private capacity, and that the COE could procedurally waive receipt of the waiver forms and allow them to be filed by each municipal agency.

Judge Rodgers said that perhaps through Mr. Radcliffe, the League could encourage the municipalities to file the waiver forms, but the COE could not dictate what the municipalities should do.

MOTION to direct staff to review the applicability of Section 2-443(e)(5)(g) to uniformed firefighter and paramedic extra-duty details and bring back a recommendation at the next COE meeting on how the COE should procedurally mitigate the oversight. Motion by Ronald Harbison, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

IX. RESPONSE LETTER FROM THE ATTORNEY GENERAL'S OFFICE RE: SECOND REQUEST FOR ADVISORY OPINION

Mr. Johnson stated that:

- The Attorney General's Office (AGO) had responded to staff's second advisory opinion request regarding conflict of interest abstention/disqualification in due-process matters involving bias, prejudice, or affinity involving financial conflict of interest.
- The COE did receive some substantive relief from the AGO on State Statute 112.3143 regarding conflict of interest.
 - ☐ A complainant, a respondent, or an advocate in a due-process hearing could file a motion to recuse or disqualify a COE member due to a bias.
 - ☐ All other responses received by the COE had indicated that if the matter did not involve a due process issue or a financial conflict, a COE member could not abstain based on State Statute 286.012.

Dr. Fiore stated that she was satisfied with the AGO's response.

Mr. Johnson said that he would review whether a bylaw change may be necessary. He added that:

- He could devise a statutory revision for the legislative delegation's review, or the COE could ask the legislature to create an exemption.
- If the legislature "carved out" an exemption, the COE needed to ascertain how to form a quorum due to the recusal/disqualification.
 - ☐ One solution would be to count the abstaining COE member as present for a quorum.
 - ☐ His concern was that three abstaining COE members would prevent a quorum.

Discussion ensued, and COE consensus was that directing staff to bring a statutory revision before the legislature was unnecessary.

IX. – CONTINUED

Judge Rodgers suggested that the COE could change the procedural process by advising individuals requesting advisory opinions that they could request a COE member's recusal. The COE would then inform all pertinent parties of the COE member's abstention, he added.

Dr. Fiore commented that COE members should not be required to recuse themselves due to a relationship with someone requesting an advisory opinion.

Mr. Johnson said that staff would bring back recommendations to the next meeting.

MOTION to approve that the COE revise its rules of procedure allowing a COE member to recuse or disqualify himself or herself. Motion by Dr. Robin Fiore, and seconded by Ronald Harbison.

Dr. Fiore clarified that the motion did not intend that the individual coming before the COE could disqualify the COE member.

Mr. Harbison questioned whether the COE would violate State statute by approving the procedure.

Mr. Johnson responded that staff's recommendations would be in accordance with State Statutes 120.665, 112.3143, and 286.012.

Dr. Fiore said that she wanted staff's recommendations to address only due-process matters and not matters involving economic conflicts of interest. Mr. Johnson responded that staff would bring back only complaint process recommendations.

UPON CALL FOR A VOTE, the motion carried 4-0. Bruce Reinhart absent.

X. GENERAL DISCUSSION – PUBLIC EMPLOYEE INSTITUTIONAL DISCOUNTS

Mr. Johnson stated that:

- Item X. did not require a motion.
- Currently, COE opinion allowed a nonvendor to give institutional discounts for public employees, provided there was no quid pro quo, or there was no past, present, or future performance of a job in exchange for a discount.

X. – CONTINUED

- The COE opinion may require revision due to questions arising from AT&T and other institutional vendors offering broad-based governmental discounts or rates.
- A well-reasoned 2006 State COE opinion written by Mr. Ostrau referred to about a broad-based discount that did not target procurement officers or a certain officer class but everyone who was similarly situated.
- Staff recommended that the COE view broad-based governmental discounts from institutional vendors as reportable nongifts.

Discussion ensued, and COE consensus was that broad-based, non-quid pro quo governmental discounts offered by institutional vendors should be allowable.

Mr. Ostrau, speaking for himself, said that the State's Code ordinance referenced publicly advertised offers for goods or services from a vendor under the same price and terms as offered to the general public. He noted that the general public should be interpreted as a major class such as employees.

Dr. Fiore said that she regarded broad-based governmental discounts from institutional vendors to be employee benefits as long as the discounts were negotiated with the County or the municipalities as employers for employees. A limited class of employees would cause her concern, she added.

Mr. Bressner commented that these types of discounts were provided to all public employees, and that it should be at the municipality's discretion whether to allow a discount.

Mr. Johnson stated that the COE had previously opined that a public discount provided by a nonvendor was not prohibited, but any discount over \$100 and not in the aggregate would be reportable.

RECESS

At 5:31 p.m., the chair declared a recess.

RECONVENE

At 5:41 p.m., the meeting reconvened with Dr. Robin Fiore, Ronald Harbison, and Judge Rodgers present.

XI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

Dr. Fiore requested that item XI.d., RQO 11-044, be pulled from the consent agenda.

MOTION to approve the Consent Agenda as amended pulling item XI.d. Motion by Ronald Harbison, and seconded by Dr. Robin Fiore.

(CLERK'S NOTE: Mr. Farach rejoined the meeting.)

UPON CALL FOR A VOTE, the motion carried 4-0. Bruce Reinhart absent.

XII. ITEMS PULLED FROM CONSENT AGENDA

XI.d. REQUEST FOR ADVISORY OPINION (RQO) 11-044

Mr. Johnson stated that:

- Glenn O'Cleary, a County Department of Airports employee, asked whether coworkers may agree to switch shifts. The coworker requesting a shift change would provide additional financial compensation directly to the coworker agreeing to work the different shift.
- Staff recommended that as long as an employee did not use his or her official position to influence a coworker in a manner inconsistent with the proper performance of his or her public duties, there was no prohibition within the Code preventing coworkers from switching shifts.
- The COE could not opine as to the internal County or departmental procedure regarding such a shift change arrangement.

Dr. Fiore expressed concern that the Code was referenced in the advisory opinion letter since the COE could only state that the coworkers had a personal arrangement that was approved by a supervisor. Rather than citing specific Code sections, she suggested the following advisory opinion letter language, There's nothing in the arrangement that you describe that violates the Code of Ethics.

MOTION to approve processed advisory opinion letter RQO 11-044 as amended to strike any Code citations, and to add language that, based on the facts, the advisory opinion did not violate any Code sections. Motion by Dr. Robin Fiore, and seconded by Ronald Harbison.

XI.d. – CONTINUED

Dr. Fiore stated that the question was whether the coworker could financially pay another coworker for covering his or her shift.

Mr. Johnson stated that the advisory opinion letter addressed the gift issue in that the financial compensation was for the less desirable shift; therefore, it was not considered a gift.

Dr. Fiore said that she wanted the advisory opinion clarified to state, if you have used your position to obtain this benefit, since the COE was unsure how the coworker enticed his or her coworker to agree to the shift change.

Commission on Ethics Staff Counsel Megan Rogers clarified that:

- The submitted facts stated that Mr. O’Cleary asked the coworker if he would be interested in switching shifts.
- Commission on Ethics Investigator Mark E. Bannon spoke with Mr. O’Cleary on July 22, 2011, and he noted that both parties had agreed to the additional compensation for the switched shift.
- The supervisor approved the switched shift.
- Both coworkers were negotiating what the financial compensation would be for the less desirable shift.

MOTION WITHDRAWN.

MOTION to approve processed advisory opinion letter RQO 11-044. Motion by Ronald Harbison, seconded by Dr. Robin Fiore, and carried 4-0.

XIII. PROPOSED ADVISORY OPINIONS – RE: CHARITABLE ORGANIZATIONS

Mr. Johnson stated that:

- On June 1, 2011, State Statute 2-444(h) of the revised Code was enacted, permitting the solicitation of charitable donations from vendors, lobbyists, and principals, providing a detailed log was submitted to the COE for transparency purposes, and as long as there was no quid pro quo or other special consideration, including any direct, financial benefit to the official, employee, or the person or entity being solicited.

XIII. – CONTINUED

- A misuse-of-office question arose in RQO 11-029.
- When staff reviewed 2-444(h), the solicitation exception applied only to the gift law and only to 2-444(a)(b), which was the prohibition against soliciting or accepting gifts over \$100 from vendors, lobbyists, principals, or employers of lobbyists.
- Staff recommended that it would be a misuse of office for public officials serving as charity officers or board members to become involved in solicitation for the charity.
 - The public official serving as a charity's officer or board member would be providing a special financial benefit to a charitable organization at the exclusion of all other charities.
 - The Code's misuse of office provision was not applicable to public officials who were charity members; only when corruption was involved.
 - Public officials could remain as charity officers or board members, but they could not use their official titles to solicit for the charity.
 - In all instances, if solicitation was permitted, a log was required to maintain solicitation of \$100 or more from vendors, lobbyists, principals, and employers of lobbyists.

XIII.a. RQO 11-029 (RESUBMITTED)

Mr. Johnson stated that:

- City of West Palm Beach (City) Commissioner Kimberly Mitchell submitted an advisory opinion requesting whether, as an elected official, she could serve on a local nonprofit organization's board and could continue to fundraise on behalf of the nonprofit organization.
- Staff had recommended that she may not use her elected office to give a special financial benefit to a nonprofit organization while serving as the charity's officer or director since it constituted a violation of section 2-443(a)(7), misuse of office.

XIII.a. – CONTINUED

- Commissioner Mitchell may either resign her position with the charity or not use her official City title in soliciting directly or indirectly for the charity. When soliciting for donations over \$100 from City vendors, lobbyists, principals, or employers of lobbyists, she must maintain a detailed log, including details regarding herself or the charity if her name was used for solicitation purposes.
 - ☐ The log should be submitted to the COE within 30 days of the charitable event or within 30 days of the solicitation.
 - ☐ Commissioner Mitchell may not solicit a donation in exchange for any special consideration on her part as a City commissioner.
- Staff recommended that advisory opinion letter RQO 11-029 be adopted.

MOTION to approve proposed advisory opinion RQO 11-029. Motion by Dr. Robin Fiore, and seconded by Ronald Harbison.

Mr. Ostrau, speaking on behalf of himself, said that the COE was misinterpreting a portion of the Code since a public official's use of his or her title would not equate to a misuse of position.

Mr. Johnson responded that someone could serve on a charity's board using his or her official title. He said it became an issue when solicitation or fundraising occurred.

Mr. Ostrau noted that Dr. Fiore's curriculum vitae (CV), which was posted on the University of Miami's web site, referenced that she was a commissioner.

Dr. Fiore replied that:

- Her CV indicated that her community service included commission service, but that reference did not help her acquire grants.
- She did not solicit or accept any gifts from anyone.

Mr. Farach pointed out that even without corrupt intent, if a public official solicited on behalf of a nonprofit organization using his or her official title, only one charity would benefit.

XIII.a. – CONTINUED

Judge Rodgers commented that the issue merited further discussion. He said that the COE may need to decide the use of a public official's title on a case-by-case basis.

UPON CALL FOR A VOTE, the motion carried 4-0. Bruce Reinhart absent.

XIII.b. RQO 11-039

Mr. Johnson stated that:

- A Village of Tequesta (Tequesta) attorney asked whether a municipality could hold a charity fundraising event on behalf of a nonprofit that benefitted public safety officers using off-duty firefighters and certain on-duty municipal staff to solicit and run the event.
- A municipal employee and a Tequesta council member served on the nonprofit board, with donations being solicited from Tequesta vendors.
- The event included raffles, door prizes, and silent auctions. All raised funds would be deposited into the nonprofit's account; however, 75 percent of the funds would be redistributed to other local nonprofit organizations approved by Tequesta's council.
- Staff had advised that:
 - Municipal employees or officials may not use their official position to provide special financial benefits to any nonprofit in which they were an officer or a director.
 - While an officer or a director, neither they, nor anyone on their behalf or on behalf of the nonprofit, may use their official title to solicit donations over \$100 from vendors, lobbyists, or their principals.
 - To comply with the Code's conflict-of-interest section, public officials should abstain from any official action that would specially and financially benefit the nonprofit in which they were an officer or a director.

XIII.b. – CONTINUED

- ☐ The Code did not prevent Tequesta from holding fundraising events to assist local nonprofit organizations, including organizations that provided assistance to Tequesta's employees.
- ☐ Tequesta could assign staff members to assist in the event planning. If Tequesta's council determined that the nonprofit solicitation was for a public purpose, staff members may solicit on Tequesta's time.
- ☐ Specific to section 2-444(h)(3), Tequesta employees may not solicit donations over \$100 from Tequesta's vendors, lobbyists, principals, and employers of lobbyists on Tequesta's time.
- ☐ If soliciting from Tequesta's vendors, lobbyists, principals, or employers of lobbyists, a log of solicitations over \$100 must be maintained and provided to the COE within 30 days of the event.
- The two issues involved Tequesta's use of employees on public time, and public officials serving as officers or board members of a nonprofit.

Dr. Fiore said that since the COE was unaware which nonprofits received the remaining 75 percent in funds, the COE could not discern the relationship between Tequesta's officials and the nonprofit organizations.

Mr. Johnson said that:

- The situation only applied to Tequesta officials who voted on issues affecting charities where they were officers or board members.
- By its nature, anonymous donations would not have a corrupting influence since no one knew the donations' sources.
- Public officials could not solicit or accept donations over \$100 during the course of one year from vendors, lobbyists, principals, or employers of a lobbyist who sold, leased, or lobbied the public officials' municipality.
- A question arose when public employees received anonymous donations on street corners while on County and municipal time.

Dr. Fiore stated that the log maintained by public employees assigned by the municipality to solicit nonprofit donations should be monitored and supervised.

XIII.b. – CONTINUED

Mr. Johnson said that Code violations could occur if an anonymous donor contacted a public employee who did not log the donation information.

Judge Rodgers commented that he felt that the COE could be creating more problems than were being solved.

MOTION to approve proposed advisory opinion letter RQO 11-039. Motion by Dr. Robin Fiore.

MOTION DIED FOR LACK OF A SECOND.

Mr. Johnson stated that he would need direction in responding to the advisory opinion letter. The advisory opinion letter could be resubmitted as two separate letters, he said.

Mr. Farach suggested that the letter could be drafted stating that, The Code does not prohibit your doing so.

Mr. Johnson stated that he would bring back RQO 11-039 as one draft letter containing two separate sections at the next COE meeting.

MOTION to table proposed advisory opinion letter RQO 11-039. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

Mr. Johnson stated that since advisory opinion letter RQO 11-051 was almost identical to RQO 11-029, it could be taken up at this time.

XIII.c. Page 26

(CLERK'S NOTE: Item XIII.d. was presented at this time.)

XIII.d. **RQO 11-051**

Mr. Johnson stated that:

- A Town of Juno Beach (Juno Beach) councilman asked whether, as a director of a Florida nonprofit corporation, he was permitted to solicit donations and hold fundraising events for the nonprofit while serving on Juno Beach's council. The councilman also anticipated eventually receiving compensation from the nonprofit.

XIII.d. – CONTINUED

Staff recommended that:

- The revised Code permitted public officials or employees to solicit contributions directly or indirectly on behalf of a nonprofit charitable organization, including solicitations and acceptance of donations from Juno Beach vendors and lobbyists; however, the solicitations may only be made if a log was maintained for transparency purposes.
- As a nonprofit director, a public official or employee may not use his or her public position to specially and financially benefit the nonprofit that he or she served, including the use of his or her official title, directly or indirectly, in soliciting donations.
- Conflict-of-interest provisions applied to public officials with a voting potential who may specifically and financially benefit a nonprofit for which the public officials were officers or directors.
- Should public officials or employees be compensated by a nonprofit organization in the future, the nonprofit may be considered an outside employer or business; and a special, financial benefit could not be provided on that basis as well.
- Public officials could resign from the nonprofit's board and become a nonprofit member.
 - ☐ Maintenance of a log would still be required.
 - ☐ Public officials could then solicit using their official title.
- Public officials could maintain their nonprofit board position, but they could only solicit in their non-public official capacity.

Mr. Farach stated that he saw a significant difference between RQO 11-029 and RQO 11-051 in that the person requesting the opinion anticipated or believed that a future payment was possible for soliciting for the nonprofit organization. He expressed concern that the public official would be given authority to solicit, then state that he or she was resigning as a nonprofit officer or director to receive compensation from the nonprofit organization.

XIII.d. – CONTINUED

Mr. Johnson stated that:

- He was unaware that any municipality compensated a public official to serve in a full-time capacity as vice-mayor.
- Due to unanticipated issues, staff's recommendation would be to table item XIII.d. since the letter's language should be slightly stronger.
- Under section 2-443(c), a conflict of interest existed if public officials anticipated a financial benefit, and they should not be voting on the issue, whether they were or were not on the nonprofit's board.

MOTION to table proposed advisory opinion letter RQO 11-051. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

(CLERK'S NOTE: Mr. Johnson requested that item XIII.c., RQO 11-041, be presented at this time, and the COE's consensus allowed that request.)

XIII.c. RQO 11-041

Mr. Johnson stated that:

- Judge Rodgers was asked to receive an Anti-Defamation League (ADL) award for professional achievement.
- Judge Rodgers asked whether he was prohibited from accepting the award or attending the ADL Jurisprudence Award.

(CLERK'S NOTE: Judge Rodgers left the meeting.)

Staff advised that:

- The COE chair was not prohibited from accepting the award for professional achievement since it was not considered a gift under the Code's specific "carve out."
- The COE chair was not prohibited from accepting tickets from the nonprofit ADL and attending the accompanying awards reception if it was a public event and the tickets were not provided by someone who was otherwise a County vendor or lobbyist.

XIII.c. – CONTINUED

- Tickets valued over \$100 should be reported.
- The nonprofit sponsor was not prohibited from using the COE chair's name in referencing his years of service as a judge, a civil rights leader, an advocate of civil rights as a former prosecutor, the first African-American prosecutor, and the county's first African-American jurist in the written materials promoting the award, as long as a record was submitted indicating all solicitations made, and pledges, and donations received over \$100 from vendors, principals, lobbyists, and employers of lobbyists who lobbied the COE or who were vendors or lobbied the County's departmental staff.

Mr. Johnson said that the ADL did not consider its donor list to be proprietary, and other than for Internal Revenue purposes, the ADL did not disclose its donors.

Dr. Fiore suggested that the ADL could be provided a list of County vendors.

Mr. Johnson responded that staff could formulate a list of current County vendors, and it would be posted on the COE's web site.

MOTION to approve proposed advisory opinion letter RQO 11-041. Motion by Ronald Harbison, seconded by Dr. Robin Fiore, and carried 3-0. Judge Edward Rodgers and Bruce Reinhart absent.

(CLERK'S NOTE: Judge Rodgers rejoined the meeting.)

XIII.e. RQO 11-059

Mr. Johnson stated that the Village of Palm Springs (Palm Springs) police chief asked whether it would violate section 2-444(h), if Palm Springs' employees participated in the American Cancer Society's (ACS) Breast Awareness fundraiser on October 22, 2011.

Staff recommended that:

- Palm Springs' employees and officials were not prohibited from participating in the nonprofit event; however, solicitation of contributions over \$100 from Palm Springs' vendors, lobbyists, principals, or employers of lobbyists while on Palm Springs' time was prohibited.

XIII.e. – CONTINUED

- If Palm Springs' employees elected to solicit donations over \$100 from Palm Springs' vendors, lobbyists, principals, or employers of lobbyists during their personal time, a log must be maintained, detailing the charity's name, the person or entity soliciting the charity, and the amount pledged. The log must be submitted to the COE within 30 days of the event.

Mr. Johnson said that in all Code sections except gift reporting and nepotism, not submitting the log willfully, knowingly, and with possible corrupt intent could be a first-degree misdemeanor. He added that:

- The COE only had power to reprimand, to fine up to \$500, order restitution, and to provide letters of instruction.
- The COE did not have the power to request that the ACS return donations due to lack of a recorded log. If it was a misuse of office, the municipality would make that determination.
 - ☐ If the charity was owned and operated by a municipal employee, the COE could decide that it was unjust enrichment.
 - ☐ The incident would need to be fact specific and fairly egregious for the COE to order restitution or a return of donations.

Dr. Fiore commented that the fact that the donations were received by a charity was a problem in that it did not purify the situation.

Mr. Johnson clarified that if a public employee solicited charitable donations from a municipality's vendors during his or her personal time, the COE should become aware of the Code violation through an audit, through a COE inquiry, or from someone anonymously informing the COE of a submitted complaint, or through a sworn complaint from personal knowledge.

Dr. Fiore said that if a log was not filled out, at some point the EODC would need to acknowledge that fact and revise the Code provision.

MOTION to approve proposed advisory opinion letter RQO 11-059. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

XIII.e. – CONTINUED

XIV. PROPOSED ADVISORY OPINIONS

PUBLIC COMMENT: B. Reznik.

Judge Rodgers stated that he believed that Mr. Reznik was in the wrong place since his situation appeared to involve the court system or the BCC. He added that the COE could not offer any relief, and that Mr. Reznik should consult his lawyer.

MOTION to table item XIV. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

XV. EXECUTIVE DIRECTOR COMMENTS

Mr. Johnson stated that:

- The COE's staff had a significant workload, and he would attempt to fit COE issues into one meeting.
- There were numerous issues due to the Code's newness, and the municipalities brought a new dimension to those issues.
- Some municipality issues, such as fundraising for the Muscular Dystrophy Association, may need to be dealt with on an emergency basis.
- In some instances, a second COE meeting may be necessary during certain months.
- Today's COE meeting could be considered a workshop since a few items were discussed that had not previously been before the COE.

Judge Rodgers stated that the COE members should meet among themselves to discuss procedural changes that would be advantageous to the COE.

Mr. Johnson said that:

- The City of Boca Raton's Airport Authority (BRAU) would be coming under the COE's jurisdiction.
- The agreement with the BRAU had been reached, and the COE would present the agreement to the BCC for ratification.

XV. – CONTINUED

- The BRAU would be paying on a per-case basis for advisory opinions.
- Ethics functions and seminars were always available to the COE members and staff. Broward County was attempting to initiate a COE.

