



Agenda

May 3, 2012 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Executive Session from 1:45pm to 2:00pm Regular Agenda will begin at 2:15pm

Palm Beach County

Commission on Ethics

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Commissioners

Manuel Farach, Chair

Robin N. Fiore, Vice Chair

Edward Rodgers

Ronald E. Harbison

Daniel T. Galo

Executive Director

Alan S. Johnson

Executive Assistant

Gina A. Levesque

Staff Counsel

Megan C. Rogers

Senior Investigator

Mark E. Bannon

Investigator

James A. Poag

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from April 5, 2012
- V. Executive Session
 - a. C12-002
- VI. Settlement Conference
 - a. C11-027 (Dr. Scott Swerdlin)
- VII. Advisory Board Mandatory Training
- VIII. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 12-028
 - b. RQO 12-031
- IX. Items Pulled from Consent Agenda
 - a.
- X. Proposed Advisory Opinions
 - a. RQO 12-025
 - b. RQO 12-026
 - c. RQO 12-027
 - d. RQO 12-030
 - e. RQO 12-032
- XI. Expedited Advisory Opinions
 - a. RQO 12-039
- XII. Social Media
- XIII. Executive Director Comments
- XIV. Commission Comments
- XV. Public Comments
- XVI. Adjournment

**OFFICIAL MEETING MINUTES
OF THE
PALM BEACH COUNTY COMMISSION ON ETHICS
PALM BEACH COUNTY, FLORIDA**

APRIL 5, 2012

**WEDNESDAY
1:43 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Manuel Farach, Esq., Chair
Robin N. Fiore, Ph.D., Vice Chair
Daniel T. Galo, Esq. – Absent
Ronald E. Harbison, CPA – Arrived later
Judge Edward Rodgers

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Senior Investigator
Alan S. Johnson, Esq., COE Executive Director
Gina A. Levesque, COE Executive Assistant
James A. Poag, COE Investigator – Absent
Megan C. Rogers, Esq., COE Staff Counsel

ADMINISTRATIVE STAFF:

Latoya Osborne, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Alan S. Johnson, Esq., Commission on Ethics (COE) executive director, stated that a quorum existed with three commissioners present.

Commissioner Farach, chair, stated that anyone wishing to speak should submit a public comment card and that cell phones should be turned off.

IV. APPROVAL OF MINUTES FROM MARCH 1, 2012

MOTION to approve the March 1, 2012, minutes. Motion by Judge Edward Rodgers, seconded by Robin Fiore, and carried 3-0. Daniel Galo and Ronald Harbison absent.

Mr. Johnson said that the executive session should last no more than 30 minutes. Commissioner Farach said that the meeting would reconvene at 2:15 p.m. after the executive session.

RECESS

At 1:45 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 2:16 p.m., the meeting reconvened. At the chair's request for a roll call, Manuel Farach, Robin Fiore, Ronald Harbison, and Judge Edward Rodgers were present.

Mr. Johnson stated that a quorum existed with four commissioners present.

V. EXECUTIVE SESSION

V.a. C11-026

Commissioner Robin Fiore read the public report and final order of dismissal as follows:

Complainant, Sheryl Steckler, Inspector General, filed the above-referenced complaint on December 16, 2011, alleging a possible ethics violation involving respondent, Everette Vaughan, 911 Project Manager, Palm Beach County Emergency Management Division. The complaint alleges that respondent violated Section 2-444(a) of the gift law. For the reasons set forth below, this complaint is dismissed.

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 Code of Ethics. Limitations and prohibitions regarding gifts from vendors to public employees may be found in Article XIII, Section 2-444(a) of the Palm Beach County Code.

V.a. – CONTINUED

Pursuant to Article V, Division 8, Section 2-260(b)(2), a sworn complaint filed by the Inspector General in compliance with the requirements of this subsection is legally sufficient as a matter of law. Therefore, the Commission on Ethics was obligated under Section 2-260(d) to commence a preliminary investigation. Allegations were made on the basis of whistleblower statements that were not substantiated by the preliminary investigation. Therefore, on February 13, 2012, the complaint was determined by staff to lack probable cause, and presented to the Commission on Ethics on April 5, 2012, with a recommendation of dismissal.

Thereafter, the Commission reviewed and considered the investigative report, documentary submissions and the recommendation of staff, and determined that there was no evidence to support a finding of probable cause in this matter.

Therefore, it is ordered and adjudged that no probable cause exists, and the complaint against respondent, Everett Vaughan, is hereby dismissed. Done and ordered by the Palm Beach County Commission on Ethics in public session on April 5, 2012. Signed Manuel Farach, Chair.

VI. PRESENTATION TO FORMER ETHICS COMMISSIONER BRUCE REINHART

Commissioner Farach thanked former Ethics Commissioner Bruce Reinhart for his hard work, insightful comments, and help while serving on the COE. He provided Commissioner Reinhart with a plaque on behalf of the commission.

Commissioner Reinhart thanked the COE.

VII. PRESENTATION OF 2011 ANNUAL REPORT

Mr. Johnson stated that:

- In fiscal year (FY) 2010, the COE had expended 62 percent of its budgeted expenditures.
- In FY 2011, 82 percent of the COE budgeted expenditures had been expended, saving 3 percent over projected savings.

VII. – CONTINUED

- The reserves had enabled staff to operate without increasing ad valorem expenditures.
- Since 2011, a second investigator had been hired.
- As of February 1, 2012, 16.47 percent of the budget had been expended, putting the COE on track to spend approximately 66 percent of its 2012 budget.
- The COE department had no need for further expansion. It was expected that the current COE staff would remain through the coming years.
- In 2011, staff had completed 92 in-person trainings with County and municipal employees, officials, and advisory board members; and 35 presentations to community organizations. Over 150 digital video discs were distributed to County and municipal departments on request.
- The Ethics Awareness Day on November 18, 2011, was successful, and it was expected that Ethics Awareness Day would take place again in 2012.
- Staff had utilized Palm Beach State College students as interns for graphic design assistance, and was able to develop and post an interactive ethics quiz that was currently available online.
- The COE executive director had been a member of the County Ordinances Drafting Committee and had participated in the Code of Ethics expansion that was effective on June 1, 2011.
- The League of Cities (LOC) and the County Attorney's Office had worked together to develop a countywide lobbyist registration ordinance that recently went into effect at the beginning of April 2012.
- An online process would be established for individuals to view the different municipalities' registered lobbyists.
- The COE's Web site had received over 300,000 views in 2011. After July 2010, the Web site views remained to be over 25,000 monthly, which showed a steady stream of interest.

VII. – CONTINUED

- The Web site now had a searchable database with a unique search engine that only allowed the Web site's information to be produced as search results.

Commissioner Fiore said that Miami-Dade County's Commission on Ethics and Public Trust (Miami-Dade COE) members had complimented the COE on its Web site, including its accessible training and support material.

Judge Edward Rodgers stated that he had received a card that displayed both COE and Office of Inspector General (OIG) information. He said that he wanted to be informed of the published material that related to him and his role as a commissioner.

Mr. Johnson said that:

- The information cards were created and distributed to the board in 2010 when the COE and the OIG shared the same office space.
- A unique information card for residents was being developed for the COE to better eliminate the perceived similarities between the two offices.
- The information cards and other promotional material, such as the "Got Ethics?" sign on County buses, were paid from the COE's budget.
- The COE had issued 123 advisory opinions, which were all available and searchable in PDF format on the COE Web site.
- Staff had received 27 sworn complaints, 29 anonymous complaints, and 4 self-initiated complaints in 2011.
 - Twenty of the 27 sworn complaints were dismissed due to legal insufficiency; two cases were pending, and six were found to be legally sufficient.
 - Of the six complaints found to be legally sufficient, three were dismissed at probable cause hearings; two were found to have probable cause, which later resulted in settlement agreements; and one was pending.

VII. – CONTINUED

- In 2011, misuse of office was the largest segment of the overall complaints, followed by the gift law, contractual relationships, voting conflicts, and nepotism.

Commissioner Farach thanked Mr. Johnson and his staff for helping the commission to run efficiently.

VIII. RULES AND PROCEDURE AMENDMENTS

VIII.a. Section 2

Mr. Johnson stated that:

- Staff believed that the Rules of Procedure (rules) needed to be amended to reflect accurately how the COE processed advisory opinions.
- Staff initially had created its rules with similarity to Miami-Dade's COE since it was the only system in the country comparable to the County's.
- Approximately 70 percent of Miami-Dade COE's advisory opinions were informal and did not go before the COE members, while the County's COE did not perform informal advisory opinions.
- Section 2.5 could be amended to reflect that advisory opinions were presented to the entire commission as individual agenda items, unless listed as consent agenda items, and should not be presented only to the Chair.
- Section 2.7 could be deleted since it authorized that the executive director could provide advisory opinions without COE input.

Commissioner Ronald Harbison suggested that the matter be reexamined to allow the COE executive director and staff authority to provide advisory opinions should the volume of work before the COE become too large.

Commissioner Fiore said that she believed that each commissioner's view of opinions was beneficial, as opposed to advisory opinions being determined by Mr. Johnson who was a lawyer.

VIII.a. – CONTINUED

MOTION to approve the Rules of Procedure amendments to section 2 and 4.2. Motion by Judge Edward Rodgers, seconded by Robin Fiore, and carried 4-0. Daniel Galo absent.

(CLERK'S NOTE: Section 4.2 was inadvertently included in the motion.)

MOTION to approve the Rules of Procedure amendments to section 2 only. Motion by Judge Edward Rodgers, seconded by Robin Fiore, and carried 4-0. Daniel Galo absent.

VIII.b. Section 4.2

Mr. Johnson stated that:

- Section 4.2 pertained to the types of cases that were presented in executive session.
- The preliminary and investigation section read as follows:

A preliminary investigation shall be undertaken by the Commission on Ethics of each legally-sufficient complaint over which the Commission on Ethics has jurisdiction to determine whether there is probable cause to believe that a violation has occurred. If upon completion of the preliminary investigation, the Commission on Ethics finds no probable cause to believe that a violation has been committed, the Commission on Ethics shall dismiss the complaint with the issuance of a report to the complainant and the respondent.

- Sworn complaints could be submitted with no legal sufficiency due to lack of jurisdiction, the event occurring earlier than two years prior, no personal knowledge, or a Sunshine Law violation.
- If a completed inquiry showed legal sufficiency, staff was able to do self-initiated complaints and begin an investigation; however, if an inquiry showed no legal sufficiency, it would be a waste of resources to prepare reports and enter into executive session.

VIII.b. – CONTINUED

- Section 4.2 could be amended to state that all legally-sufficient complaints should be brought before the COE for a ruling on probable cause or dismissal; complaints with no legal sufficiency did not need to be brought before the COE for dismissal.
- The COE could request that staff perform additional investigations, which would justify the continuation executive sessions as currently done.

Commissioner Harbison suggested that an activity report should be given to the COE on the complaints dismissed due to lack of legal sufficiency and not brought before the COE in executive session.

Judge Rodgers suggested that complainants be given the opportunity to resubmit their complaints for reconsideration within a certain amount of days from dismissal.

Mr. Johnson said that a dismissed complaint would be assigned a C-number and would not be present on the COE Web site if it lacked official COE dismissal. The complaint would be kept on file, and sent to the respondent and the complainant, he added.

Commissioner Fiore expressed concern that the suggested procedure would prevent public transparency if dismissed complaints were not made available on the Web site.

Mr. Johnson said that a rule could be drafted that allowed sworn complaints with no legal sufficiency to be made available on the Web site. He suggested tabling the item until the May 2012 COE meeting to be included under the more broad discussion regarding staff-generated reports.

MOTION to table the discussion on item VIII.b. until the May 2012 COE meeting. Motion by Ronald Harbison, and seconded by Judge Edward Rodgers.

Mr. Johnson stated that the criteria for legally-sufficient complaints were included in the complaint form that was available on the Web site; and Commissioner Fiore suggested that those criteria should be made clearer for better understanding by those submitting complaints.

UPON CALL FOR A VOTE, the motion carried 4-0. Daniel Galo absent.

IX. BOCA RATON VOTING CONFLICTS

IX.a. Request for Advisory Opinion (RQO) 11-116

Mr. Johnson stated that:

- The issue related to whether an official employed by an institution, such as a bank, having a great pool of customers or clients eliminated a conflict in certain circumstances with a regular customer of the bank that was not connected or was not an unusual customer.
- A decision on RQO 11-120 needed to be made before making a determination on RQO 11-116.

Assistant County Attorney Leonard Berger stated that the Code's language was meant to be broad enough for individuals to recognize potential issues before they became problems. He said that according to State law, an elected official could not vote on any matter that would inure to the special private gain or loss of oneself, or a business associate, or a wide variety of relatives. He recommended that the COE members follow the State COE's lead.

Commissioner Harbison said that he agreed with staff's recommendation on RQO 11-116. He also said that he believed that the Code's language was appropriate since it did not create a bright line, and allowed for interpretation based on each case's facts.

Judge Rodgers said that he believed that staff may have been assigning a dollar amount, \$10,000, which could mean different things to different classes of people. He suggested that staff could use a different classification method when analyzing a similar situation, rather than in terms of dollars.

Richard Radcliffe, LOC executive director, said that he appreciated the COE and staff's efforts on the issue.

MOTION to approve staff's recommendation on RQO 11-116. Motion by Judge Edward Rodgers.

MOTION DIED FOR LACK OF A SECOND.

Mr. Johnson reiterated that RQO 11-120 should be presented before a motion was made on RQO 11-116.

IX.b. RQO 11-120

Mr. Johnson stated that:

- A Boca Raton City Attorney asked whether an elected official whose outside employer was a large national bank or financial institution, Citibank, was required to abstain in every instance any client or customer of the outside employer appeared before her board.
- A related request was submitted on November 1, 2011, and an opinion was published as to the reasonable care standard regarding knowledge of a conflict.
- In RQO 11-099, it was determined that one should have actual or constructive knowledge and would be responsible for his/her actions.
- The City Attorney had submitted additional requests on November 30, 2011, and December 19, 2011, asking whether the term, similarly situated members of the general public, would eliminate the customer or client conflict under certain circumstances.
- The elected official was a business banker at a local Citibank branch, had no supervisory authority, and was responsible for opening small business customer accounts.
- Staff had submitted that:
 - An official who was employed by a large national bank as a business banker at a local branch and responsible for opening small business customer accounts, did not automatically have a conflict under Section 2-443(a)(5) of the Code when customers of the bank appeared before her, since the customer pool may be so large that a general customer, was considered a member of the general public.
 - The rule did not offer complete protection. A significant customer or client may not be similarly situated to other normal and usual bank customers because of the benefit that may flow to the banker's employer.

IX.b. – CONTINUED

- Customers or clients who directly conducted business with the employee/official or did business within the official's particular department, store or branch were not similarly situated to the large majority of nationwide customers or clients who had no such nexus to the official.

Judge Rodgers said that he believed that advisory opinions should not be too specific. He added that individuals should be advised on the law and that the COE should avoid dealing with factual specifics and anticipations.

Mr. Johnson replied that the COE and staff should not deal with hypotheticals. He said that RQO 11-120, like other advisory opinions, spoke to the specific facts that were submitted. He read the following from the Code:

These advisory opinions are for any person within the jurisdiction of the Commission on Ethics when in doubt about the applicability or interpretation of any provision within the Commission on Ethics' jurisdiction to himself or herself in a particular context may submit in writing the facts to the situation to the Commission on Ethics with a request for an advisory opinion to establish their standard of public duty.

Mr. Johnson continued by saying that the commission was somewhat bound to provide a more specific advisory letter, rather than a general letter of advice.

Commissioner Fiore stated that she supported the advisory letter's content since it advised the interested individual on things that should be seen as red flags.

Commissioner Farach said that he shared Judge Rodgers' belief that the advisory opinions were becoming too specific; however, he had spoken to other elected officials who were concerned about similar issues.

MOTION to approve staff's recommendation on RQO 11-120. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 4-0. Daniel Galo absent.

(CLERK'S NOTE: Discussion on RQO 11-116 was continued at this time.)

IX.a. – CONTINUED

Mr. Johnson stated that:

- The RQO 11-116 asked the following:
 - how the \$10,000 threshold value of goods or services provided to a customer or client of an official or employee's outside employer was calculated when the employer was a large national financial institution;
 - whether all goods or services for all departments should be included in the calculation of the threshold amount in the event that an official or employee's outside employer was divided into operational departments or divisions; and,
 - whether the Code's reference to the previous 24-month period suggested that an official should recalculate the aggregate value of goods or services provided to a customer or client of his/her outside employer to ascertain whether or not the \$10,000 threshold had been met each time a matter came before a governing body.
- The \$10,000 threshold within the previous 24-month period should be calculated at the time that the vote or decision was being made, or any time that the customer or client came before the governing body.

Commissioner Harbison said that he believed that staff's explanation was the only possible explanation related to this type of situation, unless a loophole was created.

Commissioner Fiore stated that the last sentence on page 2 that began, "Where there is," was too comforting and suggested the avoidance of knowledge. She said that she would prefer that the sentence be removed since it went beyond the COE's duties.

Mr. Johnson suggested that all language after footnote 4 on page 2 be removed to eliminate the broadness of the advisory opinion.

Commissioner Fiore asked that the first paragraph on page 3 be eliminated as well.

IX.a. – CONTINUED

Mr. Johnson said that the language after footnote 4 on page 2, and before the sentence on page 3 that read, “When in doubt,” would be removed.

MOTION to approve RQO 11-116 as amended to include the changes as discussed. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Daniel Galo absent.

RECESS

At 3:50 p.m., the chair declared the meeting recessed.

RECONVENE

At 4:04 p.m., the meeting reconvened with Manuel Farach, Robin Fiore, Ronald Harbison, and Judge Edward Rodgers present.

X. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

Mr. Johnson requested that item X.c., RQO 12-014, be pulled from the consent agenda since the Boca Raton City Attorney had questions and concerns regarding the advisory opinion.

X.a. RQO 12-012

X.b. RQO 12-013

X.c. Pages 14-15

X.d. RQO 12-015

X.e. RQO 12-019

X.f. RQO-12-020

X.g. RQO 12-021

Motion to approve the consent agenda as amended pulling item X.c. Motion by Judge Edward Rodgers, seconded by Robin Fiore, and carried 4-0. Daniel Galo absent.

XI. ITEMS PULLED FROM CONSENT AGENDA

XI.a. RQO 12-014

Mr. Johnson stated that:

- The County's Director of Electronic Services and Security asked whether planning employees were permitted to attend an educational seminar provided by a County vendor. The attendance was determined by supervisory personnel to be for educational purposes in their official capacity.
- Staff had submitted that:
 - County employees were not prohibited from attending a tuition-free educational seminar in their official capacity as County employees for a public purpose, notwithstanding the fact that the training was provided by a County vendor.
 - Registration fees associated with educational conferences where attendance was for governmental purposes and related to an employee's official duties and responsibilities were excluded from the definition of gift.
 - However, employees could not accept anything else of an aggregate value in excess of \$100 from a vendor, lobbyist, principal or employer of a lobbyist who sold, leased to, or lobbied the County.

Gina Levesque, COE executive assistant, clarified that a Royal Palm Beach City Attorney had concerns, rather than the Boca Raton City Attorney.

Mr. Johnson said that the attorney was concerned that a waiver was required to account for the travel expenses that were paid by the vendor. In RQO 12-014, the County employees drove to a seminar less than 35 miles away in a County vehicle with no overnight stay, which was not considered by COE staff to be travel expenses.

Commissioner Fiore requested that the advisory opinion language read, annual aggregate, rather than, aggregate, and that every advisory letter that discussed the aggregate of \$100 should read, annual aggregate. Mr. Johnson said that the language could be amended.

XI.a. – CONTINUED

MOTION to approve proposed advisory opinion letter RQO 12-014 as amended to include the changes as discussed. Motion by Ronald Harbison, seconded by Judge Edward Rodgers, and carried 4-0. Daniel Galo absent.

XII. PROPOSED ADVISORY OPINIONS

XII.a. RQO 12-011

Mr. Johnson stated that:

- A County employee asked whether he was permitted to attend a professional development conference and receive travel and related expense reimbursement where attendance:
 - was for educational purposes;
 - would be in his official capacity; and,
 - had been reviewed and approved by his supervisor.
- Discussion on the advisory opinion was previously tabled due to the existence of a partial vendor list that did not include the vendors that went directly to the Clerk & Comptroller's Finance Department. Also, the vendor list included organizations to which the County had made payments, but were not considered to be actual vendors.
- The association in question was listed on the vendor list but was not a County vendor. The association only accepted the registration fee paid by the County; since it was not a vendor, a travel expenses waiver was not needed.
- The vendor list had since been updated.
- The advisory opinion letter was resubmitted to state that since the conference attendance was for a public purpose, as vetted by the employee's supervisor, then it was excluded as a gift and did not have to be reported.

Commissioner Fiore said that she wanted to ensure that the advisory opinion letter did not suggest that travel expenses of an employee's family would also be covered.

XII.a. – CONTINUED

Megan Rogers, COE staff counsel, clarified that the organization's local chapter would provide the employee with a \$1,000 tuition stipend, but would not compensate his/her family since the cost of the conference was over \$2,000. A previous advisory opinion had addressed a family-related scenario, where the COE had broken down a way for an employee to calculate the actual benefit being received for reportable gift purposes, she added.

Mr. Johnson said that language could be added to footnote 3 on page 2 of the advisory opinion letter to reference previous similar advisory opinions, and to explain that travel expenses for family members accompanying an employee may constitute a reportable gift.

Commissioner Fiore suggested that language be added to read: This opinion applies only to your travel and attendance.

Mr. Johnson replied that the summary language could read: This opinion applies solely to your expenses in your official capacity.

Commissioner Farach said that the suggested language could be amended to read: This opinion applies solely to expenses, reimbursements, and stipends you will receive in your official capacity.

MOTION to approve proposed advisory opinion letter RQO 12-011 as amended to include the changes as discussed. Motion by Judge Edward Rodgers, seconded by Robin Fiore, and carried 4-0. Daniel Galo absent.

XII.b. RQO 12-016

Mr. Johnson stated that:

- A municipal fire rescue chief asked whether including the cost of employee travel expenses for pre-build conferences and acceptance conferences for high-cost Fire Rescue and other fire apparatus vehicles in the contract price for the vehicles violated the Code's prohibition on accepting travel expenses from vendors section.

XII.b. – CONTINUED

- Staff had submitted that while public employees may not directly or indirectly accept travel expenses from a municipal vendor, service provider, bidder or proposer, this prohibition did not apply to expenses that were ultimately paid by the municipality from municipal funds pursuant to a contract for the purchase of goods, where the purpose of the travel was to ensure that the terms of the contract were fulfilled.

City of Boynton Beach Fire Chief Ray Carter stated that:

- The fire trucks in question fell into two categories: Advanced Life Support Transport vehicles, valued from \$180,000 to \$220,000 each; and fire trucks, valued at approximately \$1 million each.
- The preconstruction and acceptance visits in question served multiple purposes such as identifying past maintenance issues, and ensuring that all bid document content and specifications were in compliance.
- Visits as such were a common practice among many countrywide fire services, and most vendors agreed to include such visits as a line item in the bid documents.
- Individuals that went on the visits were committee members responsible for creating the specifications, and a fleet maintenance member responsible for repair and maintenance of the vehicles.

MOTION to approve proposed advisory opinion letter RQO 12-016. Motion by Ronald Harbison, seconded by Judge Edward Rodgers, and carried 4-0. Daniel Galo absent.

XII.c. RQO 12-017

Mr. Johnson stated that:

- A municipal ethics officer asked whether City of West Palm Beach (West Palm Beach) employees could accept reduced tuition to attend a Florida International University (FIU) online MBA program.
- Discounted tuition was not available to all members of the general public; only to students whose employer or family member's employer had enrolled in a FIU corporate partnership program.

XII.c. – CONTINUED

- The university did not vend, lease, or lobby West Palm Beach.
- Staff had submitted that:
 - West Palm Beach employees were not prohibited from accepting a FIU tuition discount or scholarship based on their status as West Palm Beach employees provided that there was no quid pro quo or special treatment or privileges given to FIU or its agent, Academic Partnerships, in exchange for offering these scholarships.
 - For gift-law reporting purposes, tuition discounts or scholarships received by public employees or their family members for degree programs, when based on their public employment status, were reportable gifts under the Code.
- The purpose of the corporate partnerships was for FIU advertising in West Palm Beach program announcements to all employees; no financial or contractual commitment existed.
- The tuition discount would constitute a reportable gift for transparency reasons, and did not imply that a negative was attached to it.

Commissioner Fiore stated that the terms, scholarship, and, tuition discount, were interchangeable throughout the letter. She suggested that the term, tuition discount, only be used since the term, scholarship, provided other implications.

Ms. Rogers explained that Academic Partnerships was the service provider that was responsible for FIU's online course work. Academic Partnerships used the term, scholarship, while the West Palm Beach used the term, tuition discount, she added.

Mr. Johnson said that the program was valued at \$37,000, although West Palm Beach employees would pay \$27,000 and receive a \$10,000 discount.

Commissioner Fiore said that she did not consider the tuition discount to be broad-based since the opportunity would not be taken by all West Palm Beach employees although it was available to all of them.

XII.c. – CONTINUED

MOTION to approve proposed advisory opinion letter RQO 12-017. Motion by Judge Edward Rodgers, seconded by Robin Fiore, and carried 4-0. Daniel Galo absent.

XII.d. RQO 12-018

Mr. Johnson stated that:

- Accepting travel expenses was separate from the gift law. Travel expenses paid for by a vendor, regardless of the type of event, required a waiver.
- Registration fees and related costs associated with educational or governmental conferences and travel expenses that were properly waived if received from a vendor, were not considered gifts and reporting was unnecessary, provided that attendance was for governmental purposes, and was related to official duties and responsibilities.
- State-reporting individuals had no obligation under the Code, except for providing the COE with a copy of the State-required quarterly report.
- A County commissioner asked whether she may receive travel reimbursement from a Robert Wood Johnson Foundation (RWJF) and a Quantum Foundation (QF) grant to the School Board of Palm Beach County (School Board) for attendance at an annual training for the Healthy Kids, Healthy Communities Project as a community partner with the School Board.
- Some expenses would be paid by the School Board; others would be paid by the foundations.
- Staff had submitted that:
 - Neither RWJF nor QF was a vendor or principal of County lobbyists; therefore, the Code did not prohibit an elected official from attending and receiving travel reimbursement for the event.

XII.d. – CONTINUED

- Local elected officials and advisory board members who were State-reporting individuals were required to report gifts quarterly in accordance with State law, and were not subject to the annual gift reporting requirements under the Code’s Section 2-444(f)(2).
- A State-reporting individual was responsible for complying with State-reporting requirements.

MOTION to approve proposed advisory opinion letter RQO 12-018. Motion by Ronald Harbison, seconded by Judge Edward Rodgers, and carried 4-0. Daniel Galo absent.

XII.e. RQO 12-022

Mr. Johnson stated that:

- A County commissioner asked whether an elected official whose outside business provided rental space to a municipality may participate and vote on interlocal agreements, annexation issues, and lawsuits between the County he served and his municipal customer or client.
- Staff had submitted that:
 - Officials whose outside business or employer contracted with other governments were not prohibited from voting on issues between their government-client and the government that they served, provided that the matter was unrelated to their business relationship with the government-client.
 - Voting or participating on issues that may result in a special financial benefit to their outside employer or business would violate the Code’s misuse of office provisions.
 - When presented with a situation that would benefit themselves or their outside employer or business, officials must publicly disclose the nature of the conflict, file the required State disclosure form, refrain from voting and not participate in, or influence the process.

- Material regarding the Village of Wellington lawsuit was included in the advisory opinion letter since the County commissioners were required to vote on it, and it was one of Commissioner Santamaria's concerns in the initial advisory opinion request.

MOTION to approve proposed advisory opinion letter RQO 12-022. Motion by Judge Edward Rodgers, seconded by Ronald Harbison, and carried 4-0. Daniel Galo absent.

XII.f. RQO 12-023

Mr. Johnson stated that:

- A County commissioner asked whether the revised Code permitted an elected official to be an honoree at nonprofit charitable fundraising events for his/her years of service.
- The commissioner would not partake in any solicitations done by the nonprofit organization, and was not a board member or officer of the organization.
- Any nonprofit organization that solicited was required to comply with the Code; therefore, any County vendors or lobbyists that provided a gift in excess of \$100 was required to be included in a transparent solicitation log for submission to the COE within 30 days following the event.
- Once the commissioner was no longer in office, he/she could serve as an honoree without permission. The advisory opinion only applied to events occurring while the commissioner was in office.
- If the charity failed to comply with the law requirements, it would most likely constitute as an ethical violation on behalf of the elected official.

MOTION to approve proposed advisory opinion letter RQO 12-023. Motion by Judge Edward Rodgers, seconded by Ronald Harbison, and carried 4-0. Daniel Galo absent.

XII.g. RQO 12-024

Ms. Rogers stated that:

- A local nonprofit executive director asked whether his foundation may give tickets valued in excess of \$100 to municipal library employees to attend a fundraising event.
- A nonprofit organization was dedicated to raising supplemental funds for the West Palm Beach Library, such as furniture for programming and computers.
- An exception under the Florida Administrative Code explained that when an employee or elected official received a ticket directly from the charity, the employee was only required to report the actual cost to the charity, as compared to the face value of the ticket.
- Staff recommended that under the Code, employees and elected officials be required to report the face value of the ticket, recognizing the emphasis that was placed both on the vendor and lobbyist gift limitations.
- Individuals attending the event would also receive a gift from Tiffany & Co. valued at \$50. Staff recommended that since the gift was separate and identifiable from the ticket, it was required to be reported separately from the face value of the ticket, providing for additional transparency.

MOTION to approve proposed advisory opinion letter RQO 12-024. Motion by Robin Fiore, and seconded by Judge Edward Rodgers.

Commissioner Farach expressed concern that the COE was creating a dual-reporting issue for County employees and elected officials.

Mr. Johnson replied that State-reporting individuals only complied with the State requirements, and provided the COE with copies of their reports. However, those who were State- and local-reporting individuals, such as someone who was an elected official and a local employee, were required to comply to both State- and local-reporting requirements.

UPON CALL FOR A VOTE, the motion carried 4-0. Daniel Galo absent.

XIII. PROCEDURAL MATTERS RE: C11-027 (Scott Swerdlin)

Mr. Johnson stated that:

- The hearing for C11-027 regarding Scott Swerdlin, was currently scheduled for June 15, 2012.
- The Code required that the COE Chair volunteer or designate another commissioner to conduct discovery matters, including prehearing conferences, motions, subpoenas, settlement issues, examining exhibits and documents, witness lists, and other procedural matters.

Commissioner Farach said that he volunteered to conduct the discovery matters.

Mr. Johnson continued by saying that:

- A COE quorum was three members.
- Pursuant to the COE Rule of Procedure 6.1, public hearings may be conducted by all COE members, or by a three-member panel designated by the Chair.
- Commissioner Galo had previously stated that he believed that he may have had a legal conflict under the rules of professional conduct for the Bar Association. His firm represented an insurance company that represented an insurance company that represented a company of which Dr. Swerdlin was a client. He planned to abstain from the public hearing discussion and decision.
- No financial conflict existed under the COE or State Code.

Judge Rodgers said that he would volunteer to participate in the public hearing; however, he may be out of town on the scheduled date. He suggested that an alternative be designated if that were the case.

Mr. Johnson said that Dr. Swerdlin's attorney had a scheduling conflict on June 15, 2012, and had requested that it be rescheduled. He added that Dr. Swerdlin's attorney was unavailable on Fridays.

Judge Rodgers said that he had served as a mediator for several cases that involved Dr. Swerdlin's attorney, who may prefer his nonparticipation in the final hearing.

XIII. – CONTINUED

Commissioner Fiore said that the COE had up to 120 days to conduct the public hearing; however, the final hearing should be completed in May since commissioners had scheduling conflicts in June.

Mr. Johnson replied that the public hearing date needed to be set within 120 days; however, the actual public hearing could be scheduled later.

Ms. Levesque said that Dr. Swerdlin's attorney had prior engagements scheduled on Fridays. She also said that he requested that the public hearing be held on two consecutive days.

Commissioner Farach said that the panel could be chosen today while the date could be scheduled at a later time.

Ms. Levesque requested that the commissioners provide her with their available dates and times to assist in scheduling with the attorney. Mr. Johnson said that the second day would only be scheduled in the event that the public hearing was not concluded on the first day.

Commissioner Harbison said that he believed that as many commissioners as possible should participate in the public hearing.

Commissioners present said that they were available and willing to participate in the public hearing presuming that the date(s) worked with their schedule.

Commissioner Farach said that he would communicate with Mr. Johnson and staff regarding the procedural aspects of the public hearing.

Mr. Johnson said that he had handled the initial proposal, which appeared to be rejected with no plans for a negotiated settlement. He also said that Commissioner Farach, as chair, could accept motions to discuss negotiations.

Commissioner Farach said that he would be uncomfortable with accepting motions for negotiated settlements without the entire commission present.

Commissioner Fiore said that she would be unable to attend the public hearing if it was scheduled on a Wednesday. She said that she was best available on Mondays and Tuesdays.

XIII. – CONTINUED

Commissioner Farach suggested a schedule of 9:00 a.m. to 5:00 p.m., with an hour for lunch.

Mr. Johnson said that the public hearing could be recorded with an audio recording device. He also said that a court reporter was not currently available; however, one was not required for a Code-enforcement hearing. He added that the respondent could bring a court reporter if he wished.

Commissioner Farach said that he believed that the COE should bear the cost of a court reporter's attendance and transcription. Mr. Johnson replied that a court reporter could be provided if the COE agreed. He mentioned that the public hearing would also be broadcast via Channel 20.

Commissioner Farach said that the public hearing's transcript should be sworn to by a certified court reporter.

Ms. Levesque said that she would begin searching for an adequate location.

XIV. EXECUTIVE COMMENTS

Mr. Johnson thanked the COE for bearing with the scheduling of longer agendas.