XVI. PUBLIC COMMENTS – None

XVII. ADJOURNMENT

At 7:15 p.m., the vice chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into this ____ day of _____, 2011, between the Boca Raton Airport Authority, a special district existing pursuant to Chapter 2004-468, Laws of Florida, and the Palm Beach County Board of County Commissioners for the services of the Palm Beach County Commission on Ethics.

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to clearly identify the roles and responsibilities of the Palm Beach County Commission on Ethics ("Commission on Ethics") and the Boca Raton Airport Authority (the "Authority") as they relate to the implementation of the Palm Beach County Code of Ethics (the "Code of Ethics"). The Code of Ethics is intended to promote honesty, integrity and accountability in local government.

II. Background

Palm Beach County voters approved a countywide referendum bringing cities and municipalities under the jurisdiction of the commission on ethics and the ethics codes. As an independent special district, the Authority is not under the jurisdiction of the Commission on Ethics by statute or referendum; however, Authority Members are subject to the Code of Ethics and jurisdiction of the Commission on Ethics by virtue of the definition of "Official" in the Code of Ethics. Section 2-258 of the Commission on Ethics ordinance states as follows:

The commission on ethics may be empowered to review, interpret, render advisory opinions, and enforce the county's code of ethics or similar ordinances, rules or regulations duly adopted by the county or other local or municipal government, or any commission, bureau, district or other governmental entity located in the county, pursuant to agreements or memoranda of understanding between the commission on ethics and said governmental agency.

The Authority and the Commission on Ethics have determined that it will serve the public interest to enter into this Memorandum of Understanding in order to accomplish the foregoing goals.

III. Agreement

The Commission on Ethics, subject to approval by the Board of County Commissioners, is authorized to negotiate agreements or memoranda of understanding with special districts and other public officers and entities, allowing the Commission on Ethics to exercise any and all

authority, functions and powers set forth in the Commission on Ethics Ordinance for the benefit of the public entity, in this case the Authority.

The Authority desires to submit to the jurisdiction of the Palm Beach County Commission on Ethics for its Members, and to hire the Commission on Ethics to conduct investigations, hear complaints and process advisory opinions in order to promote honesty, integrity and accountability in government.

The Commission on Ethics and the Authority recognize that given the knowledge, experience, and ability of the staff of the Commission on Ethics in conducting investigations and interpreting the Palm Beach County Code of Ethics, the Commission on Ethics is in the best position to expeditiously and economically fulfill these services for the Authority.

This Memorandum of Understanding authorizes the Commission on Ethics to exercise the authority, functions and powers granted by the Commission on Ethics ordinance over the operations of the Authority.

a. Effective Date and Term

This Memorandum of Understanding shall take effect upon execution by the Board of County Commissioners. This Memorandum of Understanding will then be in effect for one (1) year. Either party may terminate this agreement with ninety days (90) written notice to the other party. Upon notice of termination by the Authority, any ongoing Authority investigations being conducted by the Commission on Ethics pursuant to this Memorandum of Understanding shall continue until completed.

The parties expressly agree that time is of the essence in this Agreement and the failure by a party to complete performance within the time specified, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.

b. Responsibilities and Duties

The Commission on Ethics shall exercise any and all authority, functions and powers provided for in the Commission on Ethics ordinance and Code of Ethics ordinance in regard to the Authority, including:

- A) The Commission on Ethics shall have the authority to (1) review, interpret, render advisory opinions and enforce the Code of Ethics, (2) investigate legally sufficient complaints within the jurisdiction of the Commission on Ethics and conduct public hearings as provided by the Commission on Ethics ordinance; and 3) develop and deliver training programs and ensure

that effective and meaningful training experiences are delivered in a timely and efficient manner.

- B) The Commission on Ethics shall have the power to conduct investigations and receive full and unrestricted access to the records of the Authority.
- C) In the case of a refusal to obey a request for documents or for an interview, the Commission on Ethics shall have the power to subpoena witnesses, administer oaths, and require the production of records in a manner consistent with section 162.08 Florida Statutes. The Commission on Ethics shall not interfere with any ongoing criminal investigation or prosecution of the State Attorney or the U.S. Attorney for the Southern District of Florida.
- D) Where the Commission on Ethics suspects a possible violation of any state, federal or local law, or rule, regulation or policy, the Airport Manager or designee shall notify the appropriate civil, criminal, or administrative agencies.
- E) The Commission on Ethics shall have the power to require Members and staff to participate in ethics training on a regular basis
- F) The Commission on Ethics "hotline" will receive complaints related to Authority operations. The Authority will support and assist the Commission on Ethics in publicizing the "hotline" and encouraging the reporting of ethics violations by local citizens, officials and employees.
- G) The Commission on Ethics may exercise any of the powers contained in the Commission on Ethics Ordinance upon its own initiative.
- H) All records held by the Commission on Ethics and its staff related to an active preliminary investigation are confidential and exempt from disclosure in a manner consistent with the provisions in s. 112.3188(2) and s. 112.324, Florida Statutes.
- I) The Commission on Ethics and its staff shall be considered "an appropriate local official" of the Authority for purpose of whistleblower protection provided by s. 112.3188(1), Florida Statutes.
- J) The Commission on Ethics may recommend remedial actions and may provide prevention and training services to Authority Members and employees. The Commission on Ethics may follow up to determine whether recommended remedial actions have been taken.

- K) The Commission on Ethics shall monitor the costs of investigations undertaken.
- L) The Commission on Ethics will provide an invoice for services rendered under this Memorandum of Understanding. The Authority agrees to provide payment to Palm Beach County within thirty (30) days of receiving an invoice.
- M) As part of its obligation under this Memorandum of Understanding, Authority employees will in all instances cooperate fully with Commission on Ethics staff regarding issues of employee and vendor training and in timely providing records requested by staff investigators.
- N) In any case in which the Commission on Ethics determines that the complaining party filed a frivolous or groundless complaint as defined in s. 57.105 Florida Statutes, or a complaint with malicious intent and with the knowledge that the complaint contains one or more material false allegations, or with reckless disregard for whether the complaint contains material false allegations, the Commission shall order the complaining party to pay any cost and attorneys fees incurred by the Commission on Ethics and or the alleged violator.
- O) The Commission on Ethics will maintain a website and all required databases including gift reports, voting conflict disclosures, outside employment waivers, final orders and advisory opinions.

c. Interpretation of Code of Ethics

Consistent with the legislative intent of the County Commission and the Commission on Ethics, the following sections of the Code of Ethics require additional construction as applied to the Authority:

- A) Section 2-443(d) shall only be interpreted to prohibit Authority Members and employees or their outside employers or businesses from entering into contracts with the Authority, not the County or the City of Boca Raton; and
- B) Section 2-443(f) shall only be interpreted to prohibit Authority Members and employees from accepting travel expenses from any Authority contractor, vendor, service provider, bidder or proposer, not County or Municipal contractors, vendors, service providers, bidders or proposers.

IV. Provision for fees

As authorized by sect. 2-258 of the code of ethics, this Memorandum of Understanding shall include a provision for fees to be paid to the Commission on Ethics from the Authority in exchange for such benefits at a rate established by the Commission on Ethics. The fee schedule adopted pursuant to this Memorandum of Understanding is as indicated. These rates are fixed for the term of the contract and subject to change thereafter. There will be no cost to the Authority for training.

Option A: Hourly []

Director	\$89.00
Attorney	\$40.00
Investigator	\$45.00
Administrative	\$40.00

Option B: Event [✓]

Advisory opinion	\$ 200.00
Complaint (inquiry through legal sufficiency finding)	\$ 300.00
Complaint (investigation through pc hearing)	\$ 1,000.00
Complaint (pc to settlement or final hearing)	\$ 750.00

V. Delegation of Duty

Nothing contained herein shall be deemed to delegate the constitutional or statutory duties of state, county, or municipal officers.

VI. Liability

The parties to this Memorandum of Understanding and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions and negligence of the other party. Further, nothing herein shall be construed as a waiver of sovereign immunity by either party, pursuant to Section 768.28, Florida statutes.

VII. Controlling Law

This Memorandum of Understanding shall be interpreted and construed according to, and governed by, the laws of the State of Florida. Any and all legal action necessary to enforce the Memorandum of Understanding will be held in Palm Beach County.

VIII. Remedies

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise of any right, power or remedy hereunder shall preclude any other of further exercise thereof.

IX. Severability

In the event any term or provision of this Memorandum of Understanding is determined by a court of competent jurisdiction to be illegal or otherwise invalid, such provision shall be construed or deleted and shall not affect the remaining portions of this Memorandum of Understanding and the remainder shall be construed to be in full force and effect.

X. Amendment

This Memorandum of Understanding shall not be modified or amended except by written agreement duly executed by the parties hereto.

XI. Notice

Each party shall furnish to the other such notice, as may be required from time to time, pursuant to this Memorandum of Understanding, in writing, posted in the U.S. mail or by hand delivery, or by overnight delivery service and addressed as follows:

To Commission on Ethics: 2633 Vista Parkway
West Palm Beach, FL 33411

To Authority: Attn: Airport Manager
3701 FAU Blvd., Suite 205
Boca Raton, Florida 33431

XII. Effective Date

This Memorandum of Understanding and the rights and obligations conferred herein shall become effective upon filing with the Clerk of the Circuit Court of Palm Beach County, Florida.

XIII. Point of Contact

For purposes of fulfilling the duties and responsibilities of this Memorandum of Understanding, the points of contact will be as follows:

Commission on Ethics: Megan Rogers, staff counsel
Commission on Ethics
2633 Vista Parkway
West Palm Beach, FL 33411
mrogers@palmbeachcountyethics.com
(561) 355-0724

Authority Mr. Ken A. Day, Airport Manager
3701 FAU Blvd., Suite 205
Boca Raton, Florida 33431
ken@bocaairport.com
(561) 391-2202, ext. 211

XIV. Entirety of Agreement

This Memorandum of Understanding represents the entire understanding between the parties and supersedes all other negotiations, representations, or agreements, written or oral, relating to this Memorandum of Understanding.

BOCA RATON AIRPORT AUTHORITY

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: 
Dawn M. Meyers, Airport Legal Counsel

APPROVED AS TO TERMS AND
CONDITIONS

By: 
Frank Feiler, Chair

PALM BEACH COUNTY

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____

APPROVED AS TO TERMS AND
CONDITIONS

By:  _____

ATTEST

Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA,
THROUGH ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Clerk

By: _____
_____, Chair

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into this ____ day of _____, 2011, between the Lake Worth Community Redevelopment Agency, a special district established by the City of Lake Worth as authorized by Section 163.370(a), and Palm Beach County, a political subdivision of the State of Florida, by and through the Palm Beach County Board of County Commissioners for the services of the Palm Beach County Commission on Ethics.

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to clearly identify the roles and responsibilities of the Palm Beach County Commission on Ethics ("Commission on Ethics") and the Lake Worth Community Redevelopment Agency ("Lake Worth CRA") as they relate to the implementation of the Palm Beach County Code of Ethics. The Palm Beach county Code of Ethics is intended to promote honesty, integrity and accountability in local government. To support this goal the Lake Worth CRA submits to the jurisdiction of the Palm Beach County Commission on Ethics and seeks to hire the Commission on Ethics to conduct investigations, hear complaints and process advisory opinions. In particular, this MOU is intended to have the Commission on Ethics exercise the authority, functions and powers granted by the Commission on Ethics ordinance as to the CRA's operations.

II. Background

In response to several high profile prosecutions of Palm Beach County and West Palm Beach City Commissioners, the Palm Beach County Commission a county code of ethics, effective May 1, 2010. Since then, Palm Beach County voters approved a countywide referendum bringing cities and municipalities under the jurisdiction of the commission on ethics and the ethics codes, effective June 1, 2011. As a dependant-taxing district, the Lake Worth CRA is not under the jurisdiction of the commission on ethics by statute or referendum. However, anticipating that local taxing districts would want to take advantage of the oversight, training and advisory functions of the Commission on Ethics, Section 2-258 of the commission on ethics ordinance states as follows:

The commission on ethics may be empowered to review, interpret, render advisory opinions, and enforce the county's code of ethics or similar ordinances, rules or regulations duty adopted by the county or other local or municipal government, or any commission, bureau, district or other governmental entity located in the county, pursuant to agreements or memoranda of understanding between the commission of ethics and said governmental agency.

The Lake Worth CRA and the Commission on Ethics have determined that it will serve the public interest to enter into this Memorandum of Understanding in order to accomplish the foregoing goals.

III. Agreement

The Commission on Ethics, subject to approval by the Board of County Commissioners, is authorized to negotiate agreements or memoranda of understanding with special districts and other public officers and entities, allowing the Commission on Ethics to exercise any and all authority, functions and powers

set forth in the Commission on Ethics Ordinance for the benefit of the public entity, in this case the Lake Worth CRA.

The Lake Worth CRA seeks to submit to the jurisdiction of the Palm Beach County Commission on Ethics and to hire the Commission on Ethics to conduct investigations, hear complaints and process advisory opinions in order to promote honesty, integrity and accountability in government.

The Commission on Ethics and CRA recognize that given the knowledge, experience, and ability of the staff of the Commission on Ethics in conducting investigations and interpreting the Palm Beach County Code of Ethics, the Commission on Ethics is in the best position to expeditiously and economically fulfill these services for the CRA.

This Memorandum of Understanding authorizes the Commission on Ethics to exercise the authority, functions and powers granted by the commission on ethics ordinance over the operations of the Lake Worth CRA.

a. Effective Date and Term

This Memorandum of Understanding shall take effect upon execution by the Board of County Commissioners. This Memorandum of Understanding will then be in effect for one (1) year. Either party may terminate this agreement with ninety days (90) written notice to the other party. Upon notice of termination by the CRA, any ongoing CRA investigations being conducted by the Commission on Ethics pursuant to this Memorandum of Understanding shall continue until completed.

The parties expressly agree that time is of the essence in this Agreement and the failure by a party to complete performance within the time specified, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.

b. Responsibilities and Duties

The Commission on Ethics shall exercise any and all authority, functions and powers provided for in the Commission on Ethics ordinance and Code of Ethics ordinance in regard to the Lake Worth CRA, including:

- A) The Commission on Ethics shall have the authority to (1) review, interpret, render advisory opinions and enforce the Code of Ethics, (2) investigate legally sufficient complains within the jurisdiction of the Commission on Ethics and conduct public hearings as provided by the Commission on Ethics ordinance; and 3) develop and deliver training programs and ensure that effective and meaningful training experiences are delivered in a timely and efficient manner.
- B) The Commission on Ethics shall have the power to conduct investigations and receive full and unrestricted access to the records of the board of directors and staff of the Lake Worth CRA.

- C) In the case of a refusal to obey a request for documents or for an interview, the Commission on Ethics shall have the power to subpoena witnesses, administer oaths, and require the production of records in a manner consistent with section 162.08 Florida Statutes. The Commission on Ethics shall not interfere with any ongoing criminal investigation or prosecution of the State Attorney or the U.S. Attorney for the Southern District of Florida.
- D) Where the Commission on Ethics suspects a possible violation of any state, federal or local law, or rule, regulation or policy, the Executive Director or designee shall notify the appropriate civil, criminal, or administrative agencies. In the case of a possible violation of a rule, regulation or policy governing a Lake Worth CRA staff member or director, the Executive Director or designee shall also notify the Lake Worth City Council and the Chairman of the CRA.
- E) The Commission on Ethics shall have the power to require directors and staff to participate in ethics training on a regular basis
- F) The Commission on Ethics "hotline" will receive complaints related to Lake Worth CRA operations. The Lake Worth CRA will support and assist the Commission on Ethics in publicizing the "hotline" and encouraging the reporting of ethics violations by local citizens, officials and employees.
- G) The Commission on Ethics may exercise any of the powers contained in the Commission on Ethics Ordinance upon its own Initiative
- H) All records held by the Commission on Ethics and its staff related to an active preliminary investigation are confidential and exempt from disclosure in a manner consistent with the provisions in s. 112.3188(2) and s. 112.324, Florida Statutes.
- I) The Commission on Ethics and its staff shall be considered "an appropriate local official" of the CRA for purpose of whistleblower protection provided by s. 112.3188(1), Florida Statutes.
- J) The Commission on Ethics may recommend remedial actions and may provide prevention and training services to Lake Worth CRA directors and staff. The Commission on Ethics may follow up to determine whether recommended remedial actions have been taken.
- K) The Commission on Ethics shall monitor the costs of investigations undertaken.
- L) The Commission on Ethics will provide an invoice for services rendered under this Memorandum of Understanding. The CRA agrees to provide payment to Palm Beach County within thirty (30) days of receiving an invoice.
- M) As part of its obligation under this Memorandum of Understanding, CRA staff will in all instances cooperate fully with Commission on Ethics staff regarding issues of staff and vendor training and in timely providing records requested by staff investigators.

- N) In any case in which the Commission on Ethics determines that the complaining party filed a frivolous or groundless complaint as defined in s. 57.105 Florida Statutes, or a complaint with malicious intent and with the knowledge that the complaint contains one or more material false allegations, or with reckless disregard for whether the complaint contains material false allegations, the commission shall order the complaining party to pay any cost and attorneys fees incurred by the Commission on Ethics and or the alleged violator.
- O) The Commission on Ethics will maintain a website and all required databases including gift reports, voting conflict disclosures, outside employment waivers, final orders and advisory opinions.

IV. Provision for fees

As authorized by sect. 2-258 of the code of ethics, this Memorandum of Understanding shall include a provision for fees to be paid to the Commission on Ethics from the Lake Worth CRA in exchange for such benefits at a rate established by the Commission on Ethics. The fee schedule adopted pursuant to this Memorandum of Understanding is as indicated. These rates are fixed for the term of the contract and subject to change thereafter. There will be no cost to the CRA for training. Appeals will be billed on an hourly basis only at a rate of forty dollars (\$40) per hour. Regarding option B (Event option) for the avoidance of doubt, the cost of a complaint which proceeds through multiple phases will be the sum of the phases completed. For example, a complaint through final hearing or settlement would cost two thousand fifty dollars (\$2,050).

Option A: Hourly []

Director	\$89.00
Attorney	\$40.00
Investigator	\$45.00
Administrative	\$40.00

Option B: Event []

Advisory opinion	\$ 200.00
Complaint (inquiry through legal sufficiency finding)	\$ 300.00
Complaint (investigation through pc hearing)	\$ 1,000.00
Complaint (pc to settlement or final hearing)	\$ 750.00

V. Delegation of Duty

Nothing contained herein shall be deemed to delegate the constitutional or statutory duties of state, county, or municipal officers.

VI. Liability

The parties to this Memorandum of Understanding and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions and negligence of the other party. Further,

nothing herein shall be construed as a waiver of sovereign immunity by either party, pursuant to Section 768.28, Florida statutes.

VII. Controlling Law

This Memorandum of Understanding shall be interpreted and construed according to, and governed by, the laws of the State of Florida. Any and all legal action necessary to enforce the Memorandum of Understanding will be held in Palm Beach County.

VIII. Remedies

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise of any right, power or remedy hereunder shall preclude any other of further exercise thereof.

IX. Severability

In the event any term or provision of this Memorandum of Understanding is determined by a court of competent jurisdiction to be illegal or otherwise invalid, such provision shall be construed or deleted and shall not affect the remaining portions of this Memorandum of Understanding and the remainder shall be construed to be in full force and effect.

X. Amendment

This Memorandum of Understanding shall not be modified or amended except by written agreement duly executed by the parties hereto.

XI. Notice

Each party shall furnish to the other such notice, as may be required from time to time, pursuant to this Memorandum of Understanding, in writing, posted in the U.S. mail or by hand delivery, or by overnight delivery service and addressed as follows:

To Commission on Ethics: 2633 Vista Parkway
West Palm Beach, FL 33411

To Lake Worth CRA: 29 South J Street, Unit 1
Lake Worth, FL 33460

and

David N. Tolces, Esquire
GOREN, CHEROF, DOODY & EZROL, P.A.
3099 East Commercial Boulevard, Suite 200
Ft. Lauderdale, FL 33308

XII. Effective Date

This Memorandum of Understanding and the rights and obligations conferred herein shall become effective upon execution by the Palm Beach County Board of County Commissioners.

XIII. Point of Contact

For purposes of fulfilling the duties and responsibilities of this Memorandum of Understanding, the points of contact will be as follows:

Commission on Ethics:
Megan Rogers, Staff Counsel
2633 Vista Parkway
West Palm Beach, FL 33411
ethics@palmbeachcountyethics.com
(561) 355-0724

To Lake Worth CRA:
Joan Oliva, Executive Director
29 South J Street, Unit 1
Lake Worth, FL 33460
joliva@lakeworth.org
(561) 493-2550

XIV. Entirety of Agreement

This Memorandum of Understanding represents the entire understanding between the parties and supersedes all other negotiations, representations, or agreements, written or oral, relating to this Memorandum of Understanding.

ATTEST

PALM BEACH COUNTY, FLORIDA, THROUGH
ITS BOARD OF COUNTY COMMISSIONERS

Sharon R. Bock, Clerk & Comptroller

By: _____
Clerk

By: _____
_____, Chair

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
Leonard W. Berger,
Assistant County Attorney

By: _____
Alan S. Johnson, Executive Director
Commission on Ethics

ATTEST:

APPROVED AS TO TERMS AND
CONDITIONS

LAKE WORTH COMMUNITY
REDEVELOPMENT AGENCY

By: _____
Joan Oliva, Executive Director

By: _____
Cary Sabol, Chair

(SEAL)

STATE OF FLORIDA
COUNTY OF PALM BEACH

Sworn to (or affirmed) and subscribed before me this _____ day of August, 2011, by Joan Oliva, Executive Director, who is _____ personally known to me, or _____ who has produced _____ as identification and Cary Sabol, Chair, who is _____ personally known to me or _____ who has produced _____ as identification.