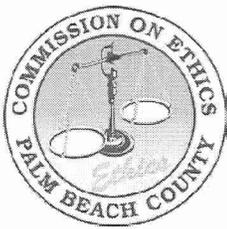
XV. PUBLIC COMMENTS – None

XIV. ADJOURNMENT

At 5:54 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

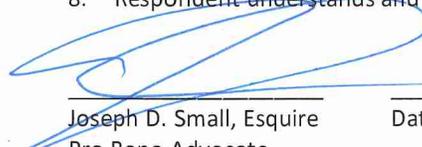
Negotiated Settlement

In Re: Scott Swerdlin

Case No.: C11-027

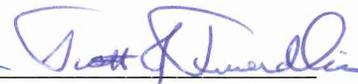
Pursuant To section 2-260(d) of the Palm Beach County Commission on Ethics ordinance, the Commission *may enter into such stipulations and settlements as it finds to be just and in the best interest of the citizens of the county.* Commission on Ethics Rules of Procedure 6.16 permits the COE Advocate to enter into settlement negotiations and present proposed agreements to the Commission for consideration and approval. Advocate and Respondent do hereby submit the following settlement agreement in the above captioned matter based upon the following terms and conditions:

1. Respondent, Dr. Scott Swerdlin, believes it to be in his best interest to avoid the expense and time of litigation in this matter and desires to resolve the issues contained in the probable cause finding by the Commission. Accordingly, Respondent admits to the allegations contained in the complaint as to Count 3, Disclosure of Voting Conflicts. Respondent admits that he substantially debated the issue, participated in the discussion and public hearing of the pending application. Respondent subsequently abstained from the vote. Respondent failed to file a State Conflict of Interest Form 8B with the Palm Beach County Commission on Ethics as required under the Code.
2. Pursuant to this Proposed Settlement Agreement, the Commission on Ethics agrees to dismiss Counts 1 and 2 of the Complaint, impose a \$500 fine prescribed under section 2-448(b) of the Palm Beach County Code of Ethics and a Letter of Reprimand.
3. Respondent understands and agrees to abide by the decision of the Commission regarding its finding, required pursuant to §2-260.1(g) of the Commission on Ethics ordinance, as to whether this violation was intentional or unintentional.
4. This Proposed Settlement Agreement embodies the entire agreement of the parties respecting the subject matter herein. There are no promises, terms, conditions or obligations other than those contained in this Proposed Settlement Agreement.
5. This Proposed Settlement Agreement supersedes any and all previous communications, representations, and offers, either verbal or written, between the Advocate and Respondent. By signing this document, Respondent acknowledges that he is doing so freely, voluntarily and without duress; that he is competent to enter this agreement; that he has reviewed this Proposed Settlement Agreement with his attorney; and that he has fully and completely read and understands the terms and conditions herein.
6. Advocate and Respondent agree that settlement of his action in the manner described above is just and in the best interest of the Respondent and the citizens of Palm Beach County.
7. Evidence of this offer of compromise and settlement is inadmissible to prove any of the allegations alleged.
8. Respondent understands and agrees that **NO OFFER IS FINAL UNTIL ACCEPTED BY THE COMMISSION ON ETHICS.**


Joseph D. Small, Esquire
Pro Bono Advocate

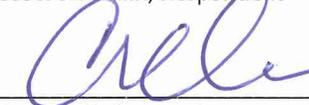
Date

4/20/2012


Scott Swerdlin, Respondent

Date

20 April 2012


Craig T. Galle, Esquire
Respondent's Representative

Date

April 20, 2012

Public Report and Final Order

COMPLAINANT, Carol Coleman, filed the above referenced COMPLAINT on December 21, 2011, alleging that the RESPONDENT, Dr. Scott Swerdlin, violated Chapter 8, Article XIII, Section 2-443(c) of the Palm Beach County Code of Ethics when, as Chairman of the Village of Wellington Equestrian Preserve Committee, RESPONDENT substantially participated in a matter that would result in a special financial benefit to the applicant, Equestrian Sports Productions, a customer or client of his outside businesses, Palm Beach Equine Medical Centers and Palm Beach Equine Clinic. In addition, upon ultimately abstaining from the vote, RESPONDENT failed to file a State of Florida Conflict Form 8B, and submit a completed copy to the Palm Beach County Commission on Ethics as required.

Pursuant to Chapter 2, Article V, Division 8, Section 2-258(a)¹ of the Palm Beach County Code of Ethics, the Commission on Ethics is empowered to enforce the county code of ethics.

Pursuant to Chapter 8, Article XIII, Section 2-443(c) ***Disclosure of voting conflicts.*** *County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above.² The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special*

¹ Article V, Division 8, section 2-258(a). *Powers and Duties.* The commission on ethics shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The commission on ethics shall be empowered to review, interpret, render advisory opinions and enforce the:

- (1) Countywide Code of Ethics;
- (2) County Post-employment Ordinance; and
- (3) County Lobbyist Registration Ordinance

² §2-443(a)(5) A customer or client of the official or employee's outside employer or business.

financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

As identified in Section 2-443(a)(5) an official is prohibited from voting or participating in a matter that will result in a special financial benefit to a customer or client of an official's outside business or employer. A customer or client is defined as any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand (\$10,000) dollars.

On January 30, 2012 the COMPLAINT was determined by staff to be LEGALLY SUFFICIENT. On March 1, 2012, in executive session, the COMMISSION ON ETHICS (COE) found PROBABLE CAUSE to believe a violation may have occurred and set the matter for final hearing. On May 3, 2012, the RESPONDENT and ADVOCATE submitted a NEGOTIATED SETTLEMENT to the COE for approval. RESPONDENT stipulates to the facts and circumstances as contained in the aforementioned LETTER OF REPRIMAND.

According to the NEGOTIATED SETTLEMENT, RESPONDENT admits to the allegations contained in Count three of the COMPLAINT that he violated §2-443(c) of the Palm Beach County Code of Ethics, RESPONDENT agrees to accept a LETTER OF REPRIMAND and to pay a fine of FIVE HUNDRED (\$500) DOLLARS. Counts one and two are dismissed. Pursuant to The Commission on Ethics Ordinance §2-260.1 *Public hearing procedures*, the commission finds that the violation was intentional/unintentional. As to Count three, the ethics commission assessed a fine of FIVE HUNDRED (\$500) DOLLARS; and the RESPONDENT has been issued a LETTER OF REPRIMAND.

Therefore it is:

ORDERED AND ADJUDGED THAT this matter is concluded upon acceptance of the LETTER OF REPRIMAND and payment of the aforementioned \$500 FINE.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on this ____ day of May, 2012.

Palm Beach County Commission on Ethics

By: _____
Manuel Farach, Chair

May 3, 2012

Dr. Scott Swerdlin
13125 Southfields Road
Wellington, FL 33414

Re: Complaint No. C11-027
Letter of Reprimand

Dear Dr. Swerdlin:

When the Commission on Ethics met in executive session on March 1, 2012, it found that probable cause existed to believe that you may have violated the Palm Beach County Code of Ethics, specifically §§2-443(a), (b) and (c). On May 3rd, 2012, you admitted to violating §2-443(c) of the Palm Beach County Code of Ethics entitled, "Disclosure of voting conflicts." The settlement agreement in this case provides for you to accept this public reprimand.

*Chapter 8, Article XIII, §2-443(c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above.¹ The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other 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, as set forth in subsections (a)(1) through (7).*

The facts are as follows:

You are the Chairman of the Equestrian Preserve Committee (the Committee), an advisory board of the Village of Wellington. On December 14, 2011, the Committee met to discuss and vote on planning and zoning amendments for the proposed Equestrian Village Project (the Project). The Project applicant was Equestrian Sports Productions (ESP). ESP produces the 12 week Winter Equestrian Festival (the Festival) as well as other equestrian events. Respondent is the manager/owner and registered agent of Palm Beach Equine Medical Centers and Palm Beach Equine Clinic. Palm Beach Equine Medical Centers and/or Palm Beach Equine Clinic have been the official veterinarians for ESP events since 2009. As the official veterinarians, your staff is on site at the Festival 5 days per week for 12 weeks, on an average of 10 hours per day for the Festival, as well as similarly serving during the summer and early fall for other ESP programming. In addition, your businesses provided ESP with equine ambulance services during these events. The value of the services you provided to ESP exceeded \$10,000 for the 24 months preceding

¹ §2-443(a)(5) A customer or client of the official or employee's outside employer or business.

§2-442 Definitions. Customer or client means any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).

the December 2011 meeting. As the official veterinarian of these events, your businesses have a table on site, and are promoted with multiple advertising banners within the show grounds. Your business' status as the official veterinarian at events hosting thousands of horses along with the promotion afforded you on site at these equestrian events benefits your outside businesses. The Palm Beach County Code of Ethics prohibits you from voting or participating in a matter that would result in a special financial benefit for you, your outside business or a customer or client of your outside business.

Prior to and during the Committee meeting on December 14, 2011, you had been advised by Village of Wellington Attorney Jeffrey Kurtz that you had a potential conflict of interest, and could not vote or participate in the Project discussion. You were forwarded a copy of the State Conflict of Interest Form 8B as well as a copy of the relevant sections of the Palm Beach County Code of Ethics on December 13, 2011. On December 14, 2011 you acknowledged receiving this information prior to the meeting. At the start of the meeting, Mr. Kurtz advised all members that if anyone had a conflict of interest in the Project, they were required to abstain and not participate in the discussion prior to the vote. Notwithstanding your conflict of interest, you substantially debated the issue, participating in both the discussion and public hearing. Additionally, you attempted to obtain an informal recommendation of the Committee without voting. Finally, when advised by Mr. Kurtz that an informal recommendation would constitute a vote under the law, you declared a conflict and abstained. Subsequently, you have failed to file a State Conflict of Interest Form 8B with the Palm Beach County Commission on Ethics as required under the Palm Beach County Code of Ethics.

Your actions constituted a violation of the Palm Beach County Code of Ethics.

The Commission on Ethics is of the strong belief that all public employees and officials are responsible for making sure their actions fully comply with the law and are beyond reproach. As a public official, you are an agent of the people and hold your position for the benefit of the public. The people's confidence in their government is eroded when they perceive that official actions may be based upon private goals rather than the public welfare. Violations of the Palm Beach County Code of Ethics contribute to the erosion of public confidence and confirm the opinion of those who believe the worst about public officials.

You are hereby admonished and urged to make the respect of the people in their government your foremost concern in your future actions.

Sincerely,

Manuel Farach, Chairman
Palm Beach County Commission on Ethics

MF/gal

Copies to: Joseph D. Small, Esquire, Pro Bono Advocate
Craig T. Galle, Esquire

VII – ADVISORY BOARD MANDATORY TRAINING

The COE staff has begun to audit countywide training compliance pursuant to §2-446 of the Code of Ethics. One issue that has been ongoing is whether and in what context independent constitutional officers and their employees are required to adhere to the Code of Ethics when they are appointed or assigned by law to be a member of a county, regional, state or municipal board, commission or committee.

Staff Analysis:

Officials and employees are subject to mandatory training pursuant to The Code of Ethics, §2-446. The definition of *Official* includes those who serve on volunteer boards and commissions 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.*¹

As such, any person appointed to such a board is subject to the jurisdiction of the Commission on Ethics in his or her capacity as an appointed member of that board. The jurisdiction does not originate from any unrelated or outside governmental employer of the board member. Therefore, employees of outside federal, state and local governmental agencies who may not be within the jurisdiction of the COE through their governmental employer, become subject to its jurisdiction as *Officials*, by appointment.

The above definition requires an appointment to the board position. Therefore, a separate constitutional officer or other designee who is a member of a board or commission as required by ordinance and not by appointment may not fit the definition of *Official* under the revised code of ethics.² There are several county boards or commissions established by ordinance and populated by specified Federal, State, County and local agency elected officials or their designees as well as representatives of professional associations. The question becomes whether these are merely positions designated by law or are considered appointments of the BCC. Three such entities have been created; Criminal Justice Commission (CJC), Investment Policy Committee (IPC), Public Safety Coordinating Council (PSCC). The codes creating the IPC and CJC establish membership by position and include *the county sheriff or his designee*.

Currently, there are several employees of the Palm Beach County Sheriff's Office (PBSO) who are volunteer board members appointed to county boards or commissions. According to Palm Beach County staff, these appointees have not acknowledged having been trained in the code of ethics. It is my understanding from county staff that this is a PBSO policy decision based upon §112.533³, Florida Statutes, as well as decisional case law.⁴ According to its executive director, the State Commission on Ethics has investigated numerous complaints against law enforcement personnel and has never been challenged under §112.533 as lacking jurisdiction to investigate.

¹ Art XIII, §2-442 Official or employee

² The original code of ethics defined "official" when used alone to mean, "members of the Board of County Commissioners, and members of any advisory or quasi-judicial board created by the Board of County Commissioners." The revised code of ethics, effective June 1, 2011, changed the definition to "members appointed."

³ Investigative procedure established by a law enforcement agency "...shall be the procedure for investigating a complaint against a law enforcement and correctional officer and for determining whether to proceed with disciplinary action or to file disciplinary charges, notwithstanding any other law or ordinance to the contrary."

⁴ *Demmings v. Orange County Citizens Review Board*, 15 So.2d 604 (5th DCA 2009), but see, *Timoney v. City of Miami Civilian Investigative Panel*, 990 So.2d 614 (3rd DCA 2008)(Chapter 112 does not apply to an independent, external investigation undertaken by a civilian review board)

Although the Palm Beach County Code of Ethics is more stringent than the state code and as such is specifically allowed under state law⁵, the issue at this time is not whether PBSO can or should be subject to the jurisdiction of the Palm Beach County Commission on Ethics. The issue is whether PBSO employees, who are *appointed* by the BCC to serve on county boards or commissions, are, in regards to their service to those boards, within the jurisdiction of the COE and Code of Ethics. If so, they are required to be trained in the code and acknowledge training as per county policy.

Correspondence regarding this issue had been ongoing since September, 2010 and is attached for reference. The County position is that all members of BCC boards and commissions, including those entities populated by ordinance and by position, are within the jurisdiction of the COE regarding those entities.

Staff Recommendation:

To the extent that a member of an outside governmental agency serves on a board, commission or committee and is appointed by an entity within the jurisdiction of the COE, that individual is considered an official within the jurisdiction of the COE based upon his or her appointment to the covered board, commission or committee. Therefore, training mandated by the code of ethics must be completed and acknowledged.

Where a board, commission or committee is created by law and membership is specified by office and not by appointment, the position is not captured under the revised code of ethics.

Staff's recommendation is consistent with the COE's previous decisions regarding a board member's status as a member of an advisory, quasi judicial *or any other board of the county, state, or any other regional, local, municipal, or corporate entity.*

In **RQO 11-089**, the COE addressed the status of municipal pension plan board members. Where a pension plan member was appointed by the pension plan board itself, not a municipal governing body, and the member was not otherwise subject to oversight based upon their status as a municipal employee, the COE determined that those members appointed by the pension board were not subject to the requirements of the Code of Ethics, whereas members appointed by the governing body were within its jurisdiction as appointed officials.

Similarly, in **RQO 11-107** where a county-wide board was created through interlocal agreement, the COE opined that members of the board appointed by a municipality or the County were officials as defined by the Code of Ethics. Conversely, board members *appointed by* private entities or the League of Cities that are not subject to the Code of Ethics, are not subject to its jurisdiction or the jurisdiction of the COE. Likewise, in **RQO 11-060**, where a pension board is created by state statute and authorized by local ordinance, members appointed by a municipality are officials, not advisory board members as defined by the Code of Ethics.

⁵ §112.326



Palm Beach County Commission on Ethics

Commissioners

Manuel Farach, *Chair*
Robin N. Fiore, *Vice Chair*
Edward Rodgers
Ronald E. Harbison
Daniel T. Galo

Executive Director

Alan S. Johnson

April 17, 2012

Colonel Joseph Bradshaw
Palm Beach County Sheriff's Office
3226 Gun Club Road
West Palm Beach, FL 33406

Sent via email and U.S. Postal Service

Re: Palm Beach County Board Appointments

Dear Colonel Bradshaw,

Recently the Commission on Ethics (COE) Staff has begun an audit of county-wide training compliance pursuant to Section 2-446 of the Palm Beach County Code of Ethics. One issue that has been ongoing is whether and in what context independent constitutional officers and their employees are required to adhere to the Code of Ethics when they are appointed or assigned by law to be a member of a county, regional, state or municipal board, commission or committee.

Attached please find a draft COE Staff Analysis regarding this issue as well as related letters and documents dating back to September, 2010.

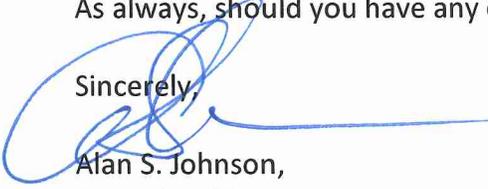
It is the position of the COE Staff that constitutional officers or their designees who are not appointed but are rather designated by ordinance to be a member of a Palm Beach County created board, committee or commission, are not within the jurisdiction of the Commission on Ethics. However, to the extent that the Board of County Commissioners or municipal governing body appoints an officer or employee of a constitutional office, who voluntarily agrees to serve on *any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity*, he or she is subject to the Code of Ethics and jurisdiction of the Commission on Ethics to the extent of their service and in their capacity as an Official as defined by the Code of Ethics. As explained in the Staff Analysis, the jurisdiction does not stem from their position as an employee of PBSO.

I do not believe that there are many PBSO employees who are currently serving on volunteer boards for either the County or a municipality within the county; however, as officials of an entity within the jurisdiction of the Commission on Ethics, those that are must comply with the training requirements of Section 2-446 of the Code of Ethics.

This matter will be discussed at the upcoming Commission on Ethics meeting scheduled for May 3, 2012 beginning at approximately 2:00 p.m. in the BCC Chambers of the Governmental Center. I wanted to let you know at the earliest so that you have an opportunity to speak to the issue should you choose to do so.

As always, should you have any questions, please feel free to contact me at 561-233-0736.

Sincerely,



Alan S. Johnson,
Executive Director

Attachment

ASJ/gal

VII – ADVISORY BOARD MANDATORY TRAINING

The COE staff has begun to audit countywide training compliance pursuant to §2-446 of the Code of Ethics. One issue that has been ongoing is whether and in what context independent constitutional officers and their employees are required to adhere to the Code of Ethics when they are appointed or assigned by law to be a member of a county, regional, state or municipal board, commission or committee.

Staff Analysis:

Officials and employees are subject to mandatory training pursuant to The Code of Ethics, §2-446. The definition of *Official* includes those who serve on volunteer boards and commissions 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.*¹

As such, any person appointed to such a board is subject to the jurisdiction of the Commission on Ethics in his or her capacity as an appointed member of that board. The jurisdiction does not originate from any unrelated or outside governmental employer of the board member. Therefore, employees of outside federal, state and local governmental agencies who may not be within the jurisdiction of the COE through their governmental employer, become subject to its jurisdiction as *Officials*, by appointment.

The above definition requires an appointment to the board position. Therefore, a separate constitutional officer or other designee who is a member of a board or commission as required by ordinance and not by appointment may not fit the definition of *Official* under the revised code of ethics.² There are several county boards or commissions established by ordinance and populated by specified Federal, State, County and local agency elected officials or their designees as well as representatives of professional associations. The question becomes whether these are merely positions designated by law or are considered appointments of the BCC. Three such entities have been created; Criminal Justice Commission (CJC), Investment Policy Committee (IPC), Public Safety Coordinating Council (PSCC). The codes creating the IPC and CJC establish membership by position and include *the county sheriff or his designee*.

Currently, there are several employees of the Palm Beach County Sheriff's Office (PBSO) who are volunteer board members appointed to county boards or commissions. According to Palm Beach County staff, these appointees have not acknowledged having been trained in the code of ethics. It is my understanding from county staff that this is a PBSO policy decision based upon §112.533³, Florida Statutes, as well as decisional case law.⁴ According to its executive director, the State Commission on Ethics has investigated numerous complaints against law enforcement personnel and has never been challenged under §112.533 as lacking jurisdiction to investigate.

¹ Art XIII, §2-442 Official or employee

² The original code of ethics defined "official" when used alone to mean, "members of the Board of County Commissioners, and members of any advisory or quasi-judicial board created by the Board of County Commissioners." The revised code of ethics, effective June 1, 2011, changed the definition to "members appointed."

³ Investigative procedure established by a law enforcement agency "...shall be the procedure for investigating a complaint against a law enforcement and correctional officer and for determining whether to proceed with disciplinary action or to file disciplinary charges, notwithstanding any other law or ordinance to the contrary."

⁴ *Demmings v. Orange County Citizens Review Board*, 15 So.2d 604 (5th DCA 2009), but see, *Timoney v. City of Miami Civilian Investigative Panel*, 990 So.2d 614 (3rd DCA 2008)(Chapter 112 does not apply to an independent, external investigation undertaken by a civilian review board)

Although the Palm Beach County Code of Ethics is more stringent than the state code and as such is specifically allowed under state law⁵, the issue at this time is not whether PBSO can or should be subject to the jurisdiction of the Palm Beach County Commission on Ethics. The issue is whether PBSO employees, who are *appointed* by the BCC to serve on county boards or commissions, are, in regards to their service to those boards, within the jurisdiction of the COE and Code of Ethics. If so, they are required to be trained in the code and acknowledge training as per county policy.

Correspondence regarding this issue had been ongoing since September, 2010 and is attached for reference. The County position is that all members of BCC boards and commissions, including those entities populated by ordinance and by position, are within the jurisdiction of the COE regarding those entities.

Staff Recommendation:

To the extent that a member of an outside governmental agency serves on a board, commission or committee and is appointed by an entity within the jurisdiction of the COE, that individual is considered an official within the jurisdiction of the COE based upon his or her appointment to the covered board, commission or committee. Therefore, training mandated by the code of ethics must be completed and acknowledged.

Where a board, commission or committee is created by law and membership is specified by office and not by appointment, the position is not captured under the revised code of ethics.

Staff's recommendation is consistent with the COE's previous decisions regarding a board member's status as a member of an advisory, quasi judicial *or any other board of the county, state, or any other regional, local, municipal, or corporate entity.*

In **RQO 11-089**, the COE addressed the status of municipal pension plan board members. Where a pension plan member was appointed by the pension plan board itself, not a municipal governing body, and the member was not otherwise subject to oversight based upon their status as a municipal employee, the COE determined that those members appointed by the pension board were not subject to the requirements of the Code of Ethics, whereas members appointed by the governing body were within its jurisdiction as appointed officials.

Similarly, in **RQO 11-107** where a county-wide board was created through interlocal agreement, the COE opined that members of the board appointed by a municipality or the County were officials as defined by the Code of Ethics. Conversely, board members *appointed by* private entities or the League of Cities that are not subject to the Code of Ethics, are not subject to its jurisdiction or the jurisdiction of the COE. Likewise, in **RQO 11-060**, where a pension board is created by state statute and authorized by local ordinance, members appointed by a municipality are officials, not advisory board members as defined by the Code of Ethics.

⁵ §112.326



Palm Beach County Commission on Ethics

Commissioners

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

Executive Director

Alan S. Johnson

December 1, 2011

Bonni S. Jensen, Esquire
Perry & Jensen, LLC
400 Executive Center Drive, Suite 207
West Palm Beach, FL 33401-2922

Re: RQO 11-089
Gift Law/Retirement Boards

Dear Ms. Jensen,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion on October 6, 2011, and on November 3, 2011, and again on November 30, 2011, and rendered its opinion at a public meeting on November 30, 2011.

YOU ASKED in your letter dated September 22, 2011, whether Trustees of the Firefighter Board of Trustees, Town of Palm Beach Retirement System (FBT), who are subject to the Palm Beach County Commission on Ethics, must report "salary, benefits, services, fees, commissions, gifts or expenses associated primarily with the [Trustees] employment, business or service as an officer or director of a corporation or organization?" You also asked if a Trustee nominated or selected by the other four (4) Trustees to this retirement board, but ultimately appointed by the governing body of the Town, is subject to the jurisdiction of the Palm Beach County Commission on Ethics.

IN SUM, local officials and advisory board members who are state reporting individuals are required to report gifts quarterly, in accordance with state law, and are therefore not subject to the annual gift reporting requirements under §2-444(f)(2)b. of the Palm Beach County Code of Ethics. A state reporting individual is responsible to comply with those reporting requirements as contained within state law.

Although the FBT itself is a state created board and therefore not an advisory board as defined in the Palm Beach County Code of Ethics,¹ trustees who are appointed by the governing body of the Town of Palm Beach (the Town), are considered "officials" and subject to the code. The fact that one appointment is based on a selection by the existing Trustees does not negate the fact that the ultimate appointment is made by the governing body and the appointee is therefore subject to the Code of Ethics.²

THE FACTS as we understand them are as follows:

You are legal counsel for the Firefighters Board of Trustees (FBT), within the Town of Palm Beach Retirement System (RS). The RS was created by a Palm Beach Ordinance in accordance with Chapter 112, Florida Statutes. The FBT's authority was created pursuant to Chapter 175, Florida Statutes, and is contained within Section 82-86 of the Town Code. The FBT is comprised of five (5) members. Two (2) are chosen and appointed by the Town

¹ §2-442, RQO 11-060 (Boca Raton Police and Firefighters' Retirement System established pursuant to chapters 175 and 185 of the Florida Statutes, is not an advisory board as defined in the PBC Code of Ethics, however, appointees of the Boca Raton governing body are considered "officials.")

² RQO 11-035, RQO 11-060, id.

Council. Two (2) are employees of the Town and are elected by the members in the retirement fund. The fifth member is chosen by the other four Trustees, but is actually appointed by the Town Council, in what you refer to in your letter as, "a ministerial duty by the Town." The Town of Palm Beach (the Town) is ultimately responsible for funding the System. You also advise that it is the Town that actually appoints this fifth trustee to the Board.

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 local municipal governing bodies, or by the mayors who serve as chief executive officers... of local municipal governing bodies." While the FBT 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.

However, §2-442, defines "Official" as a member appointed by the local municipal governing body to serve on any advisory, quasi-judicial or *any other board of the county, state, or any other regional, local, municipal, or corporate entity*. The Code does not make a distinction as to whether the governing body is making such an appointment in any particular manner. The fact that one Trustee on the FBT is initially chosen as a candidate by the other four Trustees is immaterial to the manner in which that person formally becomes a Trustee on the Board when appointed by a vote of the governing body. The governing body, in particular one that is, "responsible to fund the benefits of the Plan," under state law³, can choose not to appoint a particular individual and require that another candidate be selected. Again, the relevant fact is that while the initial choice of a potential candidate is made by the other Trustees, the appointment itself is made by the governing body.

A member of the FBT, appointed by the Palm Beach Town Council, is under the jurisdiction of the COE as to all sections of the Code of Ethics applicable to officials.

Section 2-444(f)(1) states, "Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. Under this section of the Code of Ethics, members of the FBT are "state reporting individuals" and must comply with all state requirements. The COE cannot opine as to any specific reporting requirements under state law.

IN SUMMARY, regardless of who refers a candidate for FBT appointment, FBT Trustees who are appointed by the Palm Beach Council are subject to the PBC Code of Ethics and the jurisdiction of the COE as "officials." Those Trustees who are Town of Palm Beach employees are subject to the code as "employees" as well.

FBT Trustees are subject to state gift reporting requirements as listed under Chapter 112, Florida Statutes and must report as required by state law.

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

³ Pursuant to Sections 112.66 and 175.091, Florida Statutes (2011)



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

January 5, 2012

Anna Yeskey
Palm Beach County Intergovernmental Coordination Program
9835-16 Lake Worth Road, Suite 223
Lake Worth, FL 33467

Re: RQO 11-107
Jurisdiction/Officials and Advisory Boards

Dear Ms. Yeskey,

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 January 4, 2012.

YOU ASKED whether members of the Countywide Intergovernmental Coordination Program (the Program) boards are subject to the Palm Beach County Code of Ethics.

IN SUM, the Program was not created solely by the Palm Beach County Board of County Commissioners (BCC) or by a municipal governing body. Therefore, it is not an advisory board within the meaning of the Code of Ethics. However, members of the Program's three boards are officials, as defined under the Code of Ethics, if they are appointed by the BCC or one of the 38 municipal governing bodies subject to the jurisdiction of the Commission on Ethics.

THE FACTS as we understand them are as follows:

You are a part-time staff member of the Palm Beach County Intergovernmental Coordination Program (the Program). The Program was established in Palm Beach County in the fall of 1992 through the execution of two inter-local agreements as authorized by Chapter 163, Florida Statutes. The Program was established as a means of addressing inter-jurisdictional plan amendment review and countywide issues of multi-jurisdictional significance and designed as a replacement for the Palm Beach Countywide Planning Council.

The Comprehensive Plan Amendment Coordinated Review (CPACR) Inter-local agreement creates two bodies: 1) an Executive Committee consisting of representatives appointed by the League of Cities, Board of County Commissioners, the School Board, the South Florida Water Management District and the Regional Chair or the Florida Association of Special Districts and 2) an Inter-local Plan Amendment Review Committee comprised of full-time planning directors from local government participants.

The Executive Committee (EC) prepares an annual budget for the Program, oversees collection and expenditures of member fees, prepares an annual report detailing the activities and results from the

comprehensive plan amendments processed pursuant to the agreement, makes recommendations to the participants on ways to improve the coordination projects and oversees the operations of the various panels, committees and serves as a Clearinghouse created by the agreement.

The Inter-local Plan Amendment Review Committee (RC) is charged with the technical role in the comprehensive plan coordinated review process and is designed to provide planning staff notification of land use changes prior to the local government's public hearing to allow the opportunity to resolve conflicts prior to the hearing.

A second inter-local agreement establishes a Multi-Jurisdictional Issues Coordination Forum (Issues Forum) for participant governments to discuss issues of countywide significance and develop, through a consensus building process, a way to effectively identify and address these issues. Some of the issues addressed by this group include but are not limited to: affordable housing, industrial land use needs, school concurrency, a countywide water plan, aquifer storage and recovery, biosolids pelletization, hurricane shelter capacity, growth management reform, annexation, mediation, beach funding and population projects. For a municipality, the county or other entity to be a member of the Forum, they must first be a signatory to the CPACR. Each county or municipal member then appoints and designates a representative to exercise its responsibilities in the forum.

You serve as the only dedicated staff, part-time, as a contract employee of the Town of Lantana. The budget is set each year by the EC who determines the annual membership fee paid by all participant entities. In your experience as a staff member, there has only been one situation when the organization worked on a project in which outside consultants were used. In addition to the services described above, the day to day operations of the Program involve plan amendment distribution, monitoring countywide issues, and setting the agenda for quarterly meetings of these groups as well as any subcommittees that result from identified issues.

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 two inter-local agreements that form the basis for the Program create three boards, 1) Comprehensive Plan Coordinated Review Executive Committee, (EC) 2) the Interlocal Plan Amendment Review Committee (RC) and 3) the Multijurisdictional Issues Coordination Forum (Issues Forum). While the Program was entered into by local municipal governing bodies, the boards it establishes are not created independently by any one entity subject to the jurisdiction of the Commission on Ethics. As a result, the three boards created by these agreements are not advisory boards as defined by the Code of Ethics.

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.*"

First, members of the EC are appointed by the League of Cities, the BCC, the School Board, the South Florida Water Management District and the Regional Chair or the Florida Association of Special Districts. Of the appointing authorities, only the BCC is a governing body subject to the jurisdiction of the Code of

Ethics. Accordingly, only those members who are appointed by the BCC are subject to the jurisdiction of the Commission on Ethics, in their capacity as an official of the EC.

Second, members of the RC serve based upon their employment as a planning director with the county, municipality or other entity subject to the agreement. Therefore, municipal and county employees who serve on the RC are subject to the Code of Ethics as employees of their respective government entity *and* as officials if appointed by their governing bodies.

Third, once a local government or service provider has signed on to the CPACR, it may sign on to be a member of the Issues Forum. Each Forum member then designates a representative to exercise its responsibilities in the Issues Forum. Accordingly, those members appointed to the forum by the governing body of the county or municipality are considered officials as defined by the code of ethics.

Section 2-443 (a) *Misuse of office*, prohibits an official or employee from using their official position or influencing others to take or fail to take any action, that would result in a special financial benefit not shared with similarly situated members of the general public, for themselves, relatives, members of their household or dependants, their outside employer, a customer or client of their outside employer, a substantial debtor or creditor of theirs, their spouse or domestic partner or a non-profit organization of which he or she or his or her spouse or domestic partner is an officer or director.

Section 2-443(c) *Disclosure of voting conflicts*, requires a public official to abstain and not participate in any matter coming before his or her board or commission which would result in a *special financial benefit* to the persons or entities listed in the misuse of office section.

Section 2-443(b) *Corrupt misuse of official position*, prohibits an official or employee from *corruptly* using his or her office to obtain any benefit for any person or entity. *Corruptly*, means done with a wrongful intent, inconsistent with the proper performance of an official's public duties.

A number of additional code provisions apply to both employees and officials. Section 2-443(d) *Contractual relationships*, prohibits officials and employees from entering into contracts with the county or the municipal government they serve, unless one of several exceptions applies. Section 2-443(f) prohibits officials and employees from accepting travel expenses from a contractor, vendor, service provider, bidder or proposer of the county or the municipality they represent, unless they obtain a waiver from the governing body that appointed the employee or official to the board. Section 2-443(h) prohibits officials and employees from making false statements, submitting false documentation, or knowingly withholding information in an application for employment or to provide goods or services to any entity subject to jurisdiction of the code. Section 2-443(i) prohibits officials and employees from disclosing or using information not available to members of the general public for personal gain.

Application of the Gift Law §2-444

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 ... municipality.”¹ Section 2-442 defines a vendor as a person or entity who sells or leases goods or real or personal property to the government 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. However, 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 officials, officials as well as public employees are still subject to §2-444(e) in the performance of an official act or legal duty related to their status as an official or employee.

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.

IN SUMMARY, although boards created by the Program are not advisory boards as defined by the code, members appointed by the BCC or a municipal governing body are considered officials. Employees who serve as a result of their employment maintain their status as county or municipal employees and must comply with the Code of Ethics when acting in an official capacity for their government employer. 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 appointing governments. Travel reimbursement from vendors of the County or municipality, as applicable, may be accepted provided the board member obtains a waiver from his or her appointing body. Any gifts in excess of \$100, not otherwise prohibited or excluded, must be reported as required under 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

¹ §2-444(b) extends this prohibition to advisory board members, but not to officials appointed to boards that are not created by their governing body.



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

September 6, 2011

Bob Sugarman, Esquire
Sugarman & Susskind
100 Miracle Mile, Suite 300
Coral Gables, FL 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 BRPFRS 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 BRPFRS 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 BRPFRS matters provides a sufficient nexus between the public employment and outside trust activity to incur limited jurisdiction over the BRPFRS 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 BRPFERS 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 BRPFERS (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 BRPFERS 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 2-244(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.” 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 BRPFERS 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 BRPFERS. 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 BRPFERS, 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.

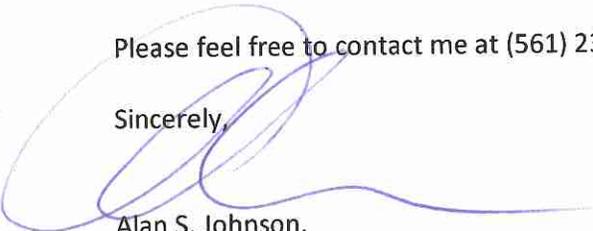
Based on the facts you have submitted, there may be vendors of the BRPFERS who are present at the conference that are not vendors of the City. Keeping in mind the misuse of office section discussed above, and the prohibition against accepting anything of value as a quid pro quo for the performance of 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 BRPFERS 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 BRPFERS 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 14, 2010

County Administration

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West Palm Beach, FL 33402-1989
(561) 355-2030
FAX: (561) 355-3982
www.pbcgov.com



**Palm Beach County
Board of County
Commissioners**

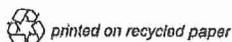
Burt Aaronson, Chair
Karen T. Marcus, Vice Chair

Shelley Vana
Steven L. Abrams
Jess R. Santamaria
Priscilla A. Taylor

County Administrator

Robert Weisman

*"An Equal Opportunity
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Mr. Alan S. Johnson
Ethics Commission Director
Commission on Ethics
2633 Vista Parkway
West Palm Beach, Florida 33411

Re: Palm Beach County Board Appointments

Dear Mr. Johnson:

As you know, several changes are being proposed to the existing Palm Beach County Code of Ethics (Ordinance No. 2009-051). One of those changes, is the definition of an "official" (Section 2-442), which will now include all members "appointed" by the board of county commissioners to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.