Signature of Notary Public

Print name of Notary Public, or affix commission stamp above

VIII – RULES OF PROCEDURE AMENDMENTS

A number of changes were made to both the Code of Ethics and Commission on Ethics Ordinances pursuant to the Referendum Drafting Committee. These changes were effective June 1, 2011. COE staff has reviewed the existing Rules of Procedure for necessary and appropriate revisions. (Specific Rule revisions attached)

Staff Analysis:

- 1- The jurisdictional requirement of Section C. Complaints –General Rules, needs to be updated to include municipality jurisdiction as of June 1, 2011. Ongoing jurisdiction of the county government remains as May 1, 2011. For municipalities, jurisdiction commences on June 1, 2011. In anticipation of additional entities contracting for the services of the COE, the effective date will be the date of contract with that entity. Rule 3.2(b)2. (reference §2-260(b) & 2-260.6)
- 2- Staff procedure upon a finding of legal sufficiency has been revised to require notification to the Respondent within twenty (20) days of the finding. Rule 4.1(b) (reference §2-260(c)).
- 3- Rules governing preliminary investigations and the setting of a final hearing were revised to require an automatic setting within 120 days of a probable cause determination. Rule 4.4(d) (reference §2-260(d)).
- 4- Restatement of rules setting public hearings within 120 days of a finding of probable cause. Rule 5.9 (reference §2-260(d)).
- 5- Section F. contains COE rules and procedures involving public hearings. Based upon prior discussions of the COE, and advisory opinions received from both the State COE and Attorney General, staff has amended section 6.4 *Disqualification of Commissioners* section to distinguish between financial and non-financial disqualification and include disqualification by motion of the Advocate or Respondent for *bias, prejudice or interest*.
- 6- Section H. contains penalty phase rules. The rule that applies to a Respondent who defaults by failure to appear must be amended to reflect that public hearings are not discretionary but automatically set upon a finding of probable cause. Rule 8.1 (reference §2-260(d)).
- 7- The penalty rules include reference to the standard of proof required to find that a violation has been committed. The revised code requires a finding, “by clear and convincing evidence, based upon competent substantial evidence in the record...” Rule 8.2 (reference §2-260.1(g)).

Staff Recommendation:

That the COE adopt the proposed amendments to its Rules of Procedure.

SECTION C. COMPLAINTS-GENERAL RULES

3.2 Subject Matter of a Sworn Complaint

- b) The Commission will not consider a complaint regarding:
 - 1. An allegation involving an ordinance outside the jurisdiction of the Commission on Ethics.
 - 2. An alleged violation that occurred before ~~March 1, 2010~~ May 1, 2010, for matters involving Palm Beach County, and before June 1, 2011, for matters involving municipalities within Palm Beach County. For all other public entities, an alleged violation that occurred prior to the effective date of contract with the Commission on Ethics.
 - 3. An alleged violation when the complaint is filed more than two (2) years after the violation is alleged to have occurred, unless a person, by fraud or other devices, prevented discovery of the violation.

SECTION D. PRELIMINARY INVESTIGATIONS

4.1 Staff Procedures Upon Receipt of a Complaint

- a) Upon receipt of a sworn written complaint, staff shall stamp on the face thereof the date on which the complaint was received in the Commission office. Each complaint received shall be given a complaint number which shall be entered on the complaint itself. Any document related to the complaint shall be entered into the complaint file.
- b) ~~Upon a preliminary finding of legal sufficiency, the Executive Director or designee shall forward a copy of the complaint to the respondent within thirty days of receipt of the complaint. Any amendments or additional material provided by the Complainant shall also be transmitted to the Respondent.~~ Within twenty (20) days of a preliminary finding of legal sufficiency, the Executive Director or designee shall forward a copy of the complaint and all documents in support thereof to the Respondent.

4.4 Preliminary Investigations

- a) A preliminary investigation shall be undertaken by the Commission on Ethics of each legally sufficient complaint over which the Commission has jurisdiction to determine whether there is probable cause to believe that a violation has occurred.
- b) Investigations shall be conducted by staff or by any other person or agency so designated by the Commission on Ethics under the supervision of the Executive Director or designee.

- c) Investigations shall be limited to the allegations of the complaint, but shall include an investigation of all facts and persons materially related.
- d) If the Commission on Ethics finds from the preliminary investigation probable cause to believe that a violation has been committed, it shall ~~notify both Complainant and Respondent via certified mail, hand delivery, or courier, informing the Respondent of his or her right to request a hearing within thirty (30) days of receipt of notice.~~ set the matter for a public hearing to be held within one hundred twenty (120) days of the probable cause determination and notify the Complainant and Respondent via certified mail, hand delivery or courier.
- e) If the Commission on Ethics finds from the preliminary investigation no probable cause to believe that a violation has been committed, the Commission shall dismiss the complaint with the issuance of a report to the Complainant and Respondent.

SECTION E. PROBABLE CAUSE DETERMINATION

5.9 Setting of Public Hearing

Upon a finding of probable cause to believe a violation has occurred, the commission shall set the matter for a final hearing to be held within one hundred twenty (120) days ~~request by the Respondent or on motion by the Commission on Ethics, the public hearing shall be held within ninety (90) days of the probable cause determination~~ unless extended by the Commission for good cause based on the request of a party or on its own initiative.

5.10 Default

If a Respondent ~~fails to timely file a request for a public hearing or fails to appear at the public hearing,~~ the Ethics Commission may find the Respondent in default and issue an appropriate public report and final order.

SECTION F. PUBLIC HEARINGS

6.4 Disqualification of Commissioners

- a) Commission members ~~shall~~ may be disqualified from sitting as a member of the Commission at either the probable cause hearing or the final public hearing for bias, prejudice or interest by motion of the Respondent or Advocate but not by the Complainant. A member may disqualify him or herself because of financial interest. ~~Disqualification may be raised by the Respondent, by the Advocate or by any member but not by the complainant.~~

SECTION H. PENALTY

8.1 Finding and Public Report

- a) Upon completion of the public hearing upon a finding of probable cause, the Commission on Ethics shall make a finding and public report as to whether any provision within its jurisdiction has been violated.
- b) When probable cause has been found and ~~either the Respondent has defaulted by failing to appear at the public hearing failed to request a public hearing, the Commission on Ethics has not exercised its discretion to set a public hearing or the Respondent has otherwise defaulted,~~ the Commission on Ethics will make appropriate findings and orders at the next regularly scheduled meeting based upon information within its possession as well as any subsequent investigative information provided to the Commission.

8.2 Order Upon Finding of Violation

- a) Upon a public hearing, if the Commission on Ethics finds, by clear and convincing evidence, based upon competent substantial evidence in the record, that a violation has been committed, the Commission shall issue an order imposing the appropriate penalty as provided in the ordinance being enforced. The final order shall include a determination as to whether the violation was intentional or unintentional.
- b) If, by Respondent's default, no public hearing is held in the matter, the Commission may make such findings as are consistent with the investigative information and issue appropriate orders.

IX – STAFF SYNOPSIS OF PROCESSED ADVISORY OPINIONS

RQO 11-049 Virginia Sayer

A Palm Beach County veterinarian asked whether she may continue to provide low cost vaccination and spay/neuter surgeries for cats and dogs at local area stores, one of which is a vendor of Palm Beach County.

The employee's outside business is not prohibited from providing pet vaccination services at a store that sells or leases goods to the county, so long as she provides the vendor with adequate consideration for use of their space, so as to avoid the receipt of a prohibited gift in excess of \$100 annually, in the aggregate. Previously, this issue was previously addressed in RQO 10-015, under the gift law contained in the pre-referendum code, which did not contain an annual aggregate limitation.

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.

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. Therefore, department staff is not prohibited from soliciting and accepting donations for the PSPD so long as they are doing so in their official capacity for use solely by the Village for a public purpose.

RQO 11-065 Steve Jerauld

The Fire Chief of Palm Beach County asked whether Palm Beach County and Municipal Fire Rescue Personnel may participate, while on-duty, in the annual Muscular Dystrophy Association (MDA) 2001 "Fill the Boot Drive" without violating the Code of Ethics. Annually, Fire Rescue personnel from the county and municipal departments join 300 communities statewide in a fundraising event to benefit the MDA. Known as the "Fill the Boot Drive," on duty fire rescue personnel volunteer to stand at traffic intersections within their response zones so that motorists can donate by placing currency and spare change into fire rescue boots. Based upon past events, donations are usually limited to loose change or single dollars bills and anything larger than \$20 would be very unusual.

Firefighters and paramedics are not prohibited from participating in the annual MDA Boot Drive provided that any solicitation or donation in excess of \$100 from a person or entity that the employee or official knows, or should know, is a vendor, lobbyist or principal of a lobbyist who lobbies, sells, or leases to their county or municipal public employer, complies with the reporting requirements contained in §2-444(h) of the Code of Ethics. If a fundraising participant is offered a donation in excess of \$100 from a donor who they recognize as a lobbyist or vendor of their county or municipal public employer, that particular gift would need to be logged (submitted within 30 days) and could not be accepted while on duty.

RQO 11-070 Mark Swanson

A county employee asked whether he may attend a vendor-sponsored event at an upcoming conference in Orlando, Florida. The County has approved his attendance at this conference and will be paying his travel expenses and registration fee.

An employee may not accept anything of value as a quid pro quo or in exchange for the past, present or future performance of their job. Otherwise, employees may accept up to \$100 in the aggregate over the course of the calendar year from a vendor, lobbyist, principal or employer of a lobbyist. Should the value of the event exceed \$100, the employee must reimburse the vendor the value in excess of \$100. While accepting these gifts may not be prohibited by the code, the Commission expressed its concern that an appearance of impropriety may exist where an employee who recommends vendors to the County accepts gifts of any value from those vendors, regardless of the fact that the employee may not be the ultimate decision maker.

RQO 11-071 Dot Bast

A Delray Beach employee asked whether she was permitted to attend an educational seminar and receive travel and related expense reimbursement from a vendor of Delray Beach. Her attendance is for educational purposes and in her official capacity as a top manager of the City.

A Delray Beach employee is not prohibited from accepting travel expense reimbursement from vendors of Delray Beach, so long as she obtains a waiver from the City Council. The reimbursement thereby becomes transparent and subject to public input and scrutiny. Other than travel expenses, an employee may not accept a gift in excess of \$100 from a vendor, lobbyist, principal, or employer of a lobbyist who sells, leases to or lobbies the City.

RQO 11-073 Gerry Franciosa

A Delray Beach advisory board member asked whether he was permitted to accept tickets valued at \$300 dollars to attend a local charity event from a local attorney who lobbies his advisory board.

Advisory Board members may not accept a gift valued in excess of \$100 dollars, in the aggregate, over the course of the calendar year from a lobbyist who lobbies their municipal board or related department. If a gift exceeds the \$100 limit, an advisory board member may still accept the gift or attend the associated event, but must reimburse the donor the amount in excess of \$100 within 90 days of the gift as provided by state statute.



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*

Manuel Farach, *Vice Chair*

Robin N. Fiore

Ronald E. Harbison

Bruce E. Reinhart

Executive Director

Alan S. Johnson

August 11, 2011

Dr. Virginia Sayre
Palm Beach County Animal Care and Control
7100 Belvedere Road
West Palm Beach, FL 33411

Re: RQO 11-049
Prohibited Contractual Relationships

Dear Dr. Sayre,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows.

YOU ASKED, in October of 2010, whether you as a Veterinarian employed by Palm Beach County Animal Care and Control, were permitted to provide low cost vaccination and spay/neuter surgeries for cats and dogs at local area stores, one of which is a vendor of Palm Beach County. You asked in a subsequent e-mail request dated June 13, 2011, whether your obligations have changed under the revised code of ethics effective June 1, 2011.

IN SUM, your outside business, Pet Wellness Station, is not prohibited from providing pet vaccination services at The Red Barn (TRB), a county vendor, so long as you provide TRB with adequate consideration for use of their space, so as to avoid the receipt of a prohibited gift in excess of \$100.

THE FACTS as we understand them are as follows:

This Commission provided you with an advisory opinion in October of 2010.¹ The facts are the same. You are employed full time by Palm Beach County Animal Care and Control (ACC) as a veterinarian and your outside business, Pet Wellness Station, provides low cost vaccinations at area pet stores, including TRB. Of the locations offering your services, only TRB is a county vendor and previously allowed you to run your clinic out of its store at no cost. Now, Pet Wellness Station pays \$50 per month in rent to TRB to use folding tables in the aisle way for two hours once a month. Another vaccine clinic, Paws Plus, has paid a site fee of \$50 to use a similar space at a similar location.

¹ RQO 10-015

THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics:

Section 2-444(g) for the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, *without adequate and lawful consideration*.

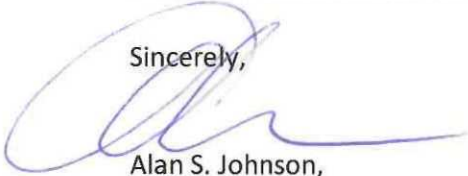
The COE previously advised you that should you received more than \$100 in complementary "rent" from TRB, you were required to report that amount on an annual gift reporting form. Under the revised code of ethics, you are prohibited from accepting more than \$100, in the aggregate, over the course of the calendar year, from any vendor of Palm Beach County, including TRB. However, your payment of \$50 to TRB in monthly rent would appear, based on the information you have provided, to constitute adequate consideration for your use of the space and, therefore, would not constitute a gift under the code of ethics.

IN SUMMARY, based on the facts and circumstances you have submitted, your outside business, the Pet Wellness Station, is not prohibited from operating at TRB, under the gift law provisions of the revised Code of Ethics, provided you continue to give adequate consideration for the benefit received.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson,
Executive Director

ASJ/mr/gal



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*

Manuel Farach, *Vice Chair*

Robin N. Fiore

Ronald E. Harbison

Bruce E. Reinhart

Executive Director

Alan S. Johnson

August 12, 2011

Chief Mark Hall
Palm Springs Police Department
230 Cypress Lane
Palm Springs, Florida 33461

Re: RQO 11-063
Gift Law

Dear Chief Hall,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics has been received and reviewed. The opinion rendered is as follows:

YOU ASKED in your email of July 29, 2011, whether your department may solicit and accept donations from a Village vendor in order to refurbish a newly acquired armored vehicle.

IN SUM, 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, they are not considered to be gifts under the code of ethics. Therefore, Code of Ethics gift regulations pertaining to vendors do not apply.

THE FACTS as we understand them are as follows:

You are the Chief of Police for the Village of Palm Springs (the Village). Recently, the department purchased a 1993 armored vehicle from Brink's Incorporated (Brink's), a nationwide private security firm, for \$10 dollars. Brink's makes these used vehicles available to law enforcement nationwide through this corporate program. Brink's is not a vendor of Palm Springs, nor does the company lobby the Village. The Village's new vehicle needs to be rehabilitated and reconditioned and the PSPD has solicited donations for this purpose from a Village vendor, Republic Services of Florida (Republic). Republic contracts with the Village to provide trash removal services and currently is in its fourth year of a seven-year contract with the municipality.

THE LEGAL BASIS for this opinion is found in the following relevant section of the Palm Beach County Code of Ethics:

Section 2-444(g)(1)e. specifically exempts gifts solicited or accepted by municipal employees on behalf of the municipality "in performance of their official duties for use solely by the county or municipality for a public purpose." Since the solicitations are made by you as a village employee, on behalf of the

Village for use solely by the PSPD, and the solicited donations will be used to recondition the armored vehicle for public use, they are not gifts as defined by the Code of Ethics.¹ Similarly, the difference in fair market value of the Brink's truck in excess of \$10 would not be considered a gift to the Village from Brink's. Alternatively, any solicited gift not used *solely by the municipality for a public purpose* would be considered a gift and subject to the regulations and requirements of the code.

IN SUMMARY, you are not prohibited from soliciting and accepting donations for the PSPD from vendors of the Village so long as you are doing so in your official capacity for use solely by the Village for a public purpose.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/mr/gal

¹ RQO 10-040 (county department soliciting donations for an awning constructed over a county swimming pool)



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*

Manuel Farach, *Vice Chair*

Robin N. Fiore

Ronald E. Harbison

Bruce E. Reinhart

Executive Director

Alan S. Johnson

August 12, 2011

Chief Steven B. Jerauld
Palm Beach County Fire Rescue
405 Pike Road
West Palm Beach, FL 33411

Re: RQO 11-065
Charitable Solicitation

Dear Chief Jerauld,

Your request for an expedited advisory opinion pursuant to Commission on Ethics rule of procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

YOU ASKED in your e-mail of August 9, 2011, whether Palm Beach County and Municipal Fire Rescue personnel may participate, while on-duty, in the annual Muscular Dystrophy Association (MDA) 2011 "Fill the Boot Drive" without violating the Code of Ethics.

IN SUM, the Code of Ethics does not prohibit on-duty fire rescue personnel from participating in the MDA non-profit fund raising event sanctioned by their government entity, provided that 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 who sells, leases or lobbies their government employer, be done only while off duty and comply with the charitable solicitation log requirements of the code.

THE FACTS as we understand them are as follows:

You are the Chief of Palm Beach County Fire Rescue and submitted this request on behalf of Palm Beach County Fire Rescue (PBCFR) and the Professional Firefighters and Paramedics of Palm Beach County, International Association of Firefighters Local 2928 (IAF Local). Annually, Fire Rescue personnel from the county and municipal departments join 300 other communities statewide to participate in an annual fundraising event for the benefit of the Muscular Dystrophy Association (MDA), a non-profit charitable organization. Known as the "Fill the Boot Drive", on duty fire rescue personnel volunteer to stand at traffic intersections within their response zones so that motorists can donate to MDA by placing currency and spare change into fire rescue boots. According to past experience, donations are generally limited to "loose change from an ashtray, or single dollar bills." Larger donations are received, however, "anything larger than \$20 would be very unusual." Donations are generally made anonymously by motorists waiting at traffic lights. This is a statewide fundraising effort and personnel are permitted to fundraise while on duty by their public employers. Participating firefighters carry portable radios and

emergency vehicles are parked nearby in order to assure on duty paramedics and firefighters are available for emergency calls, as they would be at their posted station houses.

In 2010, the boot drive in Palm Beach County yielded donations totaling \$92,000. That amount was the single largest source of funding for the MDA in the state. The 2011 drive is scheduled for September 2-4, 2011 and culminates with the MDA Labor Day Telethon. You have requested an expedited response from the COE.¹

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics, which took effect on June 1, 2011:

Section 2-443(a), misuse of office, prohibits a public official or employee from specially financially benefiting a non-profit organization *of which he or she (or his or her spouse or domestic partner) is an officer or director*. Therefore, any paramedic or firefighter who is an officer or director of MDA, locally or nationally, may not use his or her position to financially benefit the organization, *in a manner which he or she knows or should know will result in a special financial benefit, not shared with similarly situated members of the general public*, which in this instance would be all other similarly situated charitable organizations. An employee or official in this position may not solicit donations while on duty, or otherwise use their official position to specially benefit MDA.²

Under the gift law provisions, §2-444(a) prohibits a public employee from soliciting or accepting more than \$100 from a vendor or lobbyist in most circumstances. The revised Code of Ethics provides an exception to this prohibition to allow participation by officials and employees in charitable fundraising.³ However, this exception does require that fundraisers maintain a log of all solicitations and donations in excess of \$100 from vendors or lobbyists doing business or lobbying their public employer. Furthermore, in soliciting donations from these persons or entities, a public employee *may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions*.⁴

Therefore, Firefighters or paramedics who are not otherwise restricted as officers or directors of the charity, must comply with gift law regulations involving gifts from *any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable*.⁵ Specifically, a public employee must take great care to not accept donations in excess of

¹ Rule of Procedure 2.6 Expedited Responses. When the requesting party so indicates, and the facts support an expedited review of a request for advisory opinion, the Executive Director will confer with the COE Chairperson or Co-Chairperson to determine whether; to set the matter for review at the next scheduled meeting; to set a special meeting of the COE to review the request; or to have the Executive Director respond prior to the next regular meeting.

² RQO 11-029

³ §2-444(h), PBC Code of Ethics

⁴ §2-444(h)(3), PBC Code of Ethics

⁵ §2-444(a)(1), PBC Code of Ethics

\$100 from a person or entity who they know or should know lobbies, sells or leases to their public employer, without keeping a log of the transaction or while being on-duty at the time.⁶

The facts and circumstances you submitted indicate that the vast majority of solicitations and donations involve anonymous motorists contributing small cash amounts while waiting at intersections. The rules regulating gifts from vendors or lobbyists specifically require that the donor status is known or should be known to the recipient. The prohibition against use of staff or resources and the requirement of a log only applies to knowingly soliciting or accepting donations in excess of \$100 from these prohibited sources. In a practical sense, this is unlikely to happen in a fundraising event such as the MDA Boot Drive where donations are generally anonymous, spontaneous and given in small amounts, however, participants need to be aware of the requirements. If a fundraising participant is offered a donation in excess of \$100 from a donor who they recognize as a lobbyist or vendor of their county or municipal public employer, that particular gift would need to be logged (submitted within 30 days) and could not be accepted while on duty.⁷


While the risk assessment associated with a broad based public fundraiser such as the Boot Drive may be low, and a gift in excess of \$100 by a motorist on a street corner may be exceedingly rare, nevertheless, if such a large donation were to be made by an unknown donor, it is the opinion of the COE that the firefighter ask and record the donor's name. After the event a determination can be made regarding whether or not disclosure is necessary.

IN SUM, firefighters and paramedics are not prohibited from participating in the annual MDA Boot Drive provided that any solicitation or donation in excess of \$100 from a person or entity that the employee or official knows, or should know, is a vendor, lobbyist, or principal of a lobbyist who lobbies, sells or leases to their county or municipal public employer, complies with the regulations contained in §2-444(h) of the Code of Ethics.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,


Alan S. Johnson
Executive Director

ASJ/gal

⁶ RQO 11-059 (participation in American Cancer Society Breast Cancer Fundraiser by on duty municipal personnel not prohibited so long as the requirements of §2-444(h) are followed)

⁷ In the event that a vendor or lobbyist donates anonymously and subsequently identifies the donation, that individual would be in violation of the code or ethics under §2-444(a)(2) which prohibits a vendor, lobbyist or principal from giving a prohibited gift to an individual they know is an official or employee of the government in which they transact business.



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
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Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

August 25, 2011

Mark Swanson, Chief Security Supervisor
215 North Olive Avenue
West Palm Beach, FL 33401

RE: RQO 11-070
Gift Law/ vendor gifts

Dear Mr. Swanson,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics has been received and reviewed. The opinion rendered is as follows.