The Board of County Commissioners (BCC) has created a number of advisory boards, committees, task force, etc. Several of these BCC-created advisory boards/committees have been set up so that an individual serves strictly based on the office/seat they hold (i.e, Chief Judge, State Attorney, Resident Agent in Charge-ATF). The individuals in these seats change from time to time, and are not officially "appointed" by the BCC.

Unless or until the Commission on Ethics renders an opinion to the contrary, staff is proceeding with the opinion that advisory board members who serve only because of another position they hold are subject to the Code of Ethics since they serve on BCC-created advisory boards/committees. Please feel free to contact me with any concerns or questions.

Sincerely,

Brad Merriman
Assistant County Administrator

BM/pah

c: Leonard W. Berger, Assistant County Attorney
Patty Hindle, Agenda Coordinator



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

September 24, 2010

Brad Merriman, Assistant County Administrator
P.O. Box 1989
West Palm Beach, FL 33402-1989

Re: Palm Beach County Board Appointments

Dear Mr. Merriman,

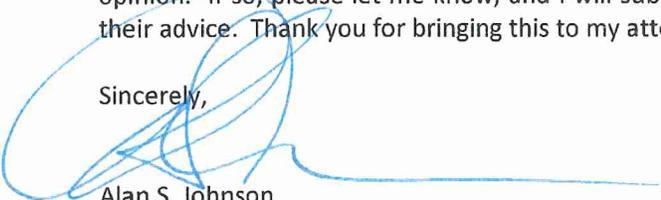
I am in receipt of your letter of September 14, 2010 regarding BCC-created advisory boards and committees, specifically, individuals who are appointed to these committees based solely on the official position that they hold (i.e., Chief Judge, State Attorney, Resident Agent in Charge-ATF, etc.).

As a matter of first impression, I think you are correct in your assessment that the Code of Ethics proposed revision regarding section 2-442, which will include all members "appointed" by the board of county commissioners, would encompass these position driven appointments. The plain language of the code does not qualify the nature of the appointment.

Of course the BCC has the authority to carve out an exception to section 2-442 should they choose to do so. Under Sec.2-258(d) The Commission on Ethics is empowered to "review ordinances . . . relating to ethics in government and . . . make recommendations to the Board of County Commissioners as it deems appropriate". If this issue threatens to affect good and efficient governance, a request for review and recommendation by the Commission on Ethics might be appropriate.

In the alternative, you could officially submit this issue to the Commission on Ethics for an advisory opinion. If so, please let me know, and I will submit the specific issue to the Commission on Ethics for their advice. Thank you for bringing this to my attention.

Sincerely,


Alan S. Johnson
Executive Director

ASJ/gal

c: Leonard W. Berger, Assistant County Attorney



County Administration

P.O. Box 1989
West Palm Beach, FL 33402-1989
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**Palm Beach County
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Burt Aaronson, Chair
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County Administrator

Robert Weisman

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MEMORANDUM

TO: Department/Division Heads
FROM: Robert Weisman, County Administrator
County Administration 
DATE: October 27, 2010
RE: **Non-Board Appointed Members/Code of Ethics**

As you know the Board of County Commissioners (BCC) adopted a new Code of Ethics in December 2009 (as amended September 2010), which covers members appointed by the BCC to serve on any advisory board of the county or any other entity. The new Code prompted changes to the board appointment process, and in April 2010, the staff distributed information on the new process and forms.

Questions arose about how to handle non-Board appointed members who sit on County-created advisory boards (i.e., Chief Judge, State Attorney, etc.). Advisory board members who serve because of the position they hold are subject to the Code of Ethics. These members must take the required training and complete the proper forms. Each Department/Division with an advisory board of this nature will be responsible for insuring the paperwork is properly completed and on file.

Please feel free to contact Patty Hindle with any concerns or questions at (561) 355-3229 or phindle@pbcgov.org

RW/pah

c: Verdenia Baker, Deputy County Administrator
Vince Bonvento, Assistant County Administrator
Shannon Larocque, Assistant County Administrator
Brad Merriman, Assistant County Administrator
Jon Van Arnam, Assistant County Administrator
Leonard W. Berger, Assistant County Attorney
Alan S. Johnson, Ethics Commission Director
Advisory Board Liaisons



INTER OFFICE M E M O R A N D U M

JESS R. SANTAMARIA

**County Commissioner
District 6**

Palm Beach County
Board of County Commissioners



Governmental Center
301 North Olive Avenue, 12th Floor
West Palm Beach, FL 33401

Telephone: (561) 355-6300

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www.pbcgov.com

DATE: October 5, 2011

TO: Bob Weisman, County Administrator

FROM: Commissioner Jess R. Santamaria 

SUBJECT: Interagency Agreements for IG Oversight

Enclosed is a copy of the June 15th 2011 letter by R.W. Evans of the law offices of Allen, Norton & Blue responding to the May 24th letter of Chair Marcus regarding the interagency agreement between the Office of Inspector General and the Palm Beach County Sheriff's Office.

I would appreciate a legal opinion from our County Attorney. Additionally, have we sought an opinion from the State Attorney or the Attorney General?

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Karen T. Marcus
County Commissioner
District 1
Board of County Commissioners

County Administrator
Robert Weisman



May 24, 2011

The Honorable Ric Bradshaw, Sheriff
Palm Beach County Sheriff's Office
3228 Gun Club Road
West Palm Beach, FL 33406

Dear Sheriff Bradshaw:

As you may know, the County Commission recently adopted three new ordinances pertaining to the Office of the Inspector General, the Commission on Ethics and the County Code of Ethics. These new ordinances reflect the changes suggested by the drafting committee that was established as part of the Charter change approved by the voters in November 2010.

While the Charter change does not affect your organization, the County Commission asked at its May 17, 2011 adoption meeting, to invite all other elected bodies to participate with the County and all 38 municipalities in an effort to ensure consistent standards for all governing bodies that serve our residents. Please consider entering into interagency agreements with Palm Beach County to extend the jurisdiction of the Commission on Ethics and the Inspector General to your agency.

If you have any questions or need additional information regarding these ordinances, you can contact Leonard W. Berger, Senior Assistant County Attorney at 355-2542.

Sincerely,

A handwritten signature in black ink, appearing to read "KTM", is written over a horizontal line.

Karen T. Marcus, Chair
Board of County Commissioners

KTM/cld

c: Board of County Commissioners
Robert Weisman, County Administrator
Denise Nleman, County Attorney

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kmarcus@pbcgov.org

PALM BEACH COUNTY
SHERIFF'S OFFICE
RIC L. BRADSHAW, SHERIFF



COLONEL JOE BRADSHAW
DEPARTMENT OF LEGAL AFFAIRS
PHONE: (561) 688-3173

FAX: (561) 688-3175

E-MAIL: bradshawj@pbso.org

June 15, 2011

The Honorable Karen T. Marcus, Chair
Board of County Commissioners
P.O. Box 1989
West Palm Beach, FL 33402-1989

Dear Chairman Marcus:

On behalf of the Sheriff, I am responding to your recent correspondence requesting that the Palm Beach County Sheriff's Office enter into an interagency agreement with Palm Beach County to extend the jurisdiction of the Commission on Ethics and the Inspector General to the Sheriff's Office. Enclosed is a legal opinion written by the General Counsel to the Florida Sheriff's Association, representing all Sheriffs in Florida, regarding the legality of entering into such an agreement.

As set forth in that opinion, a review of case law precedent and Attorney General opinions make it apparent that the County Code of Ethics cannot be applied to the Sheriff under any circumstance because the investigation of law enforcement and corrections officers is preempted by Florida law. Further, any oversight of the Sheriff's Office by the Commission on Ethics and the Inspector General exceeds the County's authority and improperly encroaches upon the constitutional office of the Sheriff. The opinion notes that since the Palm Beach County Code of Ethics essentially replicates State ethics laws, the Sheriff and Sheriff's Office employees are already subject to comparable ethical standards as set forth in Chapter 112, Florida Statutes. In addition, members of the Sheriff's Office are subject to numerous internal policies governing ethical standards and receive training accordingly.

The Sheriff is acutely aware of the importance of high ethical standards for all members of the Palm Beach County Sheriff's Office. We are confident that state law and our internal policies provide the requisite level of guidance and instruction to Sheriff's Office employees. Complaints of violations of state ethics laws and our policies are investigated by the Sheriff's

Office through our Internal Affairs Division, at a minimum, and criminally if necessary. In fact, members of the Sheriff's Office have been terminated for ethical violations and prosecuted criminally. Therefore, as the enclosed opinion sets forth, since the County is pre-empted by Florida law with regard to the investigation of law enforcement and corrections officers, the Sheriff cannot enter into an interagency agreement with the County to extend jurisdiction of the Palm Beach County Commission on Ethics and the Inspector General to the Palm Beach County Sheriff's Office.

Very truly yours,



Colonel Joe Bradshaw
Department of Legal Affairs
JAB:pac

Enclosure

cc: Sheriff Ric Bradshaw
Board of County Commissioners
Robert Weisman, County Administrator
Denise Neiman, County Attorney

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TAMPA OFFICE
324 SOUTH HYDE PARK AVENUE
HYDE PARK PLAZA, SUITE 310
TAMPA, FL 33606-4127
813-251-1710
FACSIMILE 813-252-3006

REPLY TO: TALLAHASSEE

June 15, 2011

Col. Joseph A. Bradshaw, Jr.
Palm Beach County Sheriff's Office
Post Office Box 24681
West Palm Beach, Florida 33416-4681

Re: Palm Beach County Ethics Code

Dear Col. Bradshaw:

You requested an opinion as to whether the Palm Beach County Code of Ethics, Palm Beach County Ordinance 2009-051 ("Ordinance"), which establishes the Palm Beach County Commission on Ethics ("PBCOE"), and an Inspector General who is responsible for investigating alleged violations of the Code of Ethics, could apply to the Palm Beach County Sheriff's Office ("PBSO"). In particular, you have advised that the Chair of the Board of County Commissioners has requested the Sheriff to enter into an interagency agreement with Palm Beach County ("County") to extend the jurisdiction of the PBCOE and Inspector General to the PBSO.

This issue is critically important to Florida Sheriffs. The following opinion, therefore, represents not only our legal analysis, but also the position of the Florida Sheriffs Association of which I am General Counsel.

In reviewing established case precedent, it is apparent that the Code of Ethics cannot be applied to the PBSO under any circumstances because investigations of law enforcement and corrections officers are preempted by Florida law. Furthermore, any oversight of the PBSO by the PBCOE and the Inspector General exceeds the County's authority and improperly encroaches upon the constitutional office of the Sheriff.

Finally, it should be noted that Palm Beach County Code of Ethics primarily replicates state ethics laws. Therefore, regardless of whether the Palm Beach County Code of Ethics applies, the Sheriff and members of the PBSO are subject to comparable ethical standards as set forth in Chapter 112, Florida Statutes.

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Preemption by State Law

Generally, counties within the State of Florida are authorized to legislate on any matter upon which the Florida Legislature may enact legislation or general laws. However, counties may not enact ordinances inconsistent with those general laws passed by the Florida Legislature. *Townley v. Marion County*, 343 So. 2d 1312, 1313 (Fla. 1st DCA 1977). See also Art. VIII, Section 1(f), Fla. Const. A county ordinance may not conflict with any controlling provisions of a general law and if any doubt exists, such doubt is to be resolved against the ordinance. *Campbell v. Monroe County*, 426 So. 2d 1158, 1161 (Fla. 3d DCA 1983).

The Code of Ethics, which is largely duplicative of the state ethics laws, as will be explained more thoroughly in this opinion, is administered by the PBCOE which is empowered to investigate complaints and issue subpoenas for this purpose. Specifically, the Commission is authorized to subpoena relevant witnesses and compel their attendance and testimony, as well as require by subpoena the production of documents. Palm Beach County Code, Chapter 2, Article V, § 2-260.

The Inspector General also enjoys investigatory authority. According to the Code of Ethics, the Inspector General has the authority to investigate county matters, review and audit county agencies, and prepare reports and recommendations to the Board of County Commissioners based upon the investigations. As in the case of the PBCOE, the Inspector General has the power to subpoena witnesses and require the production of records in the course of investigations. Palm Beach County Code, Chapter 2, Article XII, § 2-423.

In reviewing the Ordinance, it does not appear that it was intended to apply to the Sheriff and members of the Palm Beach County Sheriff's Office. Indeed, if the Ordinance was so constructed, it is clear that not only would investigations of members of the Sheriff's Office exceed the authority of the Commission and the Inspector General, but that the constitutionality of the Ordinance would be compromised.

Similar issues were presented to the Fifth District Court of Appeal in *Demings v. Orange County Citizens Review Board*, 15 So. 3d 604 (Fla. 5th DCA 2009), in which the court addressed the authority of a local board to review and investigate citizen complaints of excessive force and abuse of power. The Orange County Citizens Review Board, which was established by county ordinances and the Orange County Charter, initiated an independent investigation regarding a complaint of excessive use of force by a deputy sheriff. The board issued a subpoena to the deputy ordering him to appear before the board. The deputy challenged the board's authority to issue the subpoena, and the Sheriff filed a complaint for declaratory judgment, similarly contesting the board's authority to independently investigate the complaint against the deputy. *Id.* at 606-07.

The Fifth District Court of Appeal held that the review board could not compel the attendance of the Sheriff's employees to appear for questioning. The court based its decision on several factors. Initially, the court found that the legislature had preempted the investigation of complaints against law enforcement and corrections officers when it enacted the Law Enforcement Officers and Correctional Officers' Bill of Rights, sections 112.531 – 112.534, Florida Statutes. The Bill of Rights, concluded the Court "conveys a clear and definite directive that when a complaint is made against a local law enforcement officer, the employing agency is the only local governmental entity authorized to investigate the complaint." *Id.* at 608, citing § 112.533, Fla. Stat. (Emphasis added). Based upon its reading of the Bill of Rights, the court held that the investigation authorized by chapter 112 shall be the exclusive procedure for investigating complaints against local law enforcement "notwithstanding any other law or ordinance to the contrary". *Id.* at 609, quoting § 112.533(1)(a), Florida Statutes. The court also observed that section 112.533 directs any local governmental entity that receives or initiates a complaint against a local law enforcement officer to forward it to the employing agency for investigation in accordance with the Bill of Rights. *Id.*

Thus, even assuming that the Sheriff agreed to submit the PBSO to the jurisdiction of the PBCOE and the Inspector General, neither the PBCOE nor the Inspector General could investigate deputies regardless of any assurance that their investigations would comply with the Bill of Rights. In responding to an inquiry relating to the authority of a board created by a city to investigate complaints of officer misconduct, the Attorney General opined that there was no provision for the Board to utilize investigative procedures contained in the Bill of Rights or to operate as a receiving entity for complaints against law enforcement officers. *Inf. Op. Att'y Gen. to Robert Cintron, Jr., March 22, 2004; see Demings, 15 So. 3d at 609. See also Op. Att'y Gen. Fla. 2006-35 (2006) (finding that the Miami-Dade Police Department was the exclusive agency responsible for receiving and investigating complaints against officers.)*

Thus, based upon the *Demings* decision and the opinions of the Attorney General, it is clear that neither the Inspector General nor the PBCOE could investigate complaints against deputy sheriffs for violating ethics laws or misusing their official positions even if the investigatory procedures followed the Bill of Rights. The PBSO, however, would investigate ethics complaints based upon violations of agency policy. Specifically, sustained violations of the ethics laws could constitute violations of numerous general orders, including misuse of public position¹, violation of laws, policies or rules and regulations relating to the Office of the Sheriff², unlawful compensation³, and the PBSO Code of Ethics⁴. Therefore, because complaints of misconduct involving the ethics laws would be promptly addressed by PBSO investigation, county intervention is not only improper but is also unnecessary.

¹ Rules and Regulation IX (33).

² Rules and Regulation IX (53).

³ Rules and Regulation IX (54).

⁴ Rules and Regulation IX (59).

Encroachment into the Office of the Sheriff

In *Demings*, the court was also concerned with the intrusion by the county into the constitutional office of the sheriff by establishing a board with oversight authority over the Orange County Sheriff's Office. *Id.* at 609-612. The court recognized that as an independent constitutional officer, the sheriff did not derive his authority from the county charter or the board of county commissioners and was not accountable to the board for his conduct in the office or subject to the board's direction in fulfillment of his duties. *Id.* at 609. Ultimately, the sheriff was independently accountable to the electorate of Orange County. *Id.* at 610. Given this constitutional framework, the court found that the county could not interfere with the sheriff's independent exercise of his duty to investigate misconduct by his deputies by mandating his participation in the review board proceedings, either personally or through his deputies. *Id.*

No meaningful distinction can be drawn between the citizens review board in *Demings* and the PBCOE established by the Ordinance. In both cases, the county has attempted to intrude into a sheriff's constitutional office by interfering with his operation of the agency. In light of *Demings*, Sheriff Bradshaw could not confer oversight authority upon the PBCOE by interagency agreement and accede to investigations of his deputies because the county is precluded from investigating into his deputies.

In effect, the proposed interagency agreement would blur the lines between the respective constitutional offices of the county and the Sheriff, and relegate the status of PBSO members to that of county employees. For example, Section 2-446 of the Palm Beach County Code of Ethics provides that the county administrator is to establish "a mandatory [ethics] training schedule for all officials and employees" which shall include mandatory periodic follow-up sessions. (Emphasis added). All deputies and employers of the PBSO would be subject to these mandatory training provisions whether they needed it or not, as determined by the county administrator.

Pursuant to Section 125.73(1), Florida Statutes, however, the county administrator is responsible for the administration of only those departments of the county which the board has the authority to control. *See also, Alachua County v. Powers*, 351 So. 2d 32, 40 (Fla. 1st DCA 1977) (holding that county administrator's budget responsibilities extend only to departments under county commission's jurisdiction). If the Sheriff agreed to submit to the Code of Ethics, he would be conceding the County to the training of PBSO members such that they would be essentially relegated to the status of county employees⁵.

Moreover, deferring to the county as proposed by the County conflicts with established precedent defining the distinct roles of the county and the sheriff. The power of the counties to legislate is "confined to the authority to carry on county government." *Op. Att'y Gen. Fla. 84-71* (1984). With regard to the interplay between the county and a sheriff, "[t]he county

⁵ Ethics training is currently provided by the PBSO to new employees at orientation and to current employees during in-service training.

June 15, 2011

Page 5

commissioners' jurisdiction over the sheriff is limited. The sheriff is a constitutional county officer, and as a [constitutional] county officer his duties, power, and compensation must be prescribed by law." *Id.* Concerning personnel matters, the sheriff rather than the county is responsible for the "neglects and defaults of his deputies." *Evans v. Hurdcastle*, 339 So. 2d 1150 (Fla. 2d DCA 1976), citing § 30.07, Fla. Stat.; see also § 30.53, Fla. Stat.

In *Alachua County v. Powers*, 351 So. 2d 32 (Fla. 1st DCA 1977) the First District Court of Appeal was confronted with a similar instance of a county exceeding its authority at the expense of a local constitutional officer. Alachua County intended to enact a county ordinance creating a uniform pay plan for all county employees. The Alachua County clerk of court sought a declaratory judgment as to whether or not the proposed ordinance would be applicable to the clerk of the court's office. The First District Court of Appeal held that Alachua County's proposed ordinance did not apply to the several constitutional officers within Alachua County, because the Board of County Commissioners lacked the authority to control the administration of the elected independent constitutional officers and their employees. *Id.* at 43.

The Court reasoned that the clerk is a county officer pursuant to Article VIII, Section 1(d), Florida Constitution, and as an officer the clerk is delegated a portion of the sovereign power of the state. *Id.* at 42. Based on his constitutional and statutory authority, the clerk was responsible for the "efficient and effective operation of his office", which necessarily included matters relating to the deputy clerks in his office. *Id.*

Similarly, in 2002, the Florida Attorney General was asked whether "the Brevard County Commission [could] initiate independent financial and performance audits of county constitutional officers..." The Attorney General responded in the negative, stating that to successfully require the constitutional officers to abide by the Brevard County procedures concerning audits, a county would have to abolish the constitutional officers and transfer their functions to the county by charter. Op. Att'y Gen. Fla. 2002-29 (2002).

It is quite apparent, therefore, that although a county may pass ordinances applicable to "all county employees", such ordinances may not infringe on the rights and powers of the elected independent constitutional officers within the county. An interagency agreement would be a backdoor approach to circumvent the county's limitations on intruding upon the Sheriff's constitutional and statutory rights to manage his office. Accordingly, the Sheriff should decline to enter into such an agreement.

Ethics Standards under Florida Law

In comparing the Ordinance with the standards of conduct set forth in Chapter 112, Florida Statutes, it is readily apparent that the provisions of the Ordinance are primarily

redundant to the ethics laws which apply to the Sheriff and members of the PBSO⁶. Indeed, in many respects, the Ordinance mirrors section 112.313, Florida Statutes.

For example, Section 2-443(a) of the Ordinance prohibits the misuse of public office or employment by an official or employee who takes or fails to take action in a manner which he or she reasonably knows would result in a financial benefit. A similar proscription may be found in section 112.313(6), Florida Statutes which prohibits a public officer or employee from corruptly using his or her official position to secure a special privilege, benefit, or exemption for himself or herself.

Section 2-443(c) of the Ordinance prohibits contractual relationships between an official or employee and the county. Pursuant to Section 112.313(3), (7) Florida Statutes, an official or employee is similarly prohibited from doing business with his or her agency or holding conflicting employment or contractual relationships.

Section 2-443(e) of the Ordinance prohibits an official or employee from accepting travel expenses from a county contractor, vendor, service provider, or bid proposer. Section 2-444(c) also prohibits receipt of a gift because of official public action taken, to be taken or which could be taken. As previously stated, section 112.313 (2), Florida Statutes, prohibits any public officer or employee from improperly soliciting or accepting gifts upon the understanding that the action of the officer or employee would be influenced thereby. Section 112.313(4) further prohibits unauthorized compensation that is given to influence some action by the officer or employee in his or her official capacity.

Section 2-443(g) of the Ordinance prohibits an applicant for employment from making any false statement, submitting a false document, or knowingly withholding information about wrongdoing in connection with employment by his or her services to the county. In the PBSO employment application, an applicant is informed that false representations in the application could result in termination of employment.

Section 2.443(h) of the Ordinance prohibits a current or former official or employee from disclosing or using information that is unavailable to members of the general public and gained by reason of his or her official position for his or her personal benefit. Similarly, section 112.313(8), Florida Statutes, prohibits the disclosure of information not available to the public for the personal gain or benefit of an official or employee.

Section 2-444(a),(b) of the Ordinance also prohibits employees from receiving gifts of a value of \$100 or more from lobbyists. Similar provisions may be found in Section 112.313(2),(4) Florida Statutes, which, as previously stated, prohibit solicitation or acceptance of gifts with the understanding that some action of the public officer or employee would be influenced, or from

⁶ See §112.312(2) Florida Statute defining "agency" to include any political subdivision or local agency, and §112.313 relating to standards of conduct for public officers and employees of agencies.

June 15, 2011

Page 7

receiving unauthorized compensation given to influence some action by the officer or employee in his or her official capacity. Section 2-444(d) of the Ordinance tracks section 112.3148, Florida Statutes, by requiring officials who receive gifts in excess of \$100 to report these gifts.

Finally, Section 2-445 of the Ordinance, which establishes an anti-nepotism law, is comparable to Section 112.3135, Florida Statutes. Both the ordinance and the statute prohibit employment or promotion of relatives.

The standards of conduct established by the Florida Legislature that govern the actions of the Sheriff and members of the PBSO, therefore, are substantial and far-reaching. Issues of misconduct may be reported to the Florida Commission on Ethics, where they will be thoroughly investigated and resolved⁷. Similar complaints could also be investigated by the PBSO, and if criminal in nature, referred to the State Attorney's Office or the Florida Department of Law Enforcement for investigation. Therefore, there is no compelling reason for the Sheriff to enter into an interagency agreement with the County to submit to the jurisdiction of the PBCOE.

In conclusion, the Palm Beach County Code of Ethics cannot be applied to the PBSO. The Palm Beach County Code of Ethics is preempted by Florida law with regard to the investigation of law enforcement and corrections officers. Furthermore, if applied to members of the PBSO, the Ordinance encroaches upon the Sheriff's independent authority to operate his agency. Lastly, due to the comprehensive ethical standards established by the Florida Legislature in Chapter 112, Florida Statutes, an inter-agency agreement with the county is simply unnecessary.

Sincerely,



R.W. Evans

RWE/lcr

⁷ Sec §112.322, Florida Statutes

Alan Johnson S.

From: Leonard W. Berger
Sent: Tuesday, February 07, 2012 9:05 AM
To: Alan Johnson S.
Subject: FW: Interagency agreements.
Attachments: FW: Interagency Agreements

From: Leonard W. Berger
Sent: Tuesday, October 11, 2011 4:40 PM
To: Karen Marcus; Shelley Vana; Priscilla Taylor A.; Paulette Burdick P.; Jess Santamaria; Burt Aaronson; Steven Abrams
Cc: Denise Nieman; Robert Weisman
Subject: Interagency agreements.

Denise asked me to respond to the attached email which is a request from Commissioner Santamaria to review the opinion prepared on behalf of the Florida Sheriff's Association regarding Sheriff Bradshaw's ability to subject his office to the local Commission on Ethics and Inspector General's Office. The opinion asserts a couple of arguments to which I take exception, but two incontrovertible facts make any disagreement largely irrelevant. The first: the County cannot compel the Sheriff to subject his office to the County's Code of Ethics or the Inspector General Ordinance. The second: well before the Sheriff's Association opinion was generated, the Sheriff made it abundantly clear that he has no intention of agreeing to do so^[i]. Whether the Association's opinion is perfect, or perfectly wrong (it is neither), there is little doubt that my review or the review of others, like the State Attorney or Attorney General, as was suggested, will change the Sheriff's position. Given these realities, the following is a very brief overview of the Association's opinion.

The Florida Sheriff's Association opinion provides generally that state law preempts the county's ability to subject law enforcement and corrections officers to local ethics laws and that our local code is redundant to the State Code of Ethics, which already applies to the Sheriff and his officers. Both sets of laws carry similar regulations, but the local code is clearly more stringent in a number of respects. For example, the local code regulates and in some cases prohibits gifts from all entities that do business with the employee's agency. The state law has no such regulation. And while the state's gift law applies only to a very narrow category of employee, the local code covers all employees. Our local code is not redundant.

The Association's preemption argument is based largely on *Demmings v. Orange County Citizens Review Board*, 15 So.3d 604 (Fla. 5th DCA 2009), and on Law Enforcement Officers and Correctional Officers' Bill of Rights, sections 112.531-112.534, Florida Statutes. Neither authority proves conclusive. The Bill of Rights provides the exclusive procedure "for investigating a complaint against a law enforcement and correctional officer and for determining whether to proceed with disciplinary action or to file disciplinary charges, notwithstanding any other law or ordinance to the contrary."^[ii] This statute certainly preempts the field with regard to any state or local law that would attempt to establish different procedures for disciplinary proceedings against law enforcement officers, but the local code of ethics does no such thing. The code of ethics violations are brought before a civil hearing board that takes no part at all in disciplining law enforcement officers. In that regard, the local code of ethics is no different from the state code of ethics, which, as pointed out by the Association in its memo, clearly governs the Sheriff's Office. If the State's Code of Ethics does not conflict with section 112.533(1)(a), neither would our local code.

In *Demmings*, the court struck an Orange County Ordinance that established a board for hearing complaints of excessive force and abuse of power by police officers. The court struck the law because it directly conflicted with the Law Enforcement Officers Bill of Rights. Due to this conflict, the court explained that it was not necessary to analyze the preemptive effect of the state law.^[iii] The court went on to explain that it saw no reason why the county cannot comment on the sheriff's performance either through its board or an independent board or commission, making it plain that the Ordinance was struck only because of the direct conflict it had with state law^[iv]. Our Commission on Ethics does not have jurisdiction to take any action regarding a police officer's use of excessive force or abuse of power for the purpose of disciplining that officer. The Commission on Ethics enforces a Code that prevents public officials from using their public office for private gain. It does not compare at all to the ordinance at issue in *Demmings*. Finally, the *Demmings* court went on to explain generally that as an independent constitutional officer the sheriff's office ought to be free of interference from a county commissioner, but the court's brief analysis does not address a constitutional officer's legal ability to agree to participate in a county program such as this.

The Association argues that a sheriff would violate the law by agreeing to subject his office to the local Commission on Ethics and Inspector General. Whether this is true is a fair question, certainly from the Association's perspective, but I do not agree that *Demmings* or the Law Enforcement Officers Bill of Rights stand for that proposition. Even if all parties agreed today that Sheriff Bradshaw, as an independent constitutional officer, could legally volunteer his office for this program, his own decision to decline has been public for well over a year.

^[i] See, e.g., Jennifer Sorentrue, *Sheriffs Won't Take Ethics Training*, Palm Beach Post, June 22, 2010, at 1B ("Bradshaw, a member of the county's criminal justice commission, says he and his staff can't be forced to follow county ethics rules that require the training because he is an independently elected constitutional officer. Doing so, he fears, could open the door to other county mandates. . . 'If the office of the sheriff is allowed to be governed by any of these ordinances, where does it stop?' Bradshaw said earlier this month. The office abides by the state ethics code, a lawyer for the office said.").

^[ii] §112.533(1)(a), Fla. Stat. (2011).

^[iii] 15 So. 3d at 609, FN 6.

^[iv] *Id.* at 611.

PALM BEACH COUNTY

SHERIFF'S OFFICE

RIC L. BRADSHAW, SHERIFF



COLONEL JOE BRADSHAW
DEPARTMENT OF LEGAL AFFAIRS
PHONE: (561) 688-3173

FAX: (561) 688-3175

E-MAIL: bradshawj@pbso.org

April 30, 2012

Alan S. Johnson, Esq.
Executive Director
Palm Beach County Commission
On Ethics
2633 Vista Parkway
West Palm Beach, FL 33411

Sent via email and U.S. Postal Service

Re: Palm Beach County Board Appointments

Dear Mr. Johnson:

This is in response to your letter dated April 17, 2012 wherein you provided a draft Commission on Ethics (COE) Staff Analysis, which concluded that members of the Palm Beach County Sheriff's Office who are appointed by the Board of County Commissioners or municipal governing body, to serve on boards and commissions are subject to the Palm Beach County Code of Ethics. The staff analysis contends that jurisdiction over appointees derives from the revised definition of "Official" in the Code of Ethics, which now includes those who serve voluntarily on boards and commissions by appointment. The staff analysis concludes however that constitutional officers and their designees, who are not appointed to serve on boards or commissions, but rather are designated by ordinance are not within the jurisdiction of the Commission on Ethics.

Enclosed is a legal opinion written by the General Counsel to the Florida Sheriff's Association, representing all sixty-seven (67) Sheriffs in Florida, regarding the jurisdiction of the Code of Ethics as it pertains to those members of the Palm Beach County Sheriff's Office who are appointees on boards and commissions. We agree with the opinion that the distinction between a designee and an appointee "is artificial and without legal support".

As the opinion explains:

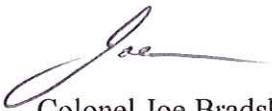
To the extent that the COE asserts jurisdiction over members of the PBSO by its definition of "Official" in the Code of Ethics, the ordinance is an ultra vires action of the Board of County Commissioners, which is null and void. For the reasons previously articulated in my opinion of June 15, 2011, any oversight of the PBSO by the COE and its Inspector General exceeds their authority and improperly encroaches upon the constitutional Office of Sheriff. The Board cannot simply remedy this matter by amending its ordinance to expand the definition of official.

The efforts of the COE to require members of the PBSO to adhere to the Code of Ethics lack statutory authorization and clearly infringe upon the Sheriff's exclusive authority to administer his agency. Any application of the Ethics Code to members of the PBSO constitutes an ultra vires action, and the ordinance is invalid to this extent.

As we have reiterated in the past, the Sheriff is acutely aware of the importance of high ethical standards for all members of the Palm Beach County Sheriff's Office. We are confident that state law and other internal policies provide the requisite level of guidance and instruction to Sheriff's Office employees. Complaints of violations of state ethics laws and our policies are investigated by the Sheriff's Office through our Internal Affairs Division, at a minimum, and criminally if necessary.

Accordingly, we agree with the opinion of the General Counsel for the Florida Sheriff's Association that members of the Palm Beach County Sheriff's Office, who are appointed by the Board of County Commissioners or municipal governing body, to serve on Palm Beach County boards and commissions, are not subject to the Palm Beach County Code of Ethics.

Very truly yours,



Colonel Joe Bradshaw
Department of Legal Affairs

JABj:tlp

Enclosure

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LAW OFFICES
ALLEN, NORTON & BLUE

PROFESSIONAL ASSOCIATION

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TALLAHASSEE, FLORIDA 32303

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421 WEST CHURCH STREET
SUITE 430
JACKSONVILLE, FL 32202
904-562-4480
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TAMPA OFFICE
324 SOUTH HYDE PARK AVENUE
HYDE PARK PLAZA, SUITE 350
TAMPA, FL 33606-4127
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FACSIMILE 813-253-2005

REPLY TO: TALLAHASSEE

<http://twitter.com/anblaw>

April 30, 2012

VIA UNITED STATES MAIL

Colonel Joseph A. Bradshaw, Jr.
Department of Legal Affairs
Palm Beach County Sheriff's Office
3228 Gun Club Road
West Palm Beach, FL 33406

Dear Col. Bradshaw:

You requested an opinion as to whether members of the Palm Beach County Sheriff's Office ("PBSO") who are appointed to serve on Palm Beach County boards and commissions are subject to the Palm Beach County Code of Ethics ("Code of Ethics")¹. The Palm Beach County Commission on Ethics ("COE"), contends that it has jurisdiction over these appointees pursuant to its revised definition of "Official" in the Code of Ethics², which includes employees of independent constitutional officers who serve voluntarily on boards and commissions by appointment by the chief executive officer of their employing agency. It is my opinion and the position of the Florida Sheriffs Association ("FSA") of which I am General Counsel, that the COE does not have jurisdiction under these circumstances.

In my opinion letter dated June 15, 2011, I previously addressed the issue as to whether the Code of Ethics³, which established the COE, applied to the PBSO. It was my opinion, and the position of the FSA, that the Code of Ethics could not be applied to the PBSO under any circumstances because Sheriff Bradshaw is an independent constitutional officer, and Florida law preempted investigations of law enforcement and corrections officers.

¹ Palm Beach County Ordinance 2011-011

² *Id.* at Article VIII, § 2-442.

³ Palm Beach County Ordinance 2009-051, repealed by Palm Beach County Ordinance 2011-011:

April 30, 2012

Page 2

The staff of the COE apparently agrees with this position and has concluded that constitutional officers and their designees who are not appointed but serve by designation according to the ordinance are not within the jurisdiction of the COE. The COE, however, has drawn a distinction between designees and appointees, contending that in the latter case, it has jurisdiction because of their appointed status. This distinction is artificial and without legal support.