YOU ASKED in your email dated August 18, 2011 whether you may attend a vendor-sponsored event at an upcoming ASIS security conference in Orlando, Florida.

IN SUM, you may not accept a gift of any value, including meals, from any person or entity in exchange for the past, present or future performance of "a legal duty" or an "official action." However, you are not prohibited from attending the Allied Barton VIP reception so long as the value of that event does not exceed \$100 and you do not accept more than \$100 annually, in the aggregate, from Allied Barton.

THE FACTS as we understand them are as follows:

You are the Chief Security Supervisor for Palm Beach County and have been approved to attend the upcoming ASIS International Security Conference in Orlando, Florida. Palm Beach County is paying your travel expenses and registration fee. ASIS is an international organization of security professionals dedicated to increasing effectiveness and productivity through educational programs that address broad security interests. ASIS administers three internationally accredited security certification programs and promulgates standards and guidelines to advance security practice worldwide. ASIS has more than 200 chapters worldwide and you are currently a member of local chapter 215.

As a previous officer and current member of the ASIS local chapter you have been invited to attend a VIP reception hosted by Allied Barton Security Services (Allied Barton), a county vendor. Allied Barton has invited select conference attendees to attend this event at Mythos Restaurant at Universal Orlando Islands of Adventure.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics:

Section 2-444(e) prohibits the offer or acceptance of any gift *because of*:

- (1) An official public action taken or to be taken, or which could be taken;
- (2) A legal duty performed or to be performed or which could be performed; or
- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

Section 2-444(g) defines a gift as the transfer of anything of economic value, including hospitality, food and drink.

Section 2-244(a) prohibits a public employee from soliciting or accepting, directly or indirectly, "a gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that ...is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the ... county."

Although Allied Barton is a county vendor, you are not prohibited from attending the event as its guest, so long as the value of the event does not exceed \$100 and over the course of the calendar year, you do not accept additional gifts from Allied Barton totaling, *in the aggregate*, more than \$100. In addressing valuation, Commission on Ethics adheres to the state standards outlined in §112.3148. While admission to the hospitality event is without cost to you, there is a value associated with the event.

Section 112.3148(c), Florida Statutes, provides that where there is no ticket cost to value an event, the value is determined by dividing the total cost for hosting the event by the number of persons attending the event. Section 112.3148(b) provides that any compensation provided to Allied Barton, shall be deducted from the overall value of the gift. Accordingly, you may still attend the event even if the per person cost exceeds \$100, so long as you reimburse Allied Barton the amount in excess of \$100. Please keep in mind, you may never accept or solicit anything of value from a vendor, lobbyist, principal or employer of a lobbyist in exchange for the past, present or future performance of your job.


While you are not prohibited from accepting a gift from a vendor that does not exceed \$100, the COE has some concern about the appearance of impropriety in accepting gifts from vendors who you may potentially recommend to the county, regardless of the fact that you may not be the ultimate decision-maker.¹ While the Code of Ethics does not prohibit such a gift, the county may have procedures that are more restrictive. The Commission on Ethics will enforce violations of the County Code of Ethics, however, responsibility for interpretation and enforcement of county or department policy remains with the county.

IN SUMMARY, based on the information you provided, you are not prohibited from accepting and attending the Allied Barton VIP event, so long as you do not do so because of "a legal duty performed" or "an official public action taken" in exchange for the value received. Given that Allied Barton is a vendor of Palm Beach County, you may not accept more than \$100, in the aggregate, over the course of the calendar year from Allied Barton. Should the value of the VIP event exceed \$100 dollars, while you are not prohibited from attending the event, you will need to reimburse Allied Barton the value in excess of \$100 in order to comply with the code of ethics.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson
Executive Director

ASJ/mr/gal

¹ See, RQO 11-040



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*

Manuel Farach, *Vice Chair*

Robin N. Fiore

Ronald E. Harbison

Bruce E. Reinhart

Executive Director

Alan S. Johnson

August 23, 2011

Dot Bast, Training and Development Mgr.
City of Delray Beach
100 NW First Avenue
Delray Beach, FL 33444

Re: RQO 11-071
Accepting Travel and Related Expenses

Dear Ms. Bast,

Your request for advisory opinion to the Palm Beach County Commission on Ethics has been received and reviewed. The opinion rendered is as follows:

YOU ASKED in your email of August 19, 2011, whether you are permitted to attend an educational seminar and receive travel and related expense reimbursement from a vendor of your municipality. Your attendance is for educational purposes and will be in your official capacity.

IN SUM, you are not prohibited from attending an educational seminar in your official capacity. In order to be reimbursed for travel expenses by a vendor of your municipality, you will need to obtain a waiver from the Delray City Council. Other than travel expenses, you may not accept a gift of in excess of \$100 from a vendor, lobbyist, principal or employer of a lobbyist who sells, leases to, or lobbies your municipality.

THE FACTS as we understand them are as follows:

You are the Training and Development Manager for the City of Delray Beach (the City). For the past two years, the City has hosted a simulcast to provide leadership training entitled *Chick-fil-A Leadership*. Chick-fil-A is not a vendor of the City; however, the company providing the seminar, Giant Impact (GI) is a vendor. GI contracts with host sites and provides the all-day simulcast to these sites via satellite or internet. Host sites include private companies, churches, non-profit organizations and other municipalities. Host sites purchase tickets from GI and then give them to their members or sell them to the public to cover costs and in some instances, for profit. The City has purchased Leadership tickets to re-sell to the public in order to offset the cost of providing this training seminar to top managers of the City. The City entered into a host agreement with GI for the 2012 Chick-fil-A Leadercast.

GI and Chick-fil-A are sponsoring a seminar in Atlanta, Georgia to educate one representative from each host site on how to be more successful in hosting the event. They are providing transportation, one night's lodging and meals during the one and one half day seminar.

THE LEGAL BASIS for this opinion may be found in the travel reimbursement section of the Code of Ethics:

Section 2-443(f) Accepting travel expenses.

No official or employee shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees and incidentals from any county or municipal contractor, vendor, service provider, bidder or proposer as applicable. The...local municipal governing body...may waive the requirements of this subsection by a majority vote of the board or local municipal governing body.

In order to be reimbursed by GI, a vendor of the City, you will need to obtain a waiver from a majority of the City Commission. The waiver process will serve to make the transaction transparent. In addition, if your attendance is in your official capacity and for educational or governmental purposes, reimbursement in excess of \$100 is not considered a gift as defined by §2-444(g) of the gift law and therefore does not need to be reported.

However, if you receive anything of value in excess of \$100 from Chick-fil-A, a non-vendor of the City, the gift must be reported on an annual gift report as required by §2-444(f)(2)b. In addition, while attending the seminar, you may not accept a gift in excess of \$100, other than waived travel reimbursement as described above, from a vendor, lobbyist, principal or employer of a lobbyist who lobbies, sells or leases to the City.¹

Lastly, you may not accept anything of value in exchange for "an official action taken" or "legal duty performed."²

IN SUMMARY, you are not prohibited from attending the GI seminar, and receiving reimbursement from a City vendor for travel expenses, provided you obtain a waiver from the City Commission. You are prohibited from accepting anything of a value in excess of \$100, other than travel related expenses, from a vendor, lobbyist, principal or employer of a lobbyist of the City. If you receive something valued in excess of \$100 from a non-vendor/lobbyist of the City, such a gift is not prohibited; however, it is reportable.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/gal

¹ See proposed, RQO 11-047

² §2-444(e)



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
Manuel Farach, *Vice Chair*
Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

August 26, 2011

Mr. Gerry Franciosa
939 Eve Street
Delray Beach, FL 33483

RE: RQO 11-073
Gift Law

Dear Mr. Franciosa,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics has been received and reviewed. The opinion rendered is as follows.

YOU ASKED in your email of August 24, 2011 whether, as a City of Delray Beach Planning and Zoning Board member, you may accept two tickets valued at \$150 each to attend a Delray Beach Chamber of Commerce event from a local attorney who lobbies your board.

IN SUM, you may not accept more than \$100 from a lobbyist who lobbies your advisory board or the municipal department over which your board has authority. Should you chose to accept the tickets, you must reimburse the value of the tickets in excess of \$100 to the donor within 90 days.

THE FACTS as we understand them are as follows:

You were recently appointed to the Delray Beach Planning and Zoning Advisory Board, and your wife is a member of the City's Public Art Advisory Board. You have been invited to attend a Delray Beach Chamber of Commerce fundraising event for local charities as a guest of local attorney, Michael Weiner. Tickets are valued at \$150 per person. Mr. Weiner's firm specializes in real estate law matters and represents clients before the Planning and Zoning Board (P&Z). Mr. Weiner meets with P&Z board members apart from publically noticed quasi-judicial or comprehensive plan hearings. He does not appear before the Public Art board.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics (revised effective June 1, 2011):

Under the gift law provisions, §2-444(b) prohibits advisory board members from accepting more than \$100, in the aggregate over the course of the calendar year, from a lobbyist who lobbies your advisory board or the municipal department that is in any way subject to your board's authority.

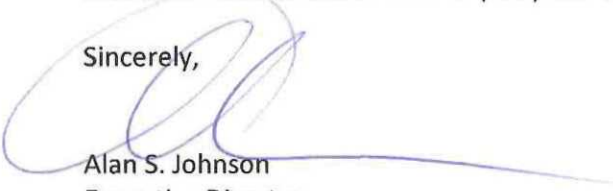
Section 2-442 defines a lobbyist as a person who is employed and receives payment for seeking to influence the decision of any employee, official or advisory board member. While Mr. Weiner is an attorney who represents clients before your board, because he meets with department staff and board members outside of publically noticed quasi-judicial or comprehensive plan hearings, he is a lobbyist for the purpose of the code of ethics. Although Mr. Weiner does not appear before your wife's board, you have been invited to attend this event as a couple and as such, under §112.3148, Florida Statutes, and the Florida Administrative Code¹, the value of her ticket is attributable to you. Should you chose to attend the event, you must reimburse Mr. Weiner the value of the gift in excess of \$100, in this case \$200, and may not accept any additional gift from him over the course of the calendar year without further reimbursment. There is no reporting requirement since a gift in excess of \$100 would be prohibited.

IN SUMMARY, you are prohibited from accepting a gift of a value in excess of \$100, annually, in the aggregate from a lobbyist who lobbies your municipal board or related department, without reimbursing any amount in excess of \$100 within 90 days of the gift. Therefore, while you are not prohibited from accepting the two tickets to the gala event, you will need to reimburse the donor as required.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson
Executive Director

ASJ/mr/gal

¹ Florida Administrative Code §34-13.310(6) Indirect Gifts. See also RQO 11-022, RQO 11-024, RQO 11-046

XI – STAFF SYNOPSIS OF PROPOSED ADVISORY OPINION: CHILDREN’S SERVICES COUNCIL

The General Counsel for the Children’s Services Council (CSC), an independent taxing authority established under §125.901, Florida Statutes, requested an opinion as to the duties and responsibilities of a CSC Council Member (designated by state statute as a Palm Beach County Commissioner – Steven Abrams) under the code of ethics. In addition, the GC asked how voluntarily coming within the jurisdiction of the COE would affect the duties and responsibilities of other CSC Council Members and staff.

The CSC enabling statute contemplates the role of the CSC to *allocate and provide funds for other agencies in the county which are operated for the benefit of children*. Grants and other donations are solicited through the CSC by CSC staff for this purpose. In addition, CSC has established a fundraising arm, Resource Development Initiative (RDI), a collaborative effort between CSC and the United Way or Palm Beach County, and a CSC created 501c3 non-profit charitable corporation, the Prevention Partnership for Children, Inc. (PPC). According to CSC counsel, the PPC organization is created to accept funds from donors who do not generally fund or donate to government entities.

First, as the only CSC Council Member who is currently otherwise subject to the jurisdiction of the COE, the County Commissioner does not participate in fundraising activities, either directly, or indirectly by name or title. CSC, RDI and PPC fundraising is done entirely by CSC staff. CSC Council Members are only made aware of solicitations and grant activity by way or annual reports or occasional updates on grant proposals or funding collaborations. When funds are solicited directly by RDI, foundations or other donors usually request a list of Council Members, however, when RDI staff solicits a contribution for other non-profit organizations, neither the Council Members names nor titles are provided. In addition, solicitations made by RDI on behalf of itself or other non-profit organizations do not involve vendors or lobbyists who lobby, sell or lease to CSC.

Staff submits the following for COE approval:

With regard to Palm Beach County Commissioner Abrams, he is not directly or indirectly (through name or title) involved in CSC solicitations. In addition, CSC does not solicit from vendors or lobbyists of CSC. CSC is another governmental entity and is mandated to allocate and provide funds to other agencies for the benefit of children. In that regard, CSC is in a unique position as funds solicited are, by definition, *solicited by public employees on behalf of the public entity in performance of their official duties for use solely by the public entity for a public purpose*. The fact that CSC may ultimately be a pass-through for other non-profit entities for the benefit of children is a fact that is contemplated in the state enabling statute as a core governmental function of the CSC. Therefore, grants and donations in this context are not considered gifts per §2-444(g)(1)e. of the Code of Ethics.

This interpretation would apply to other Council Members and staff should the CSC voluntarily come under the jurisdiction of the COE. Other than application of gift law prohibitions and regulations regarding CSC grants and donations, all other provisions dealing with financial and corrupt misuse of office, voting conflicts, contractual relationships, travel expenses, honesty in applications, disclosure of confidential information, anti-nepotism, and non-interference with investigations of the COE would be applicable.

August 22, 2011

Thomas Sheehan, General Counsel
Children's Services Council
2300 High Ridge Road
Boynton Beach, FL 33426

Re: RQO 11-068
Fundraising/ FS 125.901 Independent Special District

The Commission on Ethics considered your request for an advisory opinion and rendered its opinion at a public meeting held on September 1, 2011.

YOU ASKED three questions in your letter dated August 10, 2011. Two questions were submitted on behalf of County Commissioner Steven Abrams, a Council Member of the Children's Services Council (CSC) and one on behalf of CSC, in reference to potentially contracting for the services of the Commission on Ethics (COE) and voluntarily coming within its jurisdiction. You previously had met with COE staff regarding jurisdiction and have responded to additional follow-up questions.

First, you asked whether Commissioner Abrams would be considered as "soliciting" any entities that CSC, through its fundraising arm, Resource Development Initiative (RDI), solicits as part of its statutory mandate to raise funds for agencies operated for the benefit of children. Second, if considered as soliciting for these purposes, what steps must Commissioner Abrams take to be in compliance with the Code of Ethics? Lastly, if the CSC were to voluntarily submit to the jurisdiction of the COE by contract, would this affect the duties and requirements of Commissioner Abrams, other CSC Council members or staff?

IN SUM, based on the facts you have submitted, when RDI is soliciting a contribution for a non-profit organization, neither the Council Member's names nor titles are used or provided to prospective donors. Commissioner Abrams is not involved, directly or indirectly, with solicitations made by CSC or RDI staff as permitted under state law. Therefore, donations would not be considered gifts solicited or accepted by the official "or any other person or business entity on his or her behalf", directly or indirectly.

So long as the manner of solicitation and acceptance of donations remains as you have described, the CSC coming within the jurisdiction of the COE would not change this relationship. Additionally, since solicitation by RDI on behalf of non-profit organizations does not involve vendors or lobbyists of CSC, the prohibitions and regulations involving soliciting or accepting prohibited gifts from these entities would not be an issue. Lastly, because the CSC enabling statute mandates *CSC allocate and provide funds for other agencies in the county which are operated for the benefit of children*, grants and other donations solicited through the CSC by CSC staff for a public purpose would not constitute gifts as defined by the Code of Ethics.

THE FACTS as we understand them are as follows;

You are the general counsel for Children's Services Council (CSC), a local government entity established under §125.901, Florida Statutes, as an independent special district. Approved by a referendum of the voters of Palm Beach County, CSC has a ten-person council, five of whom are gubernatorial appointees, and five of whom sit based upon positions held in other entities. Of the five positions held by other entities, one position contains an appointee who is otherwise under the jurisdiction of the Palm Beach County Code of Ethics, County Commissioner Steven Abrams.

The powers and duties of each council on children's services within the State of Florida is delineated in §125.901(2). These statutorily mandated core functions include the following:

*To allocate and provide funds for other agencies in the county which are operated for the benefit of children, provided they are not under the exclusive jurisdiction of the public school system.*¹

CSC has interpreted agencies as including 501(c)3 non-profit organizations. In order to achieve its program funding goals, CSC created the Resource Development Initiative (RDI), a collaborative effort between CSC and the United Way of Palm Beach County. RDI participates in solicitation of contributions on behalf of or in collaboration with other non-profit charitable organizations. These solicitations are accomplished in several ways. In some instances RDI will assist a non-profit organization in filing a grant application with a foundation. This is done because foundations will more readily contribute to a 501(c)3 non-profit than to a governmental entity. Money from these grants would go directly to the non-profit entity. In other cases, CSC funds are used to "leverage" additional contributions to non-profit organizations and in those instances, the funds from CSC as well as the grantor entity would go directly to the non-profit organization.

In addition, CSC created its own 501(c)3 non-profit corporation, the Prevention Partnership for Children, Inc. (PPC). Both PPC and United Way are recipients of contributions solicited by RDI. United Way is a partner in this effort because of its connection with the grant funders of the RDI mission. CSC provides funding to United Way that is then distributed to other non-profit organizations, (e.g., special needs agencies). Lastly, RDI handles the creation of "support letters" endorsing non-profit attempts to directly solicit grants or other donations, typically from foundations or government entities. RDI will review the proposed request, determine if the CSC mission warrants support, and if so, prepares a letter which is signed by the CEO of the CSC. As in many of the RDI efforts, funding goes directly to the non-profit organization. Solicitations made by RDI on behalf of itself or other non-profit organizations do not involve vendors or lobbyists who sell, lease to, or lobby CSC.

The fundraising activities of the RDI do not involve CSC Council Members, other than to the extent that foundations or other donors usually request a list of Council Members when funds are being solicited directly by RDI. However, when RDI solicits a contribution for a non-profit organization, neither the Council Members names nor titles are provided. Council Members are not involved in soliciting, either directly or indirectly for RDI. With the exception of the annual RDI report and occasional updates regarding specific grant applications or funding collaborations, the Council Members are not made aware of RDI activities, including specific solicitations. Lastly, solicitations by RDI employees on behalf of non-profit organizations are done solely in their official capacity as CSC employees.

¹ §125.901(2)(a)3.

THE LEGAL BASIS for allowing direct and partnered solicitation of grants and other funding by CSC, RDI and PPC is based upon the gift law and its exceptions. The prohibition against soliciting or accepting more than \$100 annually in the aggregate states that *“no county commissioner...or any other person or business entity on his or her behalf, shall knowingly accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from...a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county...”* Commissioner Abrams would be accountable under this subsection, however, under the facts and circumstances submitted, neither his name nor his title are used by CSC, RDI or PPC for any solicitation or grant application other than solicitations directly by, and for the CSC, a government entity.

Notwithstanding, the status of the CSC, its subdivisions and partner non-profit organizations, are specifically addressed within the state statute with regard to the CSC public function and mission. Section 2-444(g) defines a gift as *“the transfer of anything of value.”* The following code provision would seem, therefore, to apply:

§2-444(g)(1) *Exceptions. The provisions of subsection (g) shall not apply to:*

- e. Gifts solicited or accepted by county or municipal officials or employees as applicable on behalf of the county or municipality in performance of their official duties for use solely by the county or municipality for a public purpose;*

Section 2-258 of the countywide Commission on Ethics ordinance contemplates taxing districts, and other public officials and entities voluntarily coming within the jurisdiction of the Code of Ethics. Therefore, for purposes of the Code of Ethics, sections applicable to county or municipal officials likewise apply to their counterparts within special taxing districts.

First, CSC fundraising is done through RDI, a part of CSC and is performed by RDI staff. The enabling state statute specifically mandates fundraising activities on behalf of other agencies for the benefit of children. There is no meaningful difference, therefore, in a solicitation undertaken by municipal government employees in the performance of their official duties for use solely by the municipality for a public purpose and the CSC grant and funding scenario undertaken by RDI and PPC.² CSC and its subdivisions essentially act as a pass through to fund other non-profit partners in accord with its statutory mandate.

While the gift law prohibitions may not apply to fundraising by and through the CSC, any Council Member otherwise within the jurisdiction of the Code of Ethics must adhere to §2-443(a) of the code. Commissioner Abrams may not use his official position as a county commissioner to obtain a special financial benefit, not available to similarly situated members of the general public for himself, his relatives, business interests or non-profit organizations in which he is an officer or director. Section 2-443(b) prohibits him from corruptly using his office to obtain any benefit for those persons and entities mentioned above.

IN SUM, Commissioner Abrams is not involved in the solicitation of funding for the RDI, PPC or any other non-profit beneficiary. His name and title are not used with the exception of foundation or donor requests for a list of Council Members when funding is solicited directly for the CSC, a government entity. Therefore, under these facts

² RQO 10-040 (Staff of Drowning Prevention Coalition of Palm Beach County, a division of County Parks and Recreation, soliciting funds in their official capacity to build an awning over a Palm Beach County pool for the benefit of children involved in Special Olympics)

and circumstances, donations are not being solicited by Commissioner Abrams or any other person or business entity on his behalf and the prohibitions of §2-444(a) would not apply. In any event, gifts solicited or accepted by an employee or official of a government entity, on behalf of that entity, in performance of their official duties for use solely by the entity for a public purpose would be excluded from the definition of a gift. Notwithstanding the fact that CSC and its fundraising arms RDI and PPC have active partnerships with other non-profit corporations, given the statutory mandate and mission of the CSC, the Commission on Ethics, views these relationships to be indistinguishable from county or municipal governments soliciting funds which ultimately benefit other non-profit entities. Notwithstanding the fact that the code does not prohibit these fundraising activities, Commissioner Abrams is subject to the misuse of office sections and may not use his official position to specially financially benefit himself, a relative, business interest or a non-profit organization where he is an officer or director.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/gal

XII – STAFF SYNOPSIS OF PROPOSED ADVISORY OPINIONS: NON-PROFIT CHARITABLE FUNDRAISING

RQO 11-039 Keith Davis (resubmitted from August 4)

A village attorney asked whether a municipality may hold a charity fund raising event on behalf of a non-profit that benefits public safety officers, using off-duty firefighters and certain on-duty municipal staff to solicit and run the event. A municipal employee and a Village council member serve on the board of this non-profit and donations will be solicited from vendors of the municipality. The event will include raffles, door prizes and silent auctions. All money raised will be deposited into the non-profit's account; however, 75% of the funds raised will be redistributed to other local non-profits approved by the Village Council.

Staff submits the following for COE approval: a municipality may organize and hold charitable events to benefit non-profit organizations of their choosing, so long as there is no quid pro quo or other special consideration given by official or employees to any donor for their participation and so long as no person or entity with a pending application for approval or award currently before the municipal legislative body is solicited for a donation. Village employees or officials who serve on the board of a charity that stands to financially benefit from the village event may not use their official position or title to assist in this effort and must abstain from voting if this matter comes before their board or the municipal legislative body. The Village may assign staff members and use municipal resources provided that they are not connected with solicitation of donations for municipal vendors, lobbyists, principals and employers of lobbyists.

RQO 11-051 Bill Greene (resubmitted from August 4)

A Juno Beach Town Councilman asked whether as a director of a Florida non-profit corporation, he was permitted to solicit donations and hold fundraising events for the non-profit while serving on the Town Council. The Councilman also anticipated eventually receiving compensation from the non-profit.

Staff submits the following for COE approval: the revised code of ethics does not prohibit an employee or official, or any other person or entity on their behalf, from soliciting contributions on behalf of a non-profit charitable organization as defined under the IRS code. This includes solicitations and donations in excess of \$100 from vendors and lobbyists of the Town; however, these solicitations may only be made if a solicitation log is maintained and filed with the COE.

Notwithstanding, an elected official, advisory board member or employee may not use their official position or employment in any way to specially financially benefit a charity where they serve as an official or director, including allowing the use of their official title in soliciting donations. Officials may not vote or participate in any matter that will result in a special financial benefit to themselves or their outside business or employer. Where an official contemplates receiving a financial benefit as a director of a charity, they must take great care in using his or her official position, as this may result in a violation of the misuse and conflicts sections of the code, as well as the prohibition against soliciting for one's own personal gain.

September 2, 2011

Keith W. Davis, Esquire
1111 Hypoluxo Road, Suite 207
Lantana, FL 33462

Re: RQO 11-039
Solicitations for Non-Profit Charitable Organizations

Dear Mr. Davis,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on September 1, 2011.

YOU ASKED in your email dated June 17, 2011, whether it violates the Palm Beach County Code of Ethics for the Village of Tequesta to hold a charitable fund raising event as a community outreach program of the Village Fire Department, where such program is approved by the Village Council, organized and run by the combined efforts of a non-profit entity, off-duty employees of the Village Fire Department, and certain on-duty Village staff, and where donations to support these events are solicited from vendors of the Village of Tequesta.

IN SUM, the Village of Tequesta may organize and hold fundraising events to benefit non-profit organizations of their choosing, so long as there is no quid pro quo or other special consideration given by officials or employees to any donor for their participation, and so long as no person or entity with a pending application for approval or award currently before the Council is solicited for a donation. First, public officials or employees who are directors or officers of a non-profit organization may not use their official position, including their official title, to specially financially benefit that organization. Second, Village employees or officials who solicit donations must comply with the disclosure requirements as contained in §2-444(h)(2), including the timely transmittal of a log to the PBC Commission on Ethics listing all Village vendors, lobbyists, principals and employers of lobbyists solicited, and donations pledged in excess of \$100 for this event. Lastly, on-duty staff or other municipal resources may not be used under this exception to solicit otherwise prohibited donations.

THE FACTS as we understand them are as follows:

You are the Village Attorney for the Village of Tequesta. The Village is involved in supporting a fundraising event to benefit the "Friends of Public Safety" (FOPS), which is recognized under IRS regulation 501(c)(3) as a tax-exempt non-profit organization, established by Village firefighters to support public safety personnel in times of need. The event will also help to support other select local charities as designated by FOPS.

A municipal employee, Fire Chief James Weinand, and a Village council member, James Humpage, serve on the board of FOPS and donations will be solicited from vendors of the municipality. You have advised that there is no “quid pro quo” or special privilege or benefit given to any business or person who contributes or to any official or employee who solicits, and that no vendor with an application pending before the Village will be solicited. The event will include raffles, door prizes and silent auctions. All money raised will be deposited into the non-profit’s account; however 75 % of the funds raised will be redistributed to other local non-profits.

Once the event is planned, and the other charity recipients determined, the overall plan is presented to the Village Council to approve the event. Under similar circumstances, the Council has allowed on-duty Village staff to assist in organizing and conducting these events and may do so again.

THE LEGAL BASIS for this opinion is found in the following relevant section of the revised Palm Beach County Code of Ethics:

Sec. 2-443. Prohibited conduct.

Public officials and employees may not use their official positions to give “a special financial benefit, not shared with similarly situated members of the general public” to a non-profit organization if the employee or official serves as an officer or director of that organization. Both Fire Chief James Weinand and Councilman James Humpage are officers and directors of FOPS and are prohibited from using their official positions or title to assist in this effort, including taking part in discussions related to the Village’s sponsoring of this event. Councilman Humpage must abstain from voting and file a conflict disclosure form 8B with the Village Clerk and send a copy to the COE if this matter comes before the council.¹ Finally, no public official or employee may use his or her official position, property or resource which may be within their trust to “corruptly” benefit any person or entity. “Corruptly” means done with a wrongful intent, inconsistent with the proper performance of his or her public duties.

A potential conflict may arise regarding the donation of 75% of the fundraising proceeds to other non-profit organizations. The COE is unable to opine as to the specific ultimate distribution of funds as these facts are unknown, however, all prohibitions, requirements and limitations regarding § 2-443, prohibited conduct, also apply to these currently unknown non-profit beneficiaries. For example, any public official or employee who participates in the event and is a director or officer of an unrelated civic, religious or other non-profit organization may risk violation if they use their official position to assist FOPS in fundraising while they know, or should know, that their non-profit organization will ultimately specially financially benefit from the transaction.

Sec. 2-444. Gift law.

Section 2-444(g)(1)e. specifically exempts gifts solicited or accepted by municipal employees on behalf of the municipality “in performance of their official duties for use solely by the county or municipality for a public purpose.” In an advisory opinion dated October 26, 2010, a similar issue was encountered. The COE opined that where donated funds were given directly to the county for use in erecting a shade awning at a county pool, county employee solicitation of donations from vendors was allowable even

¹ Sec. 2-443(c) Disclosure of voting conflicts, see also, RQO 11-029

though the beneficiary of the awning was the non-profit Special Olympics.² In that case, the donation was made to the county, and it was the county, as compared to the non-profit beneficiary, who accepted and applied the funds. Here, it is FOPS who accepts and distributes the money raised. Therefore, Village resources, including on-duty staff, *cannot be used in solicitation of funds*, and all solicitations of donations from municipal vendors in excess of \$100 must comply with the non-profit solicitation reporting provisions within §2-444(h)(2).

IN SUMMARY, the Village may hold a fundraising event for the purpose of assisting local non-profit organizations, including organizations set up to assist Village employees. The Village may also assign staff members and allow the use of resources provided they are not connected with solicitation of donations from Village vendors, lobbyists, principals and employers of lobbyists.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/meb/gal

² RQO 10-027, also, see RQO 10-040(solicitation of vendor donations permitted for Fire-Rescue Department program)

September 2, 2011

Mr. Bill Green, Councilman/Vice Mayor
Town of Juno Beach
410 Apollo Drive
Juno Beach, FL 33408

Re: RQO 11-051
Misuse of Office/Gift Law

Dear Councilman/Vice Mayor Greene,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on September 1, 2011.

YOU ASKED in your letter dated July 13, 2011, whether as a “principal” of a Florida non-profit corporation, Juno Beach Sports, Inc., you are permitted to solicit donations and hold fundraising events for the non-profit while serving as Vice Mayor of the Town Council of the Town of Juno Beach. Additional information was provided by you orally and by e-mail on July 20, 2011.

IN SUM, as a public official, you may not use your official title as Vice Mayor to specially financially benefit a non-profit organization if you are an officer or director of the non-profit.¹ That would constitute a misuse of your public office. In addition, you may not vote or participate in any matter that will result in a financial benefit to you, your outside business or employer, or a non-profit organization of which you (or your spouse or domestic partner) are an officer or director.

With regard to gift law requirements, while you are not prohibited from soliciting donations for a non-profit organization in your untitled capacity, any solicitation, pledge or donation in excess of \$100 involving a vendor, lobbyist, principal or employer of a lobbyist of the Town of Juno Beach must be disclosed on a form provided by the Commission on Ethics for purposes of transparency. Solicitation, direct or indirect, is not prohibited under the code so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to you or the vendor/lobbyist being solicited. Lastly, you may not use municipal staff or resources in the solicitation of charitable contributions in excess of \$100 from Town vendors or lobbyists, regardless of your status as a director or officer.

¹ RQO 11-027 (firefighter/non-profit director not permitted to use municipal resources to solicit for charitable organization), RQO 11-029 (elected official/non-profit director may not use her official title to fundraise for the non-profit)

THE FACTS as we understand them are as follows:

You are a member of the Town Council for the Town of Juno Beach (the Town) and currently serve as Vice Mayor. You recently incorporated a non-profit corporation, Juno Beach Sports, Inc. (JBS). This entity is currently listed as a Florida non-profit corporation, however, your federal §501(c)(3) status is "pending." You are currently on the Board of Directors of JBS.

JBS intends to organize and develop a recurring beach volleyball event in conjunction with Extreme Volleyball Professionals (EVP), a brand owned by Sports Endeavors, Inc. (SE), an Illinois corporation. EVP organizes volleyball events across the country. The first such event is scheduled for November 12, 2011. JBS will solicit contributions, donating a portion of the proceeds raised by the event to the Loggerhead Marinelife Center, Inc. (LMC), a 501(c)(3) non-profit education and ocean conservation facility located in the Town. After EVP is paid their fee, and LMC receives a charitable donation, any remaining funds will be applied to payment of education/travel expenses incurred by JBS and "potentially even compensation for professional work and accomplishment, to be shared among the JBS Directors."

THE LEGAL BASIS for this opinion is found in both the misuse of office and gift law sections of the code of ethics.

Sec. 2-443 Prohibited Conduct

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a *special financial benefit, not shared with similarly situated members of the general public*, for any of the following persons or entities:
- (1) Himself or herself;
 - (4) An outside employer or business of his or hers, or of his spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
 - (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

While you are in a position of authority as an officer or director of JBS, you may not use your official position to specially financially benefit that organization. Using your name and official title in fundraising would specially financially benefit JBS, to the exclusion of all other non-profit entities. Therefore, you may not solicit or otherwise act, or influence others to act in such a manner by using your official title. If you were to resign your position as director of JBS, subsection (7) would no longer apply, however, you indicated that you anticipated receiving a financial benefit from JBS from proceeds in the future. You must take great care not to use your official position as vice mayor to financially benefit yourself, or an outside business or employer in a way *not shared with similarly situated members of the general public*. Sec. 2-442 defines outside employer as "*any entity...of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation...*" An outside business is defined as "*any entity located in the county...in which the official or employee has an ownership interest.*" (Minimum 5%).

Section 2-443(c) *Disclosure of voting conflicts* similarly prohibits you from voting or participating in any matter that will result in a special financial benefit as set forth in the misuse of office section. Therefore, as a director of JBS, you are prohibited from participating or voting on any issue that benefits JBS, to the exclusion of other similarly

situated charities and non-profits. If you were not a director, subsection (7) would not apply as in the misuse of office analysis above, however, similarly to §2-443(a)(1) and (4), voting or participating in matters that will financially benefit you personally, or your outside business or employer, is prohibited.

In addition, should you be compensated by JBS in the future, it may then be considered your outside employer or business. You may not use your official position to obtain a special financial benefit for yourself or your outside business or employer.

Sec. 2-444 Gift Law

Aside from misuse of office and voting conflict issues, §2-244(c) prohibits an elected public official *“or any other person or business entity on his or her behalf”* from soliciting *“a gift of any value from any person or business entity that the recipient knows is a vendor, lobbyist or any principal or employer of a lobbyist where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee.”* If you or any relative or member of your household receives compensation from the donations to JBS that were solicited by you, or on your behalf, from vendors or lobbyists of the Town, such compensation may violate this section of the code.

Sec. 2-444(a) prohibits an elected official or employee of a municipality from soliciting or accepting *“...directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer or a lobbyist who lobbies”* the official or employee’s municipality. If you intend to solicit donations from vendors and lobbyists of the Town, or their principals or employers, there is an exception to the prohibition for a non-profit charitable organization, as defined under the Internal Revenue Code, if the solicitation is done in a manner consistent with the rules set forth in sec. 2-444(h) of the code of ethics. Keep in mind that as a director, these solicitations may not be made by you, or anyone on your behalf, in your official capacity or title as Vice Mayor of the Town.

Sec. 2-444(h) was added to the revised code of ethics to permit public officials and employees to transparently solicit contributions on behalf of non-profit charitable organizations. This section applies when the charitable organization solicits contributions in excess of \$100 from vendors or lobbyists of the official or employee’s government entity. The rules allow these solicitations, provided that a detailed log is maintained of vendors and lobbyists solicited, pledges made and donations received. The charitable solicitation form is provided on the Commission on Ethics web site at <http://www.palmbeachcountyethics.com/pdf/Forms/Solicitation%20Log.pdf>. Keep in mind that a solicitation is permissible *“so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited.”* In addition, as stated above, since you are a director of JBS, provided that it fits the definition of a non-profit charitable organization as defined under the IRS code, you may solicit, but only in your private capacity. As a director, neither you, nor anyone on your behalf, are allowed to use your official position/title in mailings, advertisements, or any other oral or written solicitation. Additionally, no person or entity that has a pending application for approval or award of any nature before the town may be solicited, and no municipal staff or resource may be used in the solicitation of these charitable contributions.

IN SUMMARY, the revised code of ethics does not prohibit an official or employee, *or any other person or business entity on his or her behalf*, from soliciting contributions, directly or indirectly, on behalf of a non-profit charitable organization as defined under the IRS code. This includes solicitation and acceptance of donations in excess of

\$100 from vendors and lobbyists of the Town, however, these solicitations may only be made if a solicitation log is maintained and filed with the COE for purposes of transparency and all other requirements of §2-444(h)(2) are followed.

Notwithstanding, as a director of JBS, you may not use your official position in any way to specially financially benefit JBS, including allowing the use of your official title in soliciting donations. You may not vote or participate in any matter that will result in a special financial benefit to you, or your outside business or employer. You must take great care in using your official position, if you contemplate receiving a financial benefit from JBS, as this may result in a violation of the misuse and conflicts sections of the code as well as the prohibition against soliciting for your own personal gain.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/gal

XIII – STAFF SYNOPSIS OF PROPOSED ADVISORY OPINIONS:

RQO 11-035 Bonnie Jensen

An attorney for the Palm Tran pension board asked whether the board was under the jurisdiction of the COE and to the extent that trustees are subject to the code, what their duties and responsibilities are regarding attendance at pension board conferences. Palm Tran is a county department and its employees are paid by the Palm Beach County Board of County Commissioners. However, the Palm Tran Pension Board (PTPB) was not created by the BCC, nor are any of its members appointed by the BCC. PTPB members regularly attend continuing education seminars and conferences where they may receive advertising materials, raffle prizes or complimentary registration from vendors of the Pension Plan who are not vendors of the County.

Staff submits the following for COE approval: The PBPT is not a county advisory board; it was not created by the BCC and its trustees were not appointed by the BCC. However, all trustees of the PBPT are employees of Palm Beach County. Effective July 1, 2011, by state statute, local government sponsors of defined benefit plans may not reduce contributions required to fund the normal cost of the plan. Accordingly, employee-trustees' decisions impact the county budget. Furthermore, employees are paid a county salary while engaged in PBPT activities. Therefore, the Commission on Ethics finds there to be sufficient nexus between a trustee's public employment and the PBPT to place them within the jurisdiction of the Code of Ethics dealing specifically with financial and corrupt misuse of office issues as they relate to their position both with the county and PTPB.

Code sections involving acceptance of travel expenses and acceptance or solicitation of prohibited gifts apply only where the travel expenses or gifts involve vendors, contractors, bidders, proposers, service providers and lobbyists, as applicable, who do business with Palm Beach County, including Palm Tran, Inc. Jurisdiction does not extend to those doing business exclusively with PBPT. However, any non-prohibited gift accepted by a Palm Tran, Inc. employee in excess of \$100 is reportable pursuant to the annual reporting requirements of the Code of Ethics.

RQO 11-037 Peter Elwell (re-submitted from July 7)

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.

Staff submits the following for COE approval: There is no prohibited conflict of interest per se under the code so long as the municipal employee does not use his official position to give his brother, his brother's company, or the landowner who employed his brother's company, a special financial benefit

not shared by similarly situated residents employing other Resident Inspectors. The COE normally would not opine as to whether to prevent the appearance of impropriety, the Town manager should have the Resident Inspector report to a different town official. However, based upon the strong appearance of impropriety in this case, we concur with the Town's proposal that in cases involving this company in the role of Resident Inspector, the Resident Inspector should report directly to the Director of Building and Zoning or another Building Official.

RQO 11-047 Mark Hall

The Chief of Police for the Village of Palm Springs asked about reporting requirements and gift law obligations for various items he received while attending a statewide police chief's conference. His registration fee for the conference was paid for by the Village; however he personally paid the attendance fee for his wife and two children. He received a discounted hotel rate as negotiated by the conference organizers. While at the conference, he won a Blu-ray disc player valued at \$120 in a raffle and visited a "hospitality suite" with his wife valued at \$8.50. Neither the raffle nor the hospitality suite was sponsored by a vendor of Palm Springs. As part of the program, the Chief and his family accepted tickets, valued at \$50 per person, to attend a "NASCAR night" presented by Motorola, a vendor of Palm Springs. Finally, at an awards banquet hosted by the statewide police chief's association, Palm Springs received an award for "Excellence in Policing", including a wall plaque and a check for \$1000 payable to the police department. The value of the banquet was estimated to be \$55.47 per guest, but the Chief paid for his children and wife to attend and the association is not a vendor, principal, or employer of lobbyists who lobby Palm Springs.

Staff submits the following for COE approval: Any gift received by an employee in association with a conference related to their public position that is valued at greater than \$100, is either a reportable or prohibited gift. Registration fees paid by a municipality for an employee to attend a conference in their official capacity are specifically excluded from the definition of a "gift" and are not reportable. Discounted hotel rates received in conjunction with conference attendance and part of a negotiated group rate are similarly not reportable gifts. The gift of the Blu-ray player and attendance at a hospitality suite, while reportable if valued at over \$100 are not prohibited because they were not provided by a vendor, lobbyist, principal or employer of a lobbyist. However, gifts valued over \$100, in the aggregate over the course of the calendar year, given by a vendor, lobbyist, principal or employer of a lobbyist are prohibited. Notwithstanding, if the employee accepts tickets or gifts in excess of \$100 from a vendor, lobbyist, principal or employer of a lobbyist, the violation can be remedied by reimbursing the vendor or lobbyist the amount in excess of \$100 within 90 days. At all times, a gift of any value may not be accepted as a quid pro quo for official action, or in exchange for the past, present, or future performance or non-performance of an employee's public or legal duties.

RQO 11-050 Valencia Y. Stubbs

A municipal city attorney asked whether a sitting council member must abstain from voting on the re-appointment of her son as a Trustee for a municipal Firefighters' Pension Trust Fund. The Trustee position is voluntary and unpaid.

Staff submits the following for COE approval: The Code of Ethics specifically allows such appointments by a council in municipalities with fewer than 35,000 residents to boards without land-planning or zoning responsibilities. Since the Trust board does not have land-planning or zoning responsibilities, and the population of the City is less than 35,000, the appointment is not prohibited.

RQO 11-052 Mark Hall

The Chief of Police for the Village of Palm Springs asked whether Palm Springs employees may accept a 15% discount from a local restaurant that is not a vendor and does not lobby Palm Springs.

Staff submits the following for COE approval: public employees and official are not prohibited from accepting a discount from a local restaurant that is not a vendor, employer or principal of a lobbyist doing business with or lobbying their municipal government so long as there is no *quid pro quo* or special privilege or treatment given to the restaurant in exchange for, or because of the discount.

RQO 11-053 Peter Elwell

A Town Manager asked whether awards given to employees for outstanding performance or employee tenure are considered gifts for the purposes of gift disclosure requirements, and if the gifts themselves may be donated by a non-profit organization that is not a vendor, lobbyist or a principal or employer of a lobbyist of the Town.

Staff submits the following for COE approval: Employee awards for “outstanding performance” or recognition for length of service to the Town, are excluded from the definition of “gifts” and are exempt from all prohibitions and reporting requirements of the Gift Law. Notwithstanding, the Code of Ethics prohibits sponsorship of these awards by a non-profit organization if such sponsorship is based on any *quid pro quo* arrangement or the receipt of any special benefit resulting from an official act.

RQO 11-055 Peter Elwell

A Town Manager asked whether town employees could accept gifts donated to the town and distributed to employees through the use of a “blind draw” raffle.

Staff submits the following for COE approval: Town of Palm Beach employees are not prohibited from accepting gifts that have been donated to the town, so long as the persons donating the items are not vendors, lobbyists, or principals or employers of lobbyists and the gift is not accepted in exchange for the performance or non-performance of a legal duty or an official public action. If the gift is valued at more than \$100, it must be reported on the employee’s annual gift reporting form.

RQO 11-060 Bob Sugarman

Counsel to a Municipal Pension Plan asked whether retirement system trustees are subject to the jurisdiction of the COE and if so what are the Trustees’ duties and responsibilities regarding retirement system related seminars and conferences. The City of Boca Raton Police and Firefighters’ Retirement

System (BRPFERS) consists of 4 trustees appointed by the City Council, and 4 City employees, elected by union employees.