It is well settled that a county cannot by ordinance confer authority that does not otherwise exist. *See State ex rel Ervin v. Mellick*, 68 So. 2d 824, 826 (Fla. 1953) (ordinance establishing term of office conflicted with city charter and held to be void); *see also Broward County v. Plantation Imports, Inc.*, 419 So. 2d 1145, 1148 (Fla. 4th DCA 1982) (ordinance authorizing consumer protection board to impose civil penalties held to be unenforceable due to lack of statutory authority). In short, if the COE did not have jurisdiction over the PBSO in the first instance, it cannot establish jurisdiction without express statutory authority.

To the extent that the COE asserts jurisdiction over members of the PBSO by its definition of "Official" in the Code of Ethics, the ordinance is an ultra vires action of the Board of County Commissioners which is null and void. For the reasons previously articulated in my opinion of June 15, 2011, any oversight of the PBSO by the COE and its Inspector General exceeds their authority and improperly encroaches upon the constitutional office of sheriff. The Board cannot simply remedy this matter by amending its ordinance to expand the definition of official.

The independence of the constitutional office of sheriff and the encroachment into this office by the Board through the Code of Ethics was explained at length in the June 15, 2011 opinion letter. A similar example of an unlawful intrusion into the operation of a constitutional office by a county occurred in *Alachua County v. Powers*, 351 So. 2d 32 (Fla. 1977), which was cited in the opinion letter. In this case, the Board of County Commissioners for Alachua County established a uniform pay plan for county employees as well as employees of county constitutional officers. The clerk of court challenged the board's authority to decide the compensation of his employees. Holding that the board exceeded its authority, the court emphasized that the clerk of court was responsible for the efficient and effective operation of his office and that the clerk's employees could not be included in the pay plan without statutory authorization. *Id.* at 42-42

The same can be said with respect to any attempt by the COE to exercise its authority over the PBSO. A sheriff's independence as a constitutional officer has been clearly established by state law. § 30.53, Fla. Stat; *see Demings v. Orange County Citizens Review Board*, 15 So. 3d 604, 610-11 (Fla. 5th DCA 2009). The efforts of the COE to require members of the PBSO to

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ALLEN, NORTON & BLUE, P.A.
PROFESSIONAL ASSOCIATION

April 30, 2012
Page 3

adhere to the Code of Ethics lack statutory authorization and clearly infringe upon the Sheriff's exclusive authority to administer his agency. Any application of the Ethics Code to members of the PBSO constitutes an ultra vires action, and the ordinance is invalid to this extent.

Sincerely,



R.W. Evans

RWE/ch

cc: Steve Casey, Executive Director of FSA



Palm Beach County Commission on Ethics

Commissioners
Manuel Farach, Chair
Robin N. Fiore, Vice Chair
Edward Rodgers
Ronald E. Harbison
Daniel T. Galo

Executive Director
Alan S. Johnson

May 1, 2012

Colonel Joseph Bradshaw
Palm Beach County Sheriff's Office
3226 Gun Club Road
West Palm Beach, FL 33406

Sent via email only

Re: Palm Beach County Board Appointments

Dear Colonel Bradshaw,

I am in receipt of your letter dated April 30, 2012 referencing an advisory opinion written by the general counsel to the Florida Sheriff's Association regarding the jurisdiction of the Palm Beach County Commission on Ethics and Code of Ethics as they pertain to those members of the Palm Beach County Sheriff's Office who are appointees to Palm Beach County boards and commissions.

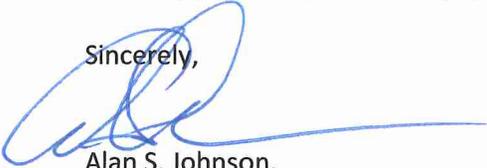
As previously indicated in my correspondence of April 17, 2012, the jurisdiction of the Commission on Ethics is derived from the appointee in his individual capacity and not through the Palm Beach County Sheriff's Office. An appointee to a board or commission serves as Mr. or Ms. and not as a Deputy. In that context, and as individual citizens of Palm Beach County, when volunteering and serving on boards and commissions, they are subject to the same rules and regulations as all other volunteer board and commission members.

Alternatively, PBSO employees can choose not to be within the jurisdiction of the Commission on Ethics in their personal and private capacities by not offering their services to the community. That would be unfortunate, and I submit, unnecessary, as rules governing the private lives of your employees in no way invokes jurisdiction over your office.

I thank you for your prompt response and as in my earlier correspondence, invite you to express your opinion and the opinion of Mr. Evans to the Commission on Ethics on May 3, 2012. For planning purposes, I expect this item will not be addressed before 2:45 p.m.

As always, should you have any questions, please feel free to contact me at 561-233-0736.

Sincerely,


Alan S. Johnson,
Executive Director
ASJ/gal

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Website: www.palmbeachcountyethics.com

PALM BEACH COUNTY
SHERIFF'S OFFICE

RIC L. BRADSHAW, SHERIFF



COLONEL JOE BRADSHAW
DEPARTMENT OF LEGAL AFFAIRS
PHONE: (561) 688-3173

FAX: (561) 688-3175

E-MAIL: bradshawj@pbso.org

May 2, 2012

Alan S. Johnson, Esq.
Executive Director
Palm Beach County Commission
On Ethics
2633 Vista Parkway
West Palm Beach, FL 33411

Sent via email only

Re: Palm Beach County Board Appointments

Dear Mr. Johnson: ^{AI}

Thank you for your letter of May 1, 2012, concerning Palm Beach County appointments and the jurisdiction of the Commission on Ethics. We cannot agree with your position that members of the Palm Beach County Sheriff's Office ("PBSO") who serve by appointment to these boards and commissions appear in their personal and private capacity. Rather, they clearly represent Sheriff Bradshaw and PBSO when they serve as board members and are not serving as private citizens of Palm Beach County.

Importantly, they are selected because of their positions and experience at PBSO. As a result of their particular expertise, they contribute in their official capacity as members of the PBSO and not as private citizens. Appointment to these boards, therefore, is not independent of their employment with PBSO. Indeed, it is precisely because of their employment that they are appointed to these boards. They serve only upon the approval of Sheriff Bradshaw and their time engaged in board activities is necessarily in their official capacity and within the course and scope of their employment with PBSO.

For these reasons, and those set forth previously, we cannot agree with your position that members of PBSO who serve by appointment are subject to the jurisdiction of the Commission on Ethics. Members of the PBSO who are appointed to these boards and commissions will continue to serve and provide their criminal justice expertise accordingly and will continue to be governed by the standards of conduct established by state law and PBSO policies and procedures.

Very truly yours,

 SIGNED IN MR. BRADSHAW'S
ABSENCE TO AVOID DELAY
Colonel Joe Bradshaw
Department of Legal Affairs



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

December 1, 2011

Bonni S. Jensen, Esquire
Perry & Jensen, LLC
400 Executive Center Drive, Suite 207
West Palm Beach, FL 33401-2922

Re: RQO 11-089
Gift Law/Retirement Boards

Dear Ms. Jensen,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion on October 6, 2011, and on November 3, 2011, and again on November 30, 2011, and rendered its opinion at a public meeting on November 30, 2011.

YOU ASKED in your letter dated September 22, 2011, whether Trustees of the Firefighter Board of Trustees, Town of Palm Beach Retirement System (FBT), who are subject to the Palm Beach County Commission on Ethics, must report "salary, benefits, services, fees, commissions, gifts or expenses associated primarily with the [Trustees] employment, business or service as an officer or director of a corporation or organization?" You also asked if a Trustee nominated or selected by the other four (4) Trustees to this retirement board, but ultimately appointed by the governing body of the Town, is subject to the jurisdiction of the Palm Beach County Commission on Ethics.

IN SUM, local officials and advisory board members who are state reporting individuals are required to report gifts quarterly, in accordance with state law, and are therefore not subject to the annual gift reporting requirements under §2-444(f)(2)b. of the Palm Beach County Code of Ethics. A state reporting individual is responsible to comply with those reporting requirements as contained within state law.

Although the FBT itself is a state created board and therefore not an advisory board as defined in the Palm Beach County Code of Ethics,¹ trustees who are appointed by the governing body of the Town of Palm Beach (the Town), are considered "officials" and subject to the code. The fact that one appointment is based on a selection by the existing Trustees does not negate the fact that the ultimate appointment is made by the governing body and the appointee is therefore subject to the Code of Ethics.²

THE FACTS as we understand them are as follows:

You are legal counsel for the Firefighters Board of Trustees (FBT), within the Town of Palm Beach Retirement System (RS). The RS was created by a Palm Beach Ordinance in accordance with Chapter 112, Florida Statutes. The FBT's authority was created pursuant to Chapter 175, Florida Statutes, and is contained within Section 82-86 of the Town Code. The FBT is comprised of five (5) members. Two (2) are chosen and appointed by the Town

¹ §2-442, RQO 11-060 (Boca Raton Police and Firefighters' Retirement System established pursuant to chapters 175 and 185 of the Florida Statutes, is not an advisory board as defined in the PBC Code of Ethics, however, appointees of the Boca Raton governing body are considered "officials.")

² RQO 11-035, RQO 11-060, id.

Council. Two (2) are employees of the Town and are elected by the members in the retirement fund. The fifth member is chosen by the other four Trustees, but is actually appointed by the Town Council, in what you refer to in your letter as, "a ministerial duty by the Town." The Town of Palm Beach (the Town) is ultimately responsible for funding the System. You also advise that it is the Town that actually appoints this fifth trustee to the Board.

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 local municipal governing bodies, or by the mayors who serve as chief executive officers... of local municipal governing bodies." While the FBT 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.

However, §2-442, defines "Official" as a member appointed by the local municipal governing body to serve on any advisory, quasi-judicial or *any other board of the county, state, or any other regional, local, municipal, or corporate entity*. The Code does not make a distinction as to whether the governing body is making such an appointment in any particular manner. The fact that one Trustee on the FBT is initially chosen as a candidate by the other four Trustees is immaterial to the manner in which that person formally becomes a Trustee on the Board when appointed by a vote of the governing body. The governing body, in particular one that is, "responsible to fund the benefits of the Plan," under state law³, can choose not to appoint a particular individual and require that another candidate be selected. Again, the relevant fact is that while the initial choice of a potential candidate is made by the other Trustees, the appointment itself is made by the governing body.

A member of the FBT, appointed by the Palm Beach Town Council, is under the jurisdiction of the COE as to all sections of the Code of Ethics applicable to officials.

Section 2-444(f)(1) states, "Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. Under this section of the Code of Ethics, members of the FBT are "state reporting individuals" and must comply with all state requirements. The COE cannot opine as to any specific reporting requirements under state law.

IN SUMMARY, regardless of who refers a candidate for FBT appointment, FBT Trustees who are appointed by the Palm Beach Council are subject to the PBC Code of Ethics and the jurisdiction of the COE as "officials." Those Trustees who are Town of Palm Beach employees are subject to the code as "employees" as well.

FBT Trustees are subject to state gift reporting requirements as listed under Chapter 112, Florida Statutes and must report as required by state law.

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

³ Pursuant to Sections 112.66 and 175.091, Florida Statutes (2011)



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

January 5, 2012

Anna Yeskey
Palm Beach County Intergovernmental Coordination Program
9835-16 Lake Worth Road, Suite 223
Lake Worth, FL 33467

Re: RQO 11-107
Jurisdiction/Officials and Advisory Boards

Dear Ms. Yeskey,

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 January 4, 2012.

YOU ASKED whether members of the Countywide Intergovernmental Coordination Program (the Program) boards are subject to the Palm Beach County Code of Ethics.

IN SUM, the Program was not created solely by the Palm Beach County Board of County Commissioners (BCC) or by a municipal governing body. Therefore, it is not an advisory board within the meaning of the Code of Ethics. However, members of the Program's three boards are officials, as defined under the Code of Ethics, if they are appointed by the BCC or one of the 38 municipal governing bodies subject to the jurisdiction of the Commission on Ethics.

THE FACTS as we understand them are as follows:

You are a part-time staff member of the Palm Beach County Intergovernmental Coordination Program (the Program). The Program was established in Palm Beach County in the fall of 1992 through the execution of two inter-local agreements as authorized by Chapter 163, Florida Statutes. The Program was established as a means of addressing inter-jurisdictional plan amendment review and countywide issues of multi-jurisdictional significance and designed as a replacement for the Palm Beach Countywide Planning Council.

The Comprehensive Plan Amendment Coordinated Review (CPACR) Inter-local agreement creates two bodies: 1) an Executive Committee consisting of representatives appointed by the League of Cities, Board of County Commissioners, the School Board, the South Florida Water Management District and the Regional Chair or the Florida Association of Special Districts and 2) an Inter-local Plan Amendment Review Committee comprised of full-time planning directors from local government participants.

The Executive Committee (EC) prepares an annual budget for the Program, oversees collection and expenditures of member fees, prepares an annual report detailing the activities and results from the

comprehensive plan amendments processed pursuant to the agreement, makes recommendations to the participants on ways to improve the coordination projects and oversees the operations of the various panels, committees and serves as a Clearinghouse created by the agreement.

The Inter-local Plan Amendment Review Committee (RC) is charged with the technical role in the comprehensive plan coordinated review process and is designed to provide planning staff notification of land use changes prior to the local government's public hearing to allow the opportunity to resolve conflicts prior to the hearing.

A second inter-local agreement establishes a Multi-Jurisdictional Issues Coordination Forum (Issues Forum) for participant governments to discuss issues of countywide significance and develop, through a consensus building process, a way to effectively identify and address these issues. Some of the issues addressed by this group include but are not limited to: affordable housing, industrial land use needs, school concurrency, a countywide water plan, aquifer storage and recovery, biosolids pelletization, hurricane shelter capacity, growth management reform, annexation, mediation, beach funding and population projects. For a municipality, the county or other entity to be a member of the Forum, they must first be a signatory to the CPACR. Each county or municipal member then appoints and designates a representative to exercise its responsibilities in the forum.

You serve as the only dedicated staff, part-time, as a contract employee of the Town of Lantana. The budget is set each year by the EC who determines the annual membership fee paid by all participant entities. In your experience as a staff member, there has only been one situation when the organization worked on a project in which outside consultants were used. In addition to the services described above, the day to day operations of the Program involve plan amendment distribution, monitoring countywide issues, and setting the agenda for quarterly meetings of these groups as well as any subcommittees that result from identified issues.

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 two inter-local agreements that form the basis for the Program create three boards, 1) Comprehensive Plan Coordinated Review Executive Committee, (EC) 2) the Interlocal Plan Amendment Review Committee (RC) and 3) the Multijurisdictional Issues Coordination Forum (Issues Forum). While the Program was entered into by local municipal governing bodies, the boards it establishes are not created independently by any one entity subject to the jurisdiction of the Commission on Ethics. As a result, the three boards created by these agreements are not advisory boards as defined by the Code of Ethics.

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.*"

First, members of the EC are appointed by the League of Cities, the BCC, the School Board, the South Florida Water Management District and the Regional Chair or the Florida Association of Special Districts. Of the appointing authorities, only the BCC is a governing body subject to the jurisdiction of the Code of

Ethics. Accordingly, only those members who are appointed by the BCC are subject to the jurisdiction of the Commission on Ethics, in their capacity as an official of the EC.

Second, members of the RC serve based upon their employment as a planning director with the county, municipality or other entity subject to the agreement. Therefore, municipal and county employees who serve on the RC are subject to the Code of Ethics as employees of their respective government entity *and* as officials if appointed by their governing bodies.

Third, once a local government or service provider has signed on to the CPACR, it may sign on to be a member of the Issues Forum. Each Forum member then designates a representative to exercise its responsibilities in the Issues Forum. Accordingly, those members appointed to the forum by the governing body of the county or municipality are considered officials as defined by the code of ethics.

Section 2-443 (a) *Misuse of office*, prohibits an official or employee from using their official position or influencing others to take or fail to take any action, that would result in a special financial benefit not shared with similarly situated members of the general public, for themselves, relatives, members of their household or dependants, their outside employer, a customer or client of their outside employer, a substantial debtor or creditor of theirs, their spouse or domestic partner or a non-profit organization of which he or she or his or her spouse or domestic partner is an officer or director.

Section 2-443(c) *Disclosure of voting conflicts*, requires a public official to abstain and not participate in any matter coming before his or her board or commission which would result in a *special financial benefit* to the persons or entities listed in the misuse of office section.

Section 2-443(b) *Corrupt misuse of official position*, prohibits an official or employee from *corruptly* using his or her office to obtain any benefit for any person or entity. *Corruptly*, means done with a wrongful intent, inconsistent with the proper performance of an official's public duties.

A number of additional code provisions apply to both employees and officials. Section 2-443(d) *Contractual relationships*, prohibits officials and employees from entering into contracts with the county or the municipal government they serve, unless one of several exceptions applies. Section 2-443(f) prohibits officials and employees from accepting travel expenses from a contractor, vendor, service provider, bidder or proposer of the county or the municipality they represent, unless they obtain a waiver from the governing body that appointed the employee or official to the board. Section 2-443(h) prohibits officials and employees from making false statements, submitting false documentation, or knowingly withholding information in an application for employment or to provide goods or services to any entity subject to jurisdiction of the code. Section 2-443(i) prohibits officials and employees from disclosing or using information not available to members of the general public for personal gain.

Application of the Gift Law §2-444

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 ... municipality.”¹ Section 2-442 defines a vendor as a person or entity who sells or leases goods or real or personal property to the government 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. However, 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 officials, officials as well as public employees are still subject to §2-444(e) in the performance of an official act or legal duty related to their status as an official or employee.