Staff submits the following for COE approval: Employees and officials of the pension plan are required to comply with the Palm Beach County Code of Ethics. BRPFS is not an advisory board under the code, because it is authorized by state statute rather than local ordinance. Therefore, trustees are not advisory board members, however, because 4 trustees are appointed by the City Council, they are considered "officials." All Employee-trustees must comply with the Code of Ethics as public employees for the City and in certain circumstances, when acting in an official capacity as a trustee for the city.

Because the BRPFS itself is state created and independent of the City, it is not subject, through the City, to the jurisdiction of the COE. Any application of the code of ethics to trustees who are City employees or officials extends only to the limitations and prohibitions involving solicitation or acceptance of gifts from vendors, lobbyists, and principals and employers of lobbyists who lobby, lease or sell to the City, not BRPFS. However, no gift may be accepted in exchange for the past, present or future performance of their official duties as employees or as officials of the City. Travel reimbursement from vendors of the City may be accepted provided the trustee obtains a waiver from the City Council (no reporting requirement if properly waived). There is no prohibition or waiver requirement if the travel reimbursement is from vendors, lobbyists, etc. of BRPFS. However, any non-prohibited gift in excess of \$100 must be reported on an annual gift report.

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. The council member had alternative locations to store his racing shell without cost and he did not stand to receive a financial benefit should the ordinance be amended.

Staff submits the following for COE approval: The code of ethics does not prohibit officials from voting and participating in matters where they have an interest, so long as they do not corruptly misuse their official position or receive a special financial benefit.

RQO 11-064 Steve Bordelon

A director of a county department asked whether employees may accept discounted mobile phone packages provided by the four major carriers when the discounted rates are available to all government employees both county and state-wide. Three of the wireless carriers, AT&T, Verizon and Sprint are vendors of the County.

Staff submits the following for COE approval: Employees are not prohibited from accepting cellular phone discounts, provided that the discount is not based on preferred treatment of the vendor by the employee, the discount applies to all similarly situated government employees or officials, and it is not otherwise offered as a quid pro quo or means to convey a special financial benefit in violation of either

the financial or corrupt misuse of office sections or, for officials receiving similar discounts, the voting conflicts section of the code.

RQO 11-066 Martin DeLoach

The Fire Chief of Palm Beach Shores asked whether the uniformed extra duty detail outside employment provisions of the Code of Ethics applied equally to Law Enforcement and Fire Rescue Agencies.

Staff submits the following for COE approval: Uniformed fire rescue extra duty details that are contracted or administered by municipal public safety agencies provide the same service in the same manner as police agency extra duty details. The intent of §2-443(e)(5)g is to provide for a waiver of the outside employment provisions for uniformed extra duty or overtime details where the public agency maintains transparent records and administers or maintains the contracts. Although the code refers only to law enforcement details, to exclude fire rescue details performing the same function and operating in the same manner would result in the “manifest incongruity” discussed by the 4th District Court of Appeal in *Las Olas Tower Company v. City of Fort Lauderdale*. In its decision, the court noted that where public policy is not violated broad discretion is permitted to an administrative body interpreting the legislative intent of a provision. Therefore, for purposes of the exception and waiver provisions, both law enforcement and fire rescue uniformed details are exempted from the prohibitions enumerated in subsection (d), contractual relationships.

RQO 11-072 Amy Stepper

A municipal employee who supervises and administers a city public arts program asked whether she may receive compensation from a local chamber of commerce for selecting artists to participate in an annual arts festival in her personal, non-city time.

Staff submits the following for COE approval: The municipal employee may participate in this event. Although the chamber of commerce offer was made based upon her municipality’s membership in the North Palm Beaches Cultural Alliance, she has not been invited to judge the event because of her official position, but because of her expertise and proficiency in the field. Her participation will be on personal and not public time. Moreover, by participating in the program she will have the opportunity to be exposed to innovative local and national artists, in turn benefiting her public employer.

September 2, 2011

Bonnie Jensen, Esquire
400 Executive Center Drive, Suite 207
West Palm Beach, Florida 33401

Re: RQO 11-035
Misuse of Office/Travel Expenses/Gift Law

Dear Ms. Jensen,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on September 1, 2011.

YOU ASKED in your submission dated June 16, 2011 whether Trustees for the Palm Tran/ATU Local 1577 Pension Plan ("Pension Plan") as members of the Palm Tran Pension Board (PBPT) were subject to the jurisdiction of the Palm Beach County Commission on Ethics and Code of Ethics. To the extent that trustees are subject to the code, what are their duties and responsibilities regarding PBPT related seminars and conferences?

IN SUM, Palm Tran, Inc., is considered a Palm Beach County Department and its employees are paid by the Palm Beach County Board of County Commissioners (BCC). The Palm Tran Pension Board (PBPT) was not created by the BCC and its trustees were not appointed by the BCC. Therefore the PBPT is not an "advisory board" nor is a trustee considered an "official" within the meaning of the Code of Ethics.

However, trustees of the PBPT are employees of Palm Beach County. Their decisions impact the county budget and they are paid a county salary while engaged in PBPT activities. Therefore, the Commission on Ethics finds there to be sufficient nexus between a trustee's public employment and the PBPT to place them within the jurisdiction of the misuse of office sections of the Code of Ethics. Code sections involving acceptance of travel expenses and acceptance or solicitation of prohibited gifts apply only where the travel expenses or gifts involve vendors, contractors, bidders, proposers, service providers and lobbyists, as applicable, who do business with Palm Beach County, including Palm Tran, Inc. Jurisdiction does not extend to those doing business exclusively with PBPT. However, any non-prohibited gift accepted by a Palm Tran, Inc. employee in excess of \$100 is reportable pursuant to the annual reporting requirements of the Code of Ethics.

THE FACTS as we understand them are as follows:

You are an attorney for the Palm Tran Pension Plan. Palm Tran, Inc., (PT) formerly Florida Transit Management and Co-Tran, is responsible for providing Transit services in Palm Beach County. In 1998, the County and Palm Tran, Inc. stipulated that they were joint employers of certain PT bargaining unit

employees. This stipulation was accepted by the Florida Public Employees Relations Commission and since that time, the County has been identified as a joint employer of PT employees. Employees of PT are paid by and receive checks from the Palm Beach County Board of County Commissioners (BCC).

In February of 1996, Palm Tran, Inc. assumed the employer obligations of Florida Transit Management. The Palm Tran Pension Board (PTPB) administers the pension plan for collective bargaining unit employees and has broad trust powers. According to the Trust Agreement, Board members are responsible for the general supervision of the fund and the plan, have the power to formulate, adopt and administer the plan for employees and their beneficiaries, establish rules and regulations for the administrative operation of the fund and amend the Pension Plan from time to time as outlined by the agreement. Article V, §5.3 of the ATU 1577 Trust Agreement provides:

The Trustees shall hold, manage, and protect the Fund and collect the income therefore and contributions thereto. The Trustees shall have the power, in their sole, absolute and complete discretion, to invest or reinvest all or any part of the principal and income, in such securities, or in such property, wherever situated, as the Trustees shall deem advisable...

The Board consists of four Trustees; two trustees are appointed by the County Administrator and two trustees are representatives of the union. Union representatives are the president of the Union and a Union officer/representative designated by the Union President. Union officers are provided paid time off by the county for the purpose of participating in union activities, including serving on the PTPB. Currently, all Pension Plan Trustees are also Palm Beach County employees.

Effective July 1, 2011, local government sponsors of defined benefit pension plans, in this case Palm Beach County, may not reduce contributions required to fund the normal cost of the plan. Senate Bill 1128, which made a series of changes to Florida's local government defined benefit retirement plans, requires that the employer is responsible for funding the "normal cost" even if plan investment losses require that the employer contribute a greater percentage per employee.

PTPB Trustees are often invited to attend various conferences around the state. The PTPB is a member of the Florida Public Pension Trustees Association (FPPTA). The FPPTA sponsors one conference and two educational seminars each year and members of the Association may attend these events. FPPTA membership includes plan trustees, vendors and service providers for public pension plans. There is a registration fee for attendance at these events, however public pension plan vendors and service providers contribute money to help pay for functions. As noted on the FPPTA brochure submitted to commission staff, "Sponsorship fees help pay for functions but do not cover the total cost."

In addition to general sponsor benefits, such as a listing in the FPPTA magazine or ribbon affixed to FPPTA name tags, vendors and service providers may also pay to be an exhibitor. Often these vendors provide cookies, ice cream bars, pens, key chains and post-it pads. Among the vendors registered to sponsor the conference, there are vendors of the pension plan alone, vendors of the county and the pension plan and vendors of the county only as well as future potential service providers to either the Pension Plan or the county. Both the FPPTA and vendors hold raffles or giveaways in addition to the promotional materials distributed in the exhibition hall. The gifts associated with these raffles, such as a hammock, have historically been valued at more than \$100.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics:

Section 2-442 defines *Advisory board* to mean “any advisory or quasi-judicial board created by the board of county commissioners, by local municipal governing bodies, or by the mayors who serve as chief executive officers... of local municipal governing bodies.” The Palm Tran Pension Plan Board of Trustees was created by state statute, rather than an act of the county’s legislative body and as such is not an advisory board.

Section 2-442 defines “officials” as “... members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of (a) local municipal governing body, as applicable, to serve on any advisory quasi-judicial, or any other board of the county, state or any other regional, local, municipal, or corporate entity.”

Members of Pension Plan Boards appointed by the legislative bodies of county or municipal governments are subject to certain requirements of the code of ethics as “Officials.” Here, Pension Plan Trustees either serve because of their union membership or are selected by the County Administrator, not the BCC. The County Administrator is not considered a mayor or chief administrative officer. Accordingly, PYPB Trustees are not subject to the Code of Ethics as officials or advisory board members.

However, perhaps uniquely to this particular pension board, all members of the board are current county employees and subject to the requirements of the code of ethics as employees of the county. While the PTPB is a separate and semi-autonomous entity from the county, should the Pension Plan be underfunded the county is partially responsible for remedying the deficit under the requirements of Senate Bill 1128. In addition, time spent on PTPB matters is compensated by the county as paid administrative leave. Therefore, pension board members are receiving their regular county salary while at meetings, conferences and seminars. The fiscal responsibility incurred by the trustee’s public employer coupled with the payment of county salary for PTPB matters provides a sufficient nexus between the public employment and outside union activity to incur limited jurisdiction over the PTPB Trustees.

Therefore, as employees of Palm Beach County, PTPB Trustees are subject to the code of ethics in as much as their actions as trustees will affect the financial stability and budget of their government employer and they receive compensation from their public employer.

Sec. 2-443 Prohibited Conduct

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in *a special financial benefit, not shared with similarly situated members of the general public*, for any of the following persons or entities:
 - a. *Yourself*
 - b. A civic group, *union*, social, charitable or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

As Palm Beach County employees, PBPT trustees may not use their official position to obtain a special financial benefit not shared with similarly situated members of the general public. In this instance, PBPT Trustees are eligible to sit on the board as a result of their employee status and decisions they make as a board have a financial effect on their public employer. Should Plan Board members use their position as a trustee to give themselves a special financial benefit or, in the case of the two union representatives, give their union a special financial benefit, they could be in violation of the code of ethics.

Section 2-443(f) Accepting travel expenses.

No official or employee shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees, and incidentals from any county or municipal contractor, vendor, service provider, bidder or proposer as applicable. The board of county commissioners of local municipal governing body as applicable may waive the requirements of this subsection by a majority vote of the board or local municipal governing body. The provisions of this subsection shall not apply to travel expenses paid by other governmental entities or by organizations of which the county or municipality as applicable is a member if the travel is related to that membership.

Employees of Palm Beach County who are members of the PTPB cannot accept travel expenses from a "contractor, vendor, service provider, bidder or proposer" of Palm Beach County without obtaining a waiver from the BCC. This section applies to trustees as county employees, therefore, there is no similar prohibition involving contractors, vendors, etc. of the PTPB who are not also doing business with the county.

Section 2-444. Gift Law

Section 2-444(g) defines a gift as the transfer of anything of economic value, including hospitality, food and drink. Section 2-244(a) prohibits a public employee from soliciting or accepting, directly or indirectly, *"a gift with a value of greater than one hundred dollars \$100 in the aggregate for the calendar year from any person or business entity that ...is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the ... county."*

Section 2-442 defines a vendor as a person or entity who sells or leases goods or real or personal property to the county or a person or entity with a pending bid proposal or an offer to sell or lease goods or real or personal property to the county.

County employees are not prohibited from accepting items of value from a county vendor, so long as the amount of the gift does not exceed \$100 and over the course of the calendar year, and they do not *accept or solicit anything of value* from a vendor, lobbyist, principal or employer of a lobbyist in exchange for the past, present or future performance of their job. In this situation, there may be vendors of the Palm Tran Pension Board who are present at the conference that are not vendors of the county. Keeping in mind the requirements of the misuse of office section discussed above, county employees are not prohibited from accepting gifts from non-vendors, lobbyists, principals or employers of lobbyists who do not lobby, sell or lease to the county, but must report the gift should its value exceed \$100.

IN SUMMARY, as employees of Palm Beach County, trustees of the PBPT are required to comply with the Palm Beach County Code of Ethics. While they are not considered "officials" within the definitions of the code, and The PBPT is not considered an "advisory board", trustees must still comply with those provisions of the code applicable to them as employees. In addition, there is a sufficient nexus between

their duties as trustees and status as county employees to require adherence to the financial and corrupt misuse sections of the code in matters involving the PBPT.

Insofar as accepting travel expenses, soliciting or accepting prohibited gifts and gift reporting requirements, PBPT trustees who are county employees must adhere to the code. Specifically, trustees must comply with code provisions regarding acceptance of travel expenses from contractors and vendors of the county or soliciting or accepting prohibited gifts from lobbyists or vendors of the county. At no time may a county employee accept a gift of any value because of the "performance of a legal duty" or an "official public action" in his or her official capacity as a county employee. Lastly, any permitted gift received by a public employee in excess of \$100 must be reported as provided in the gift law section of the code.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/mr/gal

September 2, 2011

Peter B. Elwell
Town Manager, Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: RQO 11-037
Conflict of Interest/Misuse of Office

Dear Mr. Elwell,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion on July 7 and again on August 4, 2011, and rendered its opinion at a public meeting held on September 1, 2011.

YOU ASKED in your letter dated June 16, 2011, whether the sibling relationship between a Town of Palm Beach Building Official and his brother, who has an ownership interest in a private firm hired by a landowner of commercial property to act as a Resident Inspector on a construction project, creates a prohibited conflict of interest under the Code of Ethics, where the Resident Inspector is required to submit inspection and compliance reports to the Building Official, and where the Building Official is responsible for final approval of the work completed.

IN SUM, there is no per se prohibited conflict of interest created under the Code of Ethics when a Town of Palm Beach Building Official completes his inspection and compliance assessment duties, even where the "Resident Inspector" is a sibling of the Building Official, and even where that Building Official has final authority to issue the necessary compliance documents, provided that in completing his official duties, the Building Official does not act or fail to act, or influence others to act or fail to act, in any manner that will result in a special financial benefit for his brother that is not shared by similarly situated members of the general public (other landowners represented by different resident inspectors). However, the issue of an appearance of impropriety is clearly present in such an arrangement. Although matters of internal policy and procedure are not normally subject to our jurisdiction we concur with your suggestion that this issue be dealt with by requiring this particular company acting as a Resident Inspector to report directly to the Town's Director of Planning, Zoning and Building who would assume the inspection and compliance duties of the Building Official.

THE FACTS as we understand them are as follows:

You are the Town Manager for the Town of Palm Beach (the Town). Under your Town Code, when a private party is engaged in any construction project within the Town that requires a permit, they are

further tasked with filing weekly reports with the head of the Town's Building Department (Building Official), as well as documenting compliance with the Town Building Codes. The Town's Building Official completes a final inspection of the work, and if appropriate, issues a Certificate of Completion or Certificate of Occupancy as applicable for the project. On one such commercial construction project, the landowners have hired a private company to act as their Resident Inspector. One of the partners/principals of this company is the brother of the Town's Building Official.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics:

Sec. 2-443. Prohibited conduct.

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a *special financial benefit, not shared with similarly situated members of the general public*, for any of the following persons or entities: (Emphasis added)
- (3) A *sibling* or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, *or the employer or business of any of these people*; (Emphasis added)
- (b) *Corrupt misuse of official position.* An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, *to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others.* (Emphasis added)

IN SUMMARY, based on the facts you have submitted, there is no prohibited conflict of interest per se under the code based solely on a sibling relationship between a Building Official, charged with assuring compliance with building codes in the Town, when a landowner chooses to hire as their authorized Resident Inspector a private company in which the brother of the Building Official has an ownership interest, so long as the Building Official does not use his official position to give his brother, his brother's company, or the landowner who employed his brother's company, a special financial benefit not shared by similarly situated residents employing other Resident Inspectors. This would include the Resident Inspector allowing his brother to advertise and attract customers through the use of the Resident Inspectors name and position.

The Commission on Ethics normally would not opine as to whether, in order to prevent the appearance of impropriety, you as Town Manager should have the Resident Inspector report to a different Town official. While the sibling relationship, without providing a special financial benefit, does not constitute a prohibited conflict under the Code of Ethics per se, it does create a strong appearance of impropriety. This is especially true if the official acts of the Building Official are of a discretionary nature. In your advisory opinion request, you had indicated that the Town was contemplating having the Resident Inspector report to a different official of the Town when this potential conflict arises. We concur with your suggestion that in cases involving this company in the role of Resident Inspector, you have the Resident Inspector report directly to the Director of Building and Zoning, or use a different Building Official in that role.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/meb/gal

PROPOSED

September 2, 2011

Mark C. Hall, Chief of Police
Village of Palm Springs Police Department
230 Cypress Lane
Palm Springs, FL 33461

Re: RQO 11-047
Gift Law

Dear Chief Hall,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on August 4, 2011.

YOU ASKED in your email dated June 30, 2011, about the implications of the Palm Beach County Code of Ethics under the *Gift law*, as it relates to various items you received while attending the Summer Conference for the Florida Police Chiefs Association (FPCA), held in Orlando, Florida June 26 through June 28, 2011. Additional information was obtained by COE staff in a meeting with you in your office on July 6, 2011, and several email exchanges.

IN SUM, how Section 2-444, *Gift law*, affects you regarding your attendance at the FPCA conference depends on the value and source of any gifts given to you or family members at the conference. Under §2-444, a “gift” refers to the transfer of anything of economic value, without adequate and lawful consideration. A gift received from non-vendors and non-lobbyists of the Village of Palm Springs (the Village), is not prohibited, however it must be reported if its value exceeds \$100. Gifts received by any vendor or lobbyist of the Village that exceed \$100, annually in the aggregate, are prohibited, but the prohibited portion of the gift (that portion over \$100) may be returned to the giver within 90 days of receipt without violating the code. Any benefit you received that was paid for by the Village due to your sanctioned attendance in your official capacity, is not considered a gift, and is neither prohibited nor reportable. Lastly, any award for professional or civic achievement given to you or the police department in your official capacity as Police Chief is specifically exempted from the gift law under Section 2-444(g)(1)(c).

THE FACTS as we understand them are as follows:

You are the Chief of Police for the Village of Palm Springs, Florida (the Village). In your official capacity as Chief, you attended the Summer Conference for the Florida Chief of Police Association (FCPA), held in Orlando Florida from June 26 through June 28, 2011. Attending this conference with you were your wife and two children. Your conference attendance fee and hotel room for the conference were paid for by the Village, however you paid an attendance fee personally for your wife and children to FPCA. The

hotel room cost was \$120 per day, pursuant to the rate given the FPCA by the hotel. You advise that the normal rate for this hotel is \$250 per day, but the hotel often discounts rates for guests attending a conference held at this location. You and your family arrived one day early and you paid the discounted hotel fee for this additional day. According to the facts as given, the hotel rate was negotiated by FPCA, and the decision of the hotel to extend that rate to your family the day before the conference was sufficiently related to your official travel to the conference, even though you were not reimbursed by the Village for that particular day. Therefore, it is not considered a “gift” pursuant to §2-443(g)(1)(h), and is neither reportable nor prohibited.

While at the Conference, you won a Blue Ray DVD Disk Player valued at \$120 as a raffle door prize. This item was donated to FPCA for this raffle by a car dealership in Brennan, Georgia. This dealership is not a vendor for the Village, although they are listed on the Florida State bid contract from which you purchase vehicles as one of the available vendors. This is a reportable gift under the Code, but is not prohibited, because the sponsor is not a vendor of Palm Springs, nor a lobbyist or principal or employer of a lobbyist that lobbies the Village.

As part of the FPCA conference program, you and your family attended a “NASCAR Night” at a local restaurant. The sponsor of this event was Motorola. Motorola is a vendor of Palm Beach County, from whom you purchase your police radio equipment, and thus is an indirect vendor of the Village. The cost to the sponsor for this event is estimated to be \$15,000. There were approximately 300 attendees, meaning that the individual cost for yourself, your wife and children is estimated to be \$200 (\$50 per person - four people attending). Section 2-444 prohibits the acceptance of a gift by you from a vendor of the Village if the value exceeds \$100. Here, the value is estimated to be \$200 for your family’s attendance. You may reimburse Motorola for the amount in excess of \$100 to avoid a violation of the code of ethics.¹

You and your wife attended a sponsored “hospitality suite” during the conference. FPCA estimated that the sponsor’s cost was \$1,270 and the attendance was 300 people. The individual benefit to you and your wife based on 300 people in attendance is approximately \$8.50 (\$4.25 per person).² This gift is neither prohibited nor reportable based on its value, regardless of who sponsored this event.

Finally, at the awards banquet hosted by the FPCA, you were allowed to invite three (3) guests because your organization was scheduled to receive an award from FPCA for “Excellence in Policing.” The award included a wall plaque and a check for \$1,000 payable to the police department. The food and drink for the three (3) guests was paid for as part of this award through the FPCA, who are not vendors, lobbyists, principals or employers of lobbyists for the Village. Your food and drink was paid for by the Village through the attendance fee, and you paid for your wife and children through the additional fee for the conference. The value of the banquet was estimated to be \$55.47 per guest by the FPCA Executive Director, Amy Mercer. Since you attended in your official capacity, the cost of your meal was not a gift. You paid for your wife and children to attend this function; therefore no gift related issues arise.

¹ § 112.3148(7)(b), Florida Statutes. Compensation provided by the donee to the donor, if provided within 90 days after receipt of the gift, shall be deducted from the value of the gift in determining the value of the gift.

² § 112.3148(7)(j), Florida Statutes. The value of a gift provided to several individuals may be attributed on a pro rata basis among all of the individuals.

The “guests” you invited were paid for by FCPA. While these were guests of yours, a part of the award given to Palm Springs P.D. included FCPA’s invitation to bring up to three (3) guests to attend the banquet, as well as a \$1,000 check to the agency for professional achievement. As such, both benefits are exempt from the gift law.

THE LEGAL BASIS for this opinion is found in the following relevant section of the revised Palm Beach County Code of Ethics:

Section 2-442 Defines lobbyist to mean “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 vendor as any person or entity who has a pending bid proposal, an offer or currently sells or leases property or goods or services to the municipality involved in the subject contract or transaction.

Sec. 2-444 (a)(1) prohibits a public official or employee from soliciting or accepting a gift of greater than \$100 in the aggregate for the calendar year from *“any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.”*

Sec. 2-444(f) requires any non-state reporting individual who receives a gift in excess of \$100 to report that gift on an annual gift reporting form. A gift is considered “the transfer of anything of economic value...without adequate and lawful consideration.” However, an exception to the gift law can be found in sec. 2-444(g)(1)c. which specifically states that the definition of gift “shall not apply to: Awards for professional or civic achievement;”

It should be noted that under sec. 2-444(e) no public official or employee may accept a gift of any value in exchange for the past, present or future performance of a legal duty or other official public action.

IN SUMMARY, any “gift” received by you or any member of your family³ while in attendance at this conference that is valued at greater than \$100, is either a reportable or prohibited gift under the PBC Code of Ethics. However, the code excludes certain gifts from the gift law requirements. A gift does not include attendance fees paid by the Village for your attendance at a conference in your official capacity, or any awards received for civic or professional achievement. Gifts valued at greater than \$100 (combined annually in the aggregate) from a vendor or a lobbyist, who lobbies, sells or leases to your municipality are prohibited, however the prohibited portion of the gift may be reimbursed within 90 days or receiving the gift.

While gifts from persons or entities who are not vendors or lobbyists within your municipality are not prohibited, a gift in excess of \$100 must be reported as required by the code. Finally, a person who accepts a gift they discover was prohibited by virtue of being from a vendor, lobbyist, principal or employer of a lobbyist of their public employer may avoid a violation of the code by returning to the donor the amount of the value that exceeds \$100. A gift of any value may not be accepted in exchange for the past, present or future performance of your official duties.

³ § 34-13.310(6)(a) Indirect gifts.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/meb/gal

PROPOSED

September 2, 2011

Valencia Y. Stubbs, Esq.
Office of the City Attorney
City of Riviera Beach
600 W. Blue Heron Blvd.
Riviera Beach, FL 33404

Re: RQO 11-050
Anti-Nepotism law

Dear Ms. Stubbs,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on August 4, 2011.

YOU ASKED in your email dated July 14, 2011, whether §2-443(c), of the Palm Beach County Code of Ethics, requires a sitting City of Riviera Beach Council Member to abstain from voting on the re-appointment of her son as a Trustee for the Firefighters' Pension Trust Fund, as established under §175.061, Florida Statutes. Additional information was obtained by staff via email on July 15, 2011.

IN SUM, under the facts you have presented, because the board position is voluntary and unpaid, it does not directly involve section 2-443(c), *Disclosure of voting conflicts*, as there is no special financial benefit gained by any of the persons or entities listed in 2-443(a)(1-7). In the case of a municipality with a population of greater than 35,000 people, the re-appointment to this position of a son by his parent who is a sitting City Council Member would violate section, §2-445, *Anti-Nepotism law*. However, §2-445 specifically allows such appointments by the council to a board that does not have land-planning or zoning responsibilities in those municipalities with less than 35,000 population. Since the Firefighters' Pension Trust Fund does not have land-planning or zoning responsibilities, and the population of Riviera Beach is less than 35,000, the appointment is not prohibited.

THE FACTS as we understand them are as follows:

You are an Assistant City Attorney for the City of Riviera Beach, Florida. In your official position, you have been asked whether a sitting Riviera Beach City Council Member may vote to re-appoint her son as a Trustee with the Firefighter's Pension Trust Fund, established in accordance with §175.061, Florida Statutes. Under this statute, a board of trustees for such a fund must have five (5) members, two (2) of whom are appointed by the governing body, which in this case is the Riviera Beach City Council. At present, one of these positions is filled by the son of a sitting City Council Member. The son will be under consideration for re-appointment as a Trustee in the future. When this occurs, the City Council will have a vote concerning the re-appointment of this position. Based on the 2010 Census data that

you provided, the City of Riviera Beach has a population of less than 35,000 people. In 2010, the population was 32,488.¹

THE LEGAL BASIS for this opinion is found in the following relevant section of the revised Palm Beach County Code of Ethics:

Sec. 2-445. Anti-nepotism law.

An official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement in or to a position in the county or municipality as applicable in which the official is serving or over which the official exercises jurisdiction or control, any individual who is a relative or domestic partner of the official. An individual may not be appointed...in or to a position in the county or a municipality if such appointment... has been advocated by an official...who is a relative or domestic partner of the individual or if such appointment...is made by a collegial body of which a relative of the individual is a member. *However, this section shall not apply to appointments to boards other than those with land-planning or zoning responsibilities in those municipalities with less than 35,000 population.* (Emphasis added)

The Palm Beach County Code of Ethics mirrors state law in allowing an elected official to participate in the appointment of a relative to a position within the agency over which they exercise jurisdiction, when the population of a municipality is less than 35,000, so long as the appointment is not to a board with land-planning or zoning responsibilities.²

IN SUMMARY, under §2-445 of the Code of Ethics, it is not prohibited for a sitting city council member of a municipality with a population less than 35,000 to advocate or vote for the re-appointment of her son as a trustee to a board in the municipality over which the city council has appointment authority, so long as the appointment is not to a board with land-planning or zoning responsibilities. Furthermore, the Council member is not required to abstain from voting for such a re-appointment under these circumstances.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/meb/gal

¹ U.S. Census Bureau website (www.census.gov)

² §112.3135, Florida Statutes (2010)

September 2, 2011

Mark C. Hall, Chief of Police
Palm Springs Police Department
230 Cypress Lane
Palm Springs, FL 33461

Re: RQO 11-052
Gift Law

Dear Chief Hall,

The Palm Beach County Commission on Ethics (COE) considered our request for an advisory opinion, and rendered its opinion at a public meeting on August 4, 2011.

YOU ASKED in your email dated July 15, 2011 whether an offer of a 15% discount for all Palm Springs Village employees by the Friendly's Restaurant located within Palm Springs violates the Palm Beach County Code of Ethics.

IN SUM, the Friendly's Ice Cream, Inc. franchise located in Palm Springs is not a vendor, lobbyist, principal or employer of a lobbyist, lobbying or transacting business with the Village of Palm Springs (the Village). A discount to all similarly situated government employees does not violate the Palm Beach County Code of Ethics, provided that no "quid pro quo" or other benefit is offered or accepted because of any official public action taken, or legal duty performed or violated, by a public official or employee.

THE FACTS as we understand them are as follows:

You are the Chief of the Palm Springs Police Department. It has come to your attention that the local Friendly's Restaurant (Friendly's) is offering a 15% discount for food and beverages to all public employees of Palm Springs. Friendly's is a franchise of Friendly's Ice Cream, Inc. and is neither a vendor nor a lobbyist of Palm Springs. The 15% discount is an advertised offer and you have indicated there is no return consideration contemplated on the part of Palm Springs employees.

THE LEGAL BASIS for this opinion may be found in the following sections of the revised Palm Beach County Code of Ethics.

Section 2-444(g) defines a gift as the transfer of anything of economic value. A discount has economic value; therefore, the total amount discounted would be considered a gift under the code. Section 2-244(a) prohibits a public employee from soliciting or accepting, directly or indirectly, "a gift with a value of greater than one hundred dollars \$100 in the aggregate for the calendar year from any person or business entity that ...is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or

leases to the...municipality.” Since Friendly’s is neither a vendor nor employer or principal of lobbyists within Palm Springs, this prohibition would not apply.¹

Section 2-444(e) prohibits the acceptance of any gift, for any amount, because of an official public action, or the performance, non-performance or violation of a legal duty. Therefore, there can be no official action or “quid pro quo” on the part of a public employee in exchange for the Friendly’s discount. Lastly, apart from the gift law prohibitions, section 2-443(a) of the code prohibits any use of official position or office that will result in a special financial benefit, not shared with similarly situated members of the general public, for the public employee, as well as relatives, outside economic interests and non-profit organizations in which the public employee is in a leadership position. Accepting a discount under the facts submitted here does not, per se, amount to a “use” of official position or office.

IN SUMMARY, based on the facts you have submitted, public employees and officials are not prohibited from accepting a discount from a local restaurant that is not a vendor, employer or principal of a lobbyist doing business with or lobbying their municipal government so long as there is no “quid pro quo” or special privilege or treatment given to the restaurant in exchange for, or because of the discount.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/gal

¹ RQO 11-007 (off-duty attendance by town public safety employees and town officials where they received lunch and complimentary use of facilities in appreciation for their service from a non-vendor/lobbyist was not prohibited provided there was no “quid pro quo” in exchange for the gift)

September 2, 2011

Peter B. Elwell, Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: RQO 11-053
Gift Law/Awards for Professional or Civic Achievement

Dear Mr. Elwell,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on September 1, 2011.

YOU ASKED two (2) separate, but related questions in your letter dated July 12, 2011.

Your first question was whether awards given to employees for outstanding performance (such as Employee of the Year, Officer of the Month, etc.) are considered "gifts" for the purposes of the gift disclosure requirements under §2-444(f) of the Palm Beach County Code of Ethics, where these awards are sponsored by either the Town, or a private entity.

Your second question was, whether a non-profit organization (the Fortin Foundation of Florida) which is neither a Town vendor, or a lobbyist, principal or employer of a lobbyist that lobbies the Town of Palm Beach, may donate funds for two (2) employee recognition programs, where awards are given to employees based on time of employment with the Town, or at retirement from employment with the Town. COE staff obtained additional information via email.

IN SUM, awards for professional or civic achievement are specifically excluded from the definition of "gift" within the Code of Ethics. As such, they are not subject to the gift law prohibitions and annual reporting requirements, regardless of whether they are sponsored by the Town or by private entities. Notwithstanding this exclusion, the donation of funds for sponsorship of these awards by any person or entity may not be based on the receipt of any *quid pro quo* or other improper special benefit from the Town, or from any employee or official of the Town of Palm Beach.

THE FACTS as we understand them are as follows:

You are the Town Manager of the Town of Palm Beach (the Town). You advised in your letter requesting an advisory opinion, that the Town offers various awards to Town employees for outstanding performance. Among these awards are, Employee or Officer of the Year, and Employee or Officer of the Month. These awards may be sponsored and presented by the Town, or by private entities within the

Town. They are awarded for professional achievement by the employees in each case, and are used to recognize "outstanding performance" by an employee.

The Town also has two (2) employee recognition programs that provide awards to employees based on specific length of service to the town, or upon retirement from employment with the Town. These recognition programs are sponsored through financial donations by the Fortin Foundation of Florida (Fortin), a non-profit entity that is not a Town vendor, lobbyist, principal or employer of a lobbyist that lobbies the Town. Through donations to the Town from Fortin, employees who reach a specified time of service (in five (5) year increments) or are retiring from employment with the Town, are able to select a gift from a catalog in recognition of this achievement.

No specific value was listed for these awards, nor was the actual amount donated by the sponsors who fund these awards. However, that information is not necessary to answer your questions.

THE LEGAL BASIS for this opinion is found in the following relevant section of the revised Palm Beach County Code of Ethics:

Section 2-443(b), *Corrupt misuse of official position*, prohibits any official or employee from using his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

This Section of the Code would specifically prohibit an employee of the Town from accepting any benefit, directly or indirectly, including awards for professional or civic achievement, if these sponsorships were corruptly linked in any way to a *quid pro quo* arrangement. *Corruptly* includes an act or omission that is done with a wrongful intent which is inconsistent the proper performance of public duties.

Section 2-444(g) defines a gift as the transfer of anything of economic value. Under the gift law, a public official may not solicit or accept, and a vendor or lobbyist of the official's public entity may not give, directly or indirectly, a gift valued at greater than \$100. Permissible gifts in excess of \$100 may be subject to a reporting requirement. The facts that you submitted indicate that the private sponsorship for the two *length of service recognition programs* comes from non vendors/lobbyists. In this instance, even if considered gifts, they would not be prohibited under the code.

However, **Section 2-444(g)(1)(c)** excludes awards for professional or civic achievement from the definition of "gift" under the Gift law portion of the Code of Ethics. Therefore, as long as the benefit is truly an award for professional or civic achievement, and not a subterfuge to otherwise obtain a benefit for a wrongful purpose, the award is not considered a gift under the code.

IN SUMMARY, based on the facts and circumstances you have submitted, Town employee awards for "outstanding performance," or recognition of their length of reputable service to the Town, are expressly excluded from the definition of "gifts" under Section 2-444(g)(1)(c) of the Gift Law portion of the Code of Ethics, and are exempt from all prohibitions and reporting requirements of the Gift Law. Nevertheless, Section 2-443(b) of the Code does prohibit the economic sponsorship of these awards by

private sponsors if such sponsorship is based on any *quid pro quo* arrangement, or the receipt of any special benefit resulting from an official act, inconsistent with the proper performance of the official's public duty.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/meb/gal

PROPOSED

September 2, 2011

Peter B. Elwell, Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: RQO 11-055
Gift Law

Dear Mr. Elwell,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on September 1, 2011.

YOU ASKED in your letter dated June 30, 2011, whether it would violate the Palm Beach County Code of Ethics to allow gifts that have been donated to the Town of Palm Beach (the Town), to be distributed to individual employees of the Town, through the use of a "blind draw" raffle. Additional information was provided to COE staff via email.

IN SUM, you are not prohibited from distributing gifts to employees, where those items have been donated to the Town from persons or organizations that are not Town vendors, lobbyists, or principals, so long as there is no *quid pro quo* or other special consideration given to the donor, and the gift is not given for the past, present or future performance or non-performance of a legal duty or official action. If any item received by an employee is valued at more than \$100, it must be reported pursuant to the reporting requirements of the code.

However, a municipal official or employee may not accept, *directly or indirectly*, any gift with a value of greater than \$100 annually in the aggregate from any vendor, lobbyist or principal that lobbies, sells or leases to the municipality. In this case, a gift flowing through the Town Administration would still constitute an indirect gift. Gifts distributed in this manner with a value greater than \$100 in value would be prohibited if they came from a Town vendor, lobbyist or principal. In addition, the revised Code of Ethics prohibits a vendor, lobbyist or principal from giving such a gift to a person they know to be a public employee or official.

THE FACTS as we understand them are as follows:

You are the Town Manager for the Town of Palm Beach. Palm Beach has a policy against employees accepting gifts. On occasion, individuals or organizations will donate items of economic value, including such items as tickets to an event, admission fees to a charity golf tournament, or an offer of a particular free service from local business, to the Town. At times, these donations may be made by Town vendors,

and it is possible that on occasion these donations may come from people or organizations that are lobbyists, principals or employers of lobbyists who lobby the Town of Palm Beach.

The past practice of the Town of Palm Beach has been to distribute such donations to individual Town employees through a "blind draw" raffle. All Town employees are advised of the item that was donated, and if interested, they enter their name into the raffle. The names are placed into a container, and one is selected by chance to receive the item. If selected, and the gift is valued at more than \$100, the Town requires the employee to submit a "Town Acceptance of Favors and Gratuities Form," which documents their receipt of the gift item. You stated in your letter that, "through this process, we have ensured that no individual or organization could curry favor with any particular employee, that all employees (not just those in visible or influential positions) have an opportunity to enjoy the items that are donated, and that the receipt of valuable items is transparently documented."

THE LEGAL BASIS for this opinion is found in the following relevant section of the revised Palm Beach County Code of Ethics:

Sec. 2-444. Gift law.

- (a)(1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept *directly or indirectly*, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity *that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist* who lobbies, sells or leases to the county or municipality as applicable. (Emphasis added)
- (a)(2) No lobbyist, vendor or principal or employer of a lobbyist that lobbies the county or a municipality shall knowingly give, directly or indirectly, any gift with a value greater than one hundred dollars (\$100) in the aggregate for the calendar year to a person who the vendor, lobbyist, or principal knows is an official or employee of that county or municipality.
- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
- (g) For the purposes of this section, "gift" shall refer to the transfer of *anything of economic value*, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, *without adequate and lawful consideration*. (Emphasis added)

IN SUMMARY, The Palm Beach County Code of Ethics does not prohibit a municipality from accepting and distributing gifts donated to the municipality by persons and entities who are not vendors or lobbyists of the municipality. Items distributed, with a value in excess of \$100 must be reported as required under the gift reporting provisions of the code.

A Town employee may not accept, directly or indirectly, a prohibited gift of a value in excess of \$100 if that gift was originally given by a vendor, lobbyist, principal or employer of a lobbyist who lobbies, sells or leases to the Town. Likewise, a vendor, lobbyist or principal may not knowingly give a gift of a value greater than \$100 if they know the gift is for the benefit of a Town employee.

No gift may be given or accepted in exchange for the past, present or future performance of a legal duty or as a result of an official action.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,
Commission on Ethics

ASJ/meb/gal

PROPOSED

September 2, 2011

Bob Sugarman, Esquire
Sugarman & Susskind
100 Miracle Mile, Suite 300
Coral Gables, Florida 33134

Re: RQO 11-060
Gift Law/Travel Expenses

Dear Mr. Sugarman,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on September 1, 2011.

YOU ASKED in your submission dated July 18, 2011 whether Trustees of the City of Boca Raton Police and Firefighters' Retirement System (BRPFRS) are subject to the jurisdiction of the Palm Beach County Commission on Ethics and Code of Ethics. To the extent that trustees are subject to the code, what are their duties and responsibilities regarding BRPFRS related seminars and conferences?

IN SUM, while the BRPFRS is not an "advisory board" as defined under the Code of Ethics, trustees appointed by the Boca Raton City Council are considered "officials." Five of the 8 BRPFRS Trustees are employees of Boca Raton. Their decisions impact the city budget and they are paid a city salary while engaged in BRPFRS activities during working hours. Therefore, the Commission on Ethics finds there to be sufficient nexus between a trustee's public employment and the BRPFRS to place them, as public employees, within the jurisdiction of the sections of the Code of Ethics dealing specifically with financial and corrupt misuse of office issues.

For trustees who are either "officials" (appointed by the Boca Raton City Council) or public employees (elected by fellow employees), code sections involving acceptance of travel expenses apply only where the travel expenses or gifts involve vendors, contractors, bidders, proposers, service providers who do business with the City of Boca Raton. Likewise, the \$100 gift limitation involving the solicitation or acceptance of gifts only applies to vendors or lobbyists who lobby, sell or lease to the City. These regulations do not extend to those doing business exclusively with the BRPFRS, which is not a board created by the City. However, any non-prohibited gift accepted by a City of Boca Raton employee or official in excess of \$100 is reportable pursuant to the annual reporting requirements of the Code of Ethics. Lastly, no gift of any value may be accepted by a trustee who is a public official or public employee in exchange for the performance or non-performance of an official act or legal duty.

THE FACTS as we understand them are as follows:

The City of Boca Raton Police and Firefighters' Retirement System (BRPFRS) was established by Chapter 12, Article IV of the Boca Raton Code and Chapters 175 and 185 of the Florida statutes, to provide retirement benefits to the police officers and firefighters employed by and retired from the City of Boca Raton (the City). Eight trustees serve the BRPFRS; four are city residents appointed by the city council and four are city employees (two police officers and two firefighters) who are elected by their co-workers. Currently, five of the trustees are city employees. Section 112.661(4), Florida Statutes, requires trustees of public pension funds to complete continuing education requirements. It is the policy of the BRPFRS to pay any registration fee and travel expenses incurred in association with these conferences. City employees are paid by the City for time spent on BRPFRS matters during regular working hours.

Opal Financial Group ("Opal") is a private business that coordinates institutional investment conferences throughout North America and Europe. These events are designed for High-Net-Worth Individuals and executives in Corporate Pension Funds, Endowments, Public Funds, Family Offices, Foundations, Taft-Hartley Funds, Financial Planning Firms, 401 (k) Plans, Investment Consultancies, Hedge Funds, Investment Banks, Brokerage Firms, Law Firms and Accounting Firms. There is no fee to attend the public fund conferences for any pension board member nationwide. An Opal representative confirmed that conference sponsors and potential service providers cover the cost of the conference so that Public Pension Board Trustees may attend free of charge. Opal itself does not have contracts with or provide goods or services to the City of Boca Raton; however, sponsors of Opal events or other similar conferences may be vendors of the city.

A city-council appointed trustee, who is not an employee, volunteers to serve as chair of several of the conferences Opal presents. As chair, he or she presides over the conference and reviews the conference program. While not directly compensated for the role as chairman, Opal reimburses or pays travel expenses to attend the conference.

Effective July 1, 2011, local government sponsors of defined benefit pension plans, in this case, the City, may not reduce contributions required to fund the normal cost of the plan. Senate Bill 1128, which made a series of changes to Florida's local government defined benefit retirement plans, requires that the employer is responsible for funding the "normal cost" even if plan investment losses require that the employer contribute a greater percentage per employee.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics:

Section 2-442 defines *Advisory board* to mean "any advisory or quasi-judicial board created by the board of county commissioners, by local municipal governing bodies, or by the mayors who serve as chief executive officers... of local municipal governing bodies." While the BRPFRS is governed by local ordinance, the board is authorized by state statute. It is not "created by" the local municipal governing body and is, therefore, not an advisory board.

Section 2-442 defines "officials" as "... members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of (a) local municipal governing body, as applicable, to serve on any advisory quasi-judicial, or any other board of the county, state or any other regional, local, municipal, or corporate entity." City appointees are therefore officials and are subject to the Code of Ethics in as much as they represent the

interests of the legislative body that appointed them, the City Council of Boca Raton. However, employee trustees, elected by employees and not appointed by the City Council, are not subject to the Code of Ethics as officials.

Employee members of the board are subject to the requirements of the code of ethics as employees of the City. While the BRPFERS is a separate and semi-autonomous entity from the city, should the plan be underfunded, the city is partially responsible for remedying the deficit under the requirements of Senate Bill 1128. In addition, time spent on BRPFERS matters during normal business hours is compensated by the City. The fiscal responsibility incurred by the trustee's public employer coupled with the payment of City salary for BRPFERS matters provides a sufficient nexus between the public employment and outside trust activity to incur limited jurisdiction over the BRPFERS Trustees who are also employees of the City.

Section 2-443 Prohibited Conduct

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in *a special financial benefit, not shared with similarly situated members of the general public*, for any of the following persons or entities:
- (1) Himself or herself;
 - (2) A member of his or her household, including a domestic partner and his or her dependents, or the employer or business of any of these people;
 - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
 - (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who works for such outside employer or business;
 - (5) A customer or client of the official or employee;
 - (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner-- "substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
 - (7) A nongovernmental civic group, union, social, charitable, or religious organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

Trustees appointed by the Boca Raton City Council are considered "officials" and may not take, fail to take or influence others to take or fail to take any action that would result in a special financial benefit to any of the above persons or entities. Likewise, under §2-443(c) these officials may not vote on any matter that would result in a special financial benefit to those same individuals and other entities.

As for those Boca Raton employees who are not "officials" as defined by the code (those trustees elected by their co-workers), they too may not use their official position to obtain a special financial benefit for those persons and entities listed above, that are not shared with similarly situated members of the general public. In this instance, employee-trustees are eligible to sit on the board as a result of their employee status and decisions they make as trustees have a financial effect on their public employer.

Section 2-443(d) prohibits officials and employees from entering into contracts with the City of Boca Raton, unless one of several exceptions applies. Trustees are not prohibited, by the Code of Ethics, from entering into contracts to provide goods or services to the BRPFRS by the code. The COE cannot opine as to any other rules, regulations or state statutes that may limit such a contract.

Section 2-443(f) Accepting travel expenses.

No official or employee shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees, and incidentals from any county or municipal contractor, vendor, service provider, bidder or proposer as applicable. The board of county commissioners of local municipal governing body as applicable may waive the requirements of this subsection by a majority vote of the board or local municipal governing body. The provisions of this subsection shall not apply to travel expenses paid by other governmental entities or by organizations of which the county or municipality as applicable is a member if the travel is related to that membership.

Trustees of the BRPFRS (officials and employees) cannot accept travel expenses from a “contractor, vendor, service provider, bidder or proposer” of the City without obtaining a waiver from the City Council. There is no similar prohibition involving contractors, vendors, etc. of the BRPFRS who are not also doing business with the City. Trustees must keep in mind that complimentary registration at educational conferences is funded by sponsorship dollars and the situation presented by the trustee who chairs the conference is no different. Should a vendor of the City also be a sponsor of one of these educational conferences, reimbursement of travel expenses would be considered an indirect payment of those expenses by the City vendor. In that case, trustees must apply for a waiver from the City Council in order to attend the conference.

Section 2-444. Gift Law

Section 2-444(g) defines a gift as the transfer of anything of economic value, including hospitality, food and drink. Section 2-444(a) prohibits a public employee from soliciting or accepting, directly or indirectly, “a gift with a value of greater than one hundred dollars \$100 in the aggregate for the calendar year from any person or business entity that ...is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the ... municipality.” Section 2-442 defines a vendor as a person or entity who sells or leases goods or real or personal property to the City or a person or entity with a pending bid proposal or an offer to sell or lease goods or real or personal property. There is no such prohibition for “officials” who are not members of an advisory board or elected members of the county or a municipal body. Since the BRPFRS is not an “advisory board” as defined under the code, this prohibition only extends to vendors or lobbyists who lobby, sell or lease to the City. Likewise, the prohibition against soliciting anything of value from a vendor or lobbyist does not apply to vendors or lobbyists of BRPFRS. Lastly, permissible gifts of a value in excess of \$100 must be reported pursuant to §2-444(f) of the code.

Notwithstanding that the prohibitions of §2-443(a) may not apply to vendors and lobbyists of BRPFRS, City employees and officials are still subject to §2-444(e) in the performance of an official act or legal duty related to their status as a City employee or official. Section 2-444(e) states as follows:

No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:

- (1) An official public action taken or to be taken, or which could be taken;
- (2) A legal duty performed or to be performed or which could be performed; or
- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

Based on the facts you have submitted, there may be vendors of the BRPFPS who are present at the conference that are not vendors of the City. Keeping in mind the misuse of office section discussed above, and the prohibition against accepting anything of value as a quid pro quo for the performance of your job, trustees are not prohibited from accepting gifts of any value from non-vendors, lobbyists, principals or employers of lobbyists who do not lobby, sell or lease to the City, but must report the gift should its value exceed \$100. Continuing education travel expenses provided by vendors of the City, properly waived under §2-443(f), or travel expenses paid by the pension plan, are exempted under §2-444(g)(1)h., from the reporting requirements of the gift law so long as attendance is related to an official or employee's duties and responsibilities as a BRPFPS Trustee.

IN SUMMARY, employees and officials of the City of Boca Raton are required to comply with the Palm Beach County Code of Ethics. Although the BRPFPS is not an *advisory board* under the code, trustees appointed by the City Council are considered *officials*. Employees/trustees who are elected by other employees still maintain their status as City employees and must comply with the Code of Ethics when acting in an official capacity for the City. Limitations and prohibitions relating to the solicitation or acceptance of gifts only apply to vendors, lobbyists, principals and employers of lobbyists who lobby, lease or sell to the City, however, no gift may be accepted in exchange for the past, present or future performance of their official duties as employees or officials of the City. Travel reimbursement from vendors of the City may be accepted provided the trustee obtains a waiver from the City Council. Any gifts, not otherwise prohibited, in excess of \$100 must be reported on an annual gift report. Travel reimbursement associated with educational or governmental conferences or seminars, properly waived if required, does not need to be reported.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/mr/gal

September 2, 2011

Mr. Thomas Hernacki
717 Buttonwood Road
North Palm Beach, FL

Re: RQO 11-062
Voting Conflicts

Dear Mr. Hernacki,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on September 1, 2011.

YOU ASKED, in your capacity as a City Councilman for the Village of North Palm Beach, whether a conflict of interest exists if you were to participate and vote to change an ordinance increasing the allowable size of a boat or RV parked on a single family residential property if you own a racing shell that may be covered under the ordinance.

IN SUM, where there is no special financial benefit or corrupt misuse of your public position, the Code of Ethics does not prohibit you from participating and voting on a proposed ordinance change.

THE FACTS as we understand them are as follows:

You are a Councilman for the Village of North Palm Beach (the Village). The Village has an ordinance restricting residents from parking boats and recreational vehicles (RVs) in excess of thirty feet long by ten feet high on single-family residential property. You own a 1983 Vespoli racing shell that is over 32' long, but is not 10' high. You contend that the racing shell is not covered by the ordinance, however, the COE cannot opine as to your responsibility under municipal law. For purposes of this opinion only, the COE will consider it as subject to the ordinance restrictions. Therefore, the code restrictions would affect your ability to store the shell on your property.

This matter was scheduled for discussion before the Village Council on July 28th. At that time you abstained from voting or participating in the matter and you filed an 8b conflict of interest form. You did not bring this matter before the council in regards to your personal property, nor have you received a notice of violation. In addition, you are aware of numerous other individuals with boats and RVs currently in violation of the Village ordinance.

You personally have various locations where you can store your racing shell without incurring additional cost, including your office, located in unincorporated Palm Beach County, as well as rack space available

to you free of charge at the Palm Beach Rowing Association's boathouse on Lake Mangonia, among others.

THE LEGAL BASIS for this opinion is found in the following relevant section of the Palm Beach County Code of Ethics:

Section 2-443(a) prohibits you from using your official position to give yourself "*a special financial benefit, not shared with similarly situated members of the general public.*" Similarly, §2-443(c) prohibits you from voting or participating on an issue that would result in a *special financial benefit* obtained by you or one of the other persons or entities outlined by the code.

First, a conflict of interest sufficient to trigger the Code of Ethics misuse of office sections (a) and (c) requires a financial benefit. Should compliance with the code require you to pay commercial storage fees, we consider that as a financial benefit/loss for purposes of determining whether your participation will result in a *special financial benefit* as prohibited under the code.

Under the facts you have submitted, you have multiple venues available to store your boat at no additional cost to you. Therefore, even if you were to vote on this ordinance, you would not receive a special financial benefit should the ordinance be amended.

While you have indicated that there may be numerous residents within the Village who are in a similar situation, you have not provided adequate facts and circumstances to allow the COE to opine as to whether or not there are a sufficient number of boat and RV owners within the Village who are similarly situated so as to affect the applicability of the *special financial benefit* prohibition.¹

IN SUMMARY, based on the facts and circumstances presented, you are not prohibited from voting or participating in the discussion surrounding a change to the current Village boat and RV storage ordinance. While you own a racing shell that may be subject to the ordinance, you do not stand to receive a financial benefit should the ordinance be amended.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/mr/gal

¹ RQO 10-013

September 2, 2011

Mr. Steve Bordelon, Director, Information Systems Services
Palm Beach County Board of County Commissioners
301 North Olive Avenue
West Palm Beach, FL 33401

Re: RQO 11-064
Gift law/ Public employee discount

Dear Mr. Bordelon,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on September 1, 2011.

YOU ASKED in your e-mail of August 9, 2011, whether Palm Beach County employees may accept discounted mobile phone packages provided by AT&T, Verizon, Sprint and T-mobile that are offered to all government employees. AT&T, Verizon and Sprint are vendors of Palm Beach County. The COE discussed the issue at a public meeting on August 4, 2011. Public comment was received, including input from a former Florida Ethics Commissioner.

IN SUM, based upon the facts you have submitted, Palm Beach County employees are not prohibited from accepting cellular phone discounts, provided that the discount is not based on preferred treatment of the vendor by the employee, the discount applies to all similarly situated government employees or officials, and it is not otherwise offered as a quid pro quo or convey a special financial benefit in violation of the misuse of office and voting conflict sections of the code.

THE FACTS as we understand them are as follows

You are the Director of the Information System Services Department for Palm Beach County and receive a personal cellular phone discount. Your discount is available to all public employees, without restriction. Three of the major wireless carriers, AT&T, Verizon and Sprint, provide general public employee discounts and are vendors of Palm Beach County.

Commission staff contacted the major wireless service providers about their government discount programs. AT&T, Verizon, Sprint and T-mobile all offer Government employee discount plans that are open to any federal, state, county or municipal employee. They require that the employee show proof of employment through a government email address, paystub or employer ID. These discount programs are available to all government employees and are not associated with the services these vendors provide to the county. Nor are they tied to the county's contract with the provider. Discounts typically range from 15-20% of the basic service amount billed and may include discounts on phone or wireless accessories such as car chargers or cell phone cases. While each wireless provider determines the percentage of the discount that they chose to offer to employees, all government employees regardless of their department, job responsibility or status as a county, municipal, state-level, or federal

employee receive the same discount. Over the course of a calendar year, standard discounts may exceed, in the aggregate, \$100 in value.

THE LEGAL BASIS for the commission's opinion is found in the following relevant sections of the Palm Beach County Code of Ethics:

Section 2-444(g) defines a gift as "*the transfer of anything of economic value.*" Discounted services are unquestionably a thing of value and §2-244(a) prohibits a public employee from soliciting or accepting, directly or indirectly, "a gift with a value of greater than one hundred dollars \$100 in the aggregate for the calendar year from any person or business entity that ...is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the ... county." AT&T, Verizon and Sprint are vendors of the county and are subject to this prohibition.¹ However, the code excludes certain transfers of economic value from the definition of a gift. Section 2-444(g)(1)f. states as follows:

Exceptions. The provisions of subsection (g) shall not apply to:

- f. Publicly advertised offers for goods or services from a vendor under the same terms and conditions as are offered or made available to the general public;

Under the facts and circumstances of these transactions, all employees, whether they work for Palm Beach County, a municipality, the State of Florida or the federal government receive the same discount regardless of whether the wireless provider supplies goods or services to their public employer. Therefore all similarly situated persons within the general public are treated alike. Previously, the COE has determined that non vendors may offer discounted rates to public employees so long as there is not a quid pro quo or an exchange for the past, present or future performance or non performance of a legal duty or official action² The question presently before the commission is whether public employees are permitted to accept such discounts from vendors of their public employer. Where there is no evidence that these are targeted discounts, the Commission on Ethics interprets the code to exempt broad based public employee discounts from the gift law prohibition applicable to vendors. The State Commission on Ethics made a similar finding in relation to otherwise prohibited lobbyist gifts/discounts as long as they were not *directed to a select group of reporting individuals* or a particular reporting individual who was *singled out to receive a special discount that was not available to anyone else.*³ For example, should a vendor of the county or a municipality choose to offer a discount targeted to the employees who award or oversee their contract, such a discount would be prohibited under the code of ethics.

In addition, public employees and officials must keep in mind that §2-443(a) of the code prohibits any use of official position or office that will result in a special financial benefit, not shared with similarly situated members of the general public, for the public employee or official, as well as relatives, outside economic interests and non-profit organizations in which the public employee is in a leadership position. While accepting a discount under the facts submitted here is not prohibited under the provisions of the gift law, any such "use" of official position or office in obtaining a *special financial benefit* as defined in subsections (a), (b) and (c), would violate the misuse and conflict sections of the Code of Ethics.

IN SUMMARY, based on the facts you have submitted, broad based public employee discounts are 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, and they are not otherwise offered as a quid pro quo, or to convey a special financial benefit in violation of the misuse of office or voting conflicts sections of the Code of Ethics.

¹ Conversely, §2-444(a)(2) prohibits a vendor from giving a prohibited gift to someone they know is a county or municipal employee.

² RQO 11-002, RQO 11-007

³ CEO 06-18 (October 25, 2006)

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/mr/gal

PROPOSED

August 22, 2011

Martin DeLoach, Fire Chief
Vice-President
Fire Chief's Association of Palm Beach County
247 Edwards Lane
Palm Beach Shores, FL 33404

Re: RQO 11-066
Extra Duty Details/ Part-Time Employment Waiver

Dear Chief DeLoach,

The Commission on Ethics considered your request for an advisory opinion and rendered its opinion at a public meeting held on September 1, 2011.

YOU ASKED in your letter of June 8, 2011 whether the uniformed extra duty detail outside employment provisions of the Code of Ethics applied equally to Law Enforcement and Fire Rescue Agencies. Additional information was obtained during a discussion of the issue at the August 4, 2011 COE meeting as well as a follow-up letter received by COE staff on August 22, 2011.

IN SUM, uniformed fire rescue extra duty details that are contracted or administered by the applicable municipal public safety agency provide the same service in the same manner as do police agency details. The intent of §2-443(e)(5)g. is to provide for a waiver of the outside employment provisions for uniformed extra duty or overtime details where the public agency maintains transparent records and administers or maintains the contracts. Although the code refers to law enforcement, to exclude fire rescue details performing the same function under these circumstances would result in a "manifest incongruity." Therefore, for purposes of the exception and waiver provisions, both law enforcement and fire rescue uniformed details are exempted from the prohibitions enumerated in subsection (d), contractual relationships.

THE FACTS as we understand them are as follows:

You are the Palm Beach Shores Fire Chief and Vice-President of the Fire Chief's Association of Palm Beach County. Both county and municipal fire rescue departments contract or administer uniformed extra duty details involving certified fire rescue personnel participating in special events in their official capacity. As with police assignments, they are regulated by union contracts that require a systematic procedure for the selection of personnel. You stated that, "on an almost daily basis, our departments provide EMS and fire rescue coverage utilizing off-duty personnel in a similar fashion, often working side-by-side with our law enforcement partners." The details involve multiple contracts for venues and

events throughout the county. In many instances, staffing for the uniformed extra duty details is determined near the time of the event. The volume is significant and the administrative difficulties of executing waivers for each and every event and individual fire rescue employee mirror the circumstances faced by law enforcement agencies. County and municipal fire departments already maintain transparent records regarding extra duty detail contracts and administration in the same manner as do police agencies. You have spoken with League of Cities and union representatives who join in the request to interpret the current extra duty detail waiver exemption to encompass all public safety personnel.

THE LEGAL BASIS for exempting all similarly situated public safety personnel from the requirements of filing individual part-time employment waivers, permitting contractual relationships otherwise prohibited by the code, may be found in §2-444(e)(5)g., it's legislative intent, and Florida Appellate Court interpretation of administrative law construction.

Section 2-444(d) prohibits an *employee from entering into any contract or other transaction for goods or services with their respective county or municipality*. This prohibition includes transactions between the employee's government employer and his or her outside employer or business. The code provides a number of exceptions to this prohibition, including a part-time employment waiver, to be executed by the employee and approved by the chief administrative officer and the employee's department head. The executed waiver is submitted to the COE and is published and maintained for transparency purposes. A Drafting Committee, established by referendum, revised the Code of Ethics in 2011. Among the revisions was an exception to the waiver requirement for uniformed law enforcement personnel, as follows;

Section 2-444(e)(5)g. Official law enforcement overtime or extra duty details. The provisions of subsection (d) shall be waived for outside employment when that employment consists of a certified police agency uniformed external security detail, contracted or administered by the police agency as applicable. For the purpose of this subsection, all records of external, extra duty or overtime security details, including supervisor approval, identity of contracting parties, and including time, date and manner of detail shall be maintained by the individual contracting police agency, records of which shall be accessible to the public subject to state public records disclosure exemptions.

On August 4, 2011, this matter was generally discussed by the Commission on Ethics at its regularly scheduled meeting. During the public comment section of the discussion, the COE heard from both municipal and county fire chiefs as well as members of the Referendum Drafting Committee and the League of Cities. The Fire Chiefs maintained that all public safety uniformed extra duty details, including fire rescue details, are similarly contracted and administered. Members of the committee who drafted the exemption agreed that the omission of fire rescue personnel was an inadvertent oversight and that had the issue been raised, the section would have included all public safety department uniformed details similarly situated and administered. Florida Supreme Court and Appellate Court decisions have addressed statutory construction and interpretation issues. Where public policy is not violated, broad discretion is permitted in an administrative body interpreting the legislative intent of a provision. "In

statutory construction a literal interpretation need not be given the language used when to do so would lead to an unreasonable conclusion or defeat legislative intent or result in a manifest incongruity.”¹

IN SUM, based on the facts you have submitted, §2-444(e)(5)g. applies to all public safety uniformed extra duty details contracted or administered by the county or municipality, as applicable, provided all code requirements for administration, record retention and maintenance are followed.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director

¹ *Las Olas Tower Company v. City of Ft. Lauderdale*, 742 So.2d 308 (4th DCA 1999)(A reviewing court will defer to an interpretation given a statute or ordinance by the agency responsible for its administration.) *Rotemi Realty, Inc. v. Act Realty Company, Inc.*, 911 So.2d 1181 (Fla. 2001)(Interpreting state statute which bars lobbyist contingency agreements to not include real estate agents)

September 2, 2011

Amy Stepper, Recreation Supervisor
4404 Burns Road
Palm Beach Gardens, Florida 33410

Re: RQO 11-072
Misuse of Office/Gift Law

Dear Ms. Stepper,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on September 1, 2011.

YOU ASKED in your email of August 22, 2011 whether as the supervisor of the GardensArt Program for the City of Palm Beach Gardens, you may receive compensation from the Northern Palm Beach County Chamber of Commerce for selecting artists to participate in its 27th annual ArtiGras Fine Arts Festival.

IN SUM, you are not prohibited from serving as a juror for annual ArtiGras Fine Arts Festival. While judging this event is related to your public position as supervisor of the GardensArt Program, you have been asked to participate because of your personal experience and proficiency in this area. Your participation will be on your personal and not public time. Moreover, by participating in this program you will have the opportunity to be exposed to innovative local artists, in turn benefiting the City's art program.

THE FACTS as we understand them are as follows:

You are the supervisor of the GardensArt Program (the GAP) for the City of Palm Beach Gardens (the City). The GAP exhibits the work of professional artists and photographers in rotating exhibits and provides residents and employees of the City with the opportunity to experience high quality artwork as part of their everyday participation in local government. The GAP has initiated several partnerships with local arts organizations and businesses including membership in the North Palm Beaches Cultural Alliance (Cultural Alliance). The Northern Palm Beach County Chamber of Commerce (the Chamber) contacted Cultural Alliance members seeking jurors to select artists for the 2012 ArtiGras Fine Arts Festival (the Festival). The City is a member of the Alliance. The jury will consist of five "experienced art professionals" and jurors will receive a \$250 stipend in exchange for approximately 10 hours of work over two days. Meals will also be provided by the Chamber. Judging this event would give you the opportunity to review multimedia and traditional artwork from local and national artists and allow you to improve your art selection skills. Should you be selected for this opportunity, you will use vacation time when necessary and at no time will you be compensated by both the Chamber and the City.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics, which took effect on June 1, 2011:

Sec. 2-443 Prohibited Conduct

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in *a special financial benefit, not shared with similarly situated members of the general public*, for any of the following persons or entities:
- a. *Yourself*

You are being invited to judge this event because of your experience as an art professional, not as a result of your government employment. You did not actively use your official position in any way to solicit this opportunity and the stipend amount of \$250 is not an apparently excessive sum for your participation as a professional. Finally, you are not using city time or resources in participating in this event and your participation will in fact benefit your public employer. As a result, you are not prohibited from judging the event and may accept the \$250 stipend and meals from the Chamber.

Section 2-444(g) provides that a "gift" is anything of value without adequate or lawful consideration. Here, the value of your time in preparation for and attendance at the events is consideration for the stipend and meals. Accordingly, they are not "gifts" within the meaning of the code of ethics and are not reportable on your yearly gift reporting form.

IN SUMMARY, based on the information you provided, you are not prohibited from serving as a juror for the ArtiGras selection committee and accepting a stipend for your time and effort.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/mr/gal