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.

IN SUMMARY, although boards created by the Program are not advisory boards as defined by the code, members appointed by the BCC or a municipal governing body are considered officials. Employees who serve as a result of their employment maintain their status as county or municipal employees and must comply with the Code of Ethics when acting in an official capacity for their government employer. 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 appointing governments. Travel reimbursement from vendors of the County or municipality, as applicable, may be accepted provided the board member obtains a waiver from his or her appointing body. Any gifts in excess of \$100, not otherwise prohibited or excluded, must be reported as required under 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

¹ §2-444(b) extends this prohibition to advisory board members, but not to officials appointed to boards that are not created by their governing body.



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

September 6, 2011

Bob Sugarman, Esquire
Sugarman & Susskind
100 Miracle Mile, Suite 300
Coral Gables, FL 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 (BRPFERS) 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 BRPFERS related seminars and conferences?

IN SUM, while the BRPFERS 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 BRPFERS Trustees are employees of Boca Raton. Their decisions impact the city budget and they are paid a city salary while engaged in BRPFERS activities during working hours. Therefore, the Commission on Ethics finds there to be sufficient nexus between a trustee's public employment and the BRPFERS 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 BRPFERS, 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 BRPFRS 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 BRPFRS 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 BRPFRS matters provides a sufficient nexus between the public employment and outside trust activity to incur limited jurisdiction over the BRPFRS 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 BRPFERS 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 BRPFERS (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 BRPFERS 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 2-244(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.” 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 BRPFERS 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 BRPFERS. 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 BRPFERS, 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.

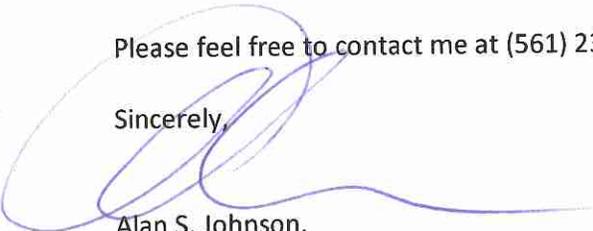
Based on the facts you have submitted, there may be vendors of the BRPFERS who are present at the conference that are not vendors of the City. Keeping in mind the misuse of office section discussed above, and the prohibition against accepting anything of value as a quid pro quo for the performance of 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 BRPFERS 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 BRPFERS 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

VIII – Processed Advisory Opinions

RQO 12-028- Tom Carney

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

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

RQO 12-031 Martha Lee

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

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



Palm Beach County Commission on Ethics

Commissioners

Manuel Farach, *Chair*
Robin N. Fiore, *Vice Chair*
Edward Rodgers
Ronald E. Harbison
Daniel T. Galo

Executive Director

Alan S. Johnson

April 11, 2012

Thomas Carney, Vice-Mayor
100 N.W. First Avenue
Delray Beach, FL 33444

Re: RQO 12-028
Charitable Solicitation

Dear Vice-Mayor Carney,

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 Thursday, April 5, 2011 whether you, as an elected official in Delray Beach, may participate in a fundraising event for the benefit of the Delray Beach Public Library Association, Inc., a 501 (c)(3) non-profit organization.

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

THE FACTS as we understand them are as follows:

Unlike most public libraries that are operated through a combination of private and public funding, the Delray Beach Public Library (DBPL) is funded solely through charitable giving and is a 501 (c)(3) non-profit organization. One of its annual fundraising events is called "Dine Out for a Cause" (the Event). The Sundry House of Delray Beach has offered to host the Event and has agreed to donate 20% of the restaurant's gross receipts collected between 6-9pm on the evening of July 26th, 2012 to the DBPL. The 20% donation will not be calculated per patron, bill or per table, but will be determined at the end of the evening by the restaurant from total gross receipts.

As the Vice-Mayor of Delray Beach, the DBPL has asked you to participate in this event as a "celebrity chef."¹ Your name and official title will be on DBPL advertising materials and on the evening of the event you will greet patrons and speak with diners over the course of the evening. Neither you nor your spouse serves on the DBPL Board of Directors.

The Sundry House is not a vendor of Delray Beach (the City), however vendors and lobbyists of the City may attend the Event. While the main fundraising vehicle for the evening will be the 20% gross receipt contribution from the

¹ RQO 12-023 (revisions to the code of ethics permit an IRS recognized charitable organization to solicit vendors and lobbyists using an elected official's name and official title on the invitation and in promotion of the event provided the solicitation complies with transparency requirements of the revised code).

Sundy House, promotional materials for the DBPL will be available that evening and library staff will be available to answer questions and accept donations. You have requested an expedited response from the COE.²

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

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*. You do not serve on the board of directors of the DBPL and therefore you are not prohibited from using your official title in the advertisement associated with the DBPL's upcoming event.³

Under the gift law provisions, §2-444(a) prohibits you from soliciting or accepting gifts worth more than \$100, annually in the aggregate, from a person or entity who you know or *should know with the exercise of reasonable care* is a vendor or lobbyist of the City. The revised Code of Ethics provides an exception to this prohibition allowing participation by officials and employees in charitable fundraising.⁴ This exception requires that you or anyone soliciting or accepting donations on your behalf maintain and submit a log of all solicitations or donations in excess of \$100 from vendors or lobbyists doing business with or lobbying the City. It should be noted that notwithstanding any other provision, you may never accept anything of value as a *quid pro quo* in exchange for an official act or the past, present or future performance of a legal duty.⁵

Again, the code requires that when a public official or employee solicits or lends their name to a solicitation by a 501(c)3 non-profit charitable organization, as defined under the Internal Revenue Code, that the official or the non-profit log all donations in excess of \$100 from vendors or lobbyists who the employee or *official knows or reasonably should know* does business with the official or employee's government. There is no bright line definition of reasonable care.⁶ Nor is there a requirement that you must undertake a particular level of scrutiny in order to determine whether a donation has been accepted from a vendor or lobbyist in relation to the solicitation by DBPL. A determination of whether or not an official or employee knows or should know of a vendor or lobbyist donation can only be made on a case by case basis, based on the facts and circumstances presented. Circumstantial evidence of knowledge is relevant; however, a violation may ultimately be sustained only by clear and convincing evidence that there was actual or constructive knowledge of the prohibited donation. As a practical matter, the Commission has previously determined that where a non-profit organization has reasonable protocols in place to capture and log otherwise prohibited gifts, an employee or official may act reasonably in reliance on these protocols.⁷

There are several fundraising scenarios that are at issue under the facts and circumstances presented by your question. First, there is the donation from the Sundy House of 20% of the proceeds from the evening's receipts. Insofar as the 20% donation from the Sundy House is from the restaurant itself and not from individual donors as the gift is not calculated per table or per receipt; the donation may be attributed to the Sundy House alone. That being said, the Commission on Ethics would recommend that in accord with the purpose and intent of the transparency provisions contained in the code of ethics, the DBLP include the following advisory on invitations to the event:

² 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.

³ RQO 11-029 (an employee or elected official who serves as an officer or director of a charitable organization may not use their official title or elected office in soliciting donations; to do so would per se constitute using their employment or elected office to specially financially benefit that charity)

⁴ Section 2-444(h), PBC Code of Ethics

⁵ Section 2-444(g), PBC Code of Ethics

⁶ RQO 11-099

⁷ RQO 11-075

If you are a vendor or lobbyist of the City of Delray Beach, please be advised that should your dining bill exceed \$500 you must notify a library staff member so that your donation may be recorded in compliance with the Palm Beach County Code of Ethics.

At the event, library staff would then record the vendor or lobbyist's donation in excess of \$100 (20% of \$500). A sample charitable solicitation log is available on the COE website.

Secondly, the DBPL does not anticipate soliciting or receiving individual donations at the event, however, patrons who are unable to attend may provide a donation in response to receiving the event invitation. Should donations attributable to individual persons and entities be accepted at the event or in advance of the event, compliance can be easily monitored by DBPL based upon a donor's written pledge or check. Library staff may inquire whether a donor is a vendor or lobbyist of Delray Beach, and if so, a donation in excess of \$100 *must* be recorded on the charitable solicitation log maintained by DBPL.

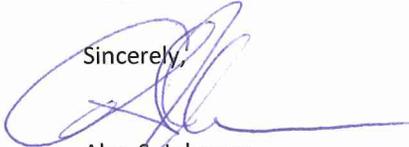
IN SUM, based on the facts you have submitted, you are not prohibited from serving as a "celebrity chef" to benefit the DBPL so long as individual gifts in excess of \$100 from vendors and lobbyists of the City are recorded as required by the Code of Ethics. A log of these gifts must be transmitted to the COE within 30 days of the event. The COE recommends that should an individual vendor or lobbyist of the City spend more than \$500 at the event, the 20% of his or her receipt representing the charitable donation should be separately logged and recorded by library staff to provide greater transparency in accordance with the purpose of the Code of Ethics.

In addition, you may never accept, directly or indirectly, a gift of any value as a *quid pro quo* or in exchange for the past, present or future performance of an official act or legal 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/mcr/gal



Palm Beach County Commission on Ethics

Commissioners

Manuel Farach, *Chair*
Robin N. Fiore, *Vice Chair*
Edward Rodgers
Ronald E. Harbison
Daniel T. Galo

Executive Director

Alan S. Johnson

April 24, 2012

Ms. Martha Lee
301 N. Olive Avenue
West Palm Beach, FL 33401

Re: RQO 12-031
Misuse of Office

Dear Ms. Lee,

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

YOU ASKED in your email dated April 19, 2012, what your obligations, as a county employee, are under the Palm Beach County Code of Ethics, in addressing a personal financial dispute between yourself, Palm Beach County Workforce Alliance and Florida Atlantic University, where your county supervisor serves on the board of directors of Workforce Alliance.

IN SUM, as a county employee you are prohibited from using your official position directly or indirectly to give yourself a special financial benefit. In addition, you may not corruptly use your official position to obtain any benefit that is inconsistent with the proper performance of your public duties, for any person. This includes a prohibition on using your official title in discussions with FAU and Workforce Alliance, influencing others to intervene and using public resources, such as county email, to negotiate a resolution.

THE FACTS as we understand them are as follows:

You are an Administrative Assistant to a County Commissioner. Over 10 years ago, you received a tuition stipend from Palm Beach County Workforce Alliance (WA) to attend Florida Atlantic University (FAU). WA offers training scholarships designed to provide marketable job skills for applicants. These scholarship dollars are provided directly to the training organization, in this case FAU. Recently, you attempted to obtain your transcript from FAU. FAU denied your transcript request and alleged that you or WA on your behalf failed to pay for your final credit. You believe that WA is responsible for payment of this credit and may in fact have already paid the fee. Accordingly, you have been working with WA and FAU to resolve the situation. Throughout this process you have used personal time and your personal email. When a member of FAU staff contacted you via your county email, you informed him that all future correspondence must be directed to your personal email. You are concerned because your supervisor serves on the board of WA and accordingly, you do not want to use your position in any way that is inconsistent with the Code of Ethics.

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

- (1) Himself or herself

As a County employee, you may not use your official position to give yourself "a special financial benefit, not shared with similarly situated members of the general public." Accordingly, when you are involved in a dispute with an organization, you may not use your official position or influence your supervisor to use their official position to remedy that dispute.

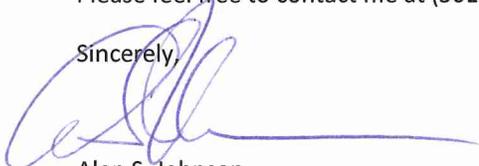
Additionally, §2-443(b), *Corrupt Misuse of Official Position*, prohibits you from using your official position, or any property or resource within your trust, to "corruptly" secure a special privilege, benefit, or exemption for yourself or others." Under the Code, the term "corruptly" means, "done with wrongful intent," and "inconsistent with the proper performance of his or her public duties." As an employee of Palm Beach County and assistant to a WA board member, you must take great care to not use your official position, and not influence your supervisor, to take or fail to take any action that will result in your receiving a special financial benefit. This may include, but is not limited to, correspondence using your official title and address, asking your supervisor to intervene in the dispute or otherwise invoking your position or the position of your supervisor in any aspect of this matter. Based on the facts you have submitted, you have taken care to separate your official position and that of your supervisor from the dispute and the COE strongly urges you to continue to keep all aspects of this matter separated from your official position.

IN SUMMARY, while the Code does not prohibit you from taking action in your personal capacity, you may not use your status as a Palm Beach County employee and Assistant to a WA board member to give yourself or influence others to give you a special financial benefit not available to similarly situated members of the public. Using or attempting to use your official position or the name of your county supervisor to influence or otherwise give yourself a special financial benefit would constitute a violation of the misuse of office 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/mcr/gal

X – Proposed Advisory Opinions

RQO 12-025- Darlene Schaukowitch

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

Staff submits the following for COE approval: a lobbyist is *any person who is employed and receives payment, or who contracts for economic consideration for the purpose of lobbying on behalf of a principal*. Lobbying is defined as *seeking to influence a decision through oral or written communication or an attempt to obtain the goodwill of an official or employee with respect to the passage, defeat or modification of any item which may foreseeably be presented for consideration to the advisory board or governing body*.

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

RQO 12-026 – Suzanne Mulvehill

A municipal elected official asked whether she may initiate a proclamation declaring May 20-26, 2012, as Small Business Week in her municipality, concurrently with the United States Business Administration’s National Small Business week. In addition to her position as City Commissioner, she holds a position as a Certified Business Analyst for the Small Business Development Center (SBDC) at Palm Beach State College (PBSC) and works with small business clients of SBDC.

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

RQO 12-027 - Suzanne Mulvehill

A municipal elected official asked whether as a City Commissioner she may meet with a vendor of the City to assist their development as a small business in the context of her outside employment as a Certified Business Analyst for the Small Business Development Center (SBDC) at Palm Beach State College (PBSC) and whether such a meeting will result in a conflict of interest should this company appear before the City Commission in the future.

Staff submits the following for COE approval: while the financial misuse of office section of the Code of Ethics prohibits an elected official from using their official position to specially financially benefit themselves, their outside business or employer or a customer or client of their outside business or employer, the code specifically excludes other government entities in the definition of outside employer. PBSC does not constitute an outside employer as defined by the code. By extension, the small business in question is a client of PBSC, a government entity. It does not qualify as a customer or client of an outside employer for purposes of financial misuse of office. Therefore, unless there is a special financial benefit to the elected official personally, or a corrupt use of an officials position for their personal benefit or the benefit of others, inconsistent with the proper performance of their office, the code does not prohibit an official from assisting the small business, a current vendor of the City, under the facts and circumstances described here.

While there may be no per se prohibited conflict of interest created under the Code of Ethics, even where the small business is a current or potential future vendor of the City, there may be an appearance of impropriety, especially if the small business vendor appears before the official in the future.

RQO 12-030 Anna Stewart

A county department manager asked whether a county department, may accept booth space at *Sunfest* donated by a local swim school, for the purpose of handing out drowning prevention literature to the public.

Staff submits the following for COE approval: an official may not use his or her official position to obtain a special financial benefit for him or herself, a spouse or domestic partner or their outside business or employer, as well as a number of additional persons or entities with whom the official has some financial or fiduciary relationship. No member of the Drowning Prevention Coalition (DPC) staff has such a relationship with Small Fish, Big Fish Swim School.

Additionally, since the donated booth space will be used on behalf of DPC, a county department, for use, "solely by the county in conducting its official business", it is not considered to be a gift under the Code of Ethics. Therefore, gift prohibitions and reporting requirements of the Code do not apply.

RQO 12-032 - Bill Orlove

A municipal elected official asked whether the Palm Beach County Code of Ethics regulates or prohibits elected officials from receiving a monthly expense allowance, established by their City Commission by resolution and contained in the City personnel policy manual, *to cover travel and expense expenditures made in the performance of their official duties*. He also asked whether a record of these expenditures should be submitted by the City Commissioners for purposes of transparency. Additionally, he asked whether he can use a portion of the expense stipend to make charitable contributions supporting non-profit organizations within the community, including a school that employs his wife.

Staff submits the following to the COE for approval: an official may not use his or her official position to obtain a special financial benefit for him or herself, a spouse or domestic partner or their outside business or employer, as well as a number of additional persons or entities with whom the official has some financial or fiduciary relationship. In addition, an official may not use their official position to obtain any benefit, for any person, if done corruptly.

A government body may transparently resolve to advance travel and other expenses to the Mayor and City Commissioners, incurred in the performance of their official duties. However, if the expense funds are used for personal benefit and not in the *performance of official duties*, such use may constitute a financial misuse of office or a corrupt misuse of office, depending upon the facts and circumstances.

Based on the facts and circumstances submitted, the City Resolution does not define *performance of official duties* or *public purpose* in relation to these stipends. Although here the elected official took it upon himself to submit an accounting of expenses, there is no such requirement in the City Resolution. In addition, funds not expended are not returned to the City, but retained by the elected officials. Under this process, officials run the risk of violating the Code of Ethics as a result of the following: first, *official duties* is undefined and may lead to circumstances which support allegations of misuse; second, there is no transparent accountability as to how these monies are spent, and; third, the retention of unspent monies would appear to be a special financial benefit to the official. While the COE cannot speculate as to facts and circumstances not presented, the process itself lacks transparency and presents an appearance, if not the risk of impropriety.

Lastly, as neither the elected official nor their spouse serves as an officer or director of a non-profit organization, use of expense funds would not violate the misuse of office section specific to those conflicts. The COE cannot opine as to whether such donations would violate City ordinance, policy or procedure. However, donations to a non-profit that employs an official's spouse may violate the prohibition against using one's official position to specially benefit the *employer or business* of their spouse.

May 4, 2012

Ms. Darlene Schaukowitch
Cotleur & Hearing
1934 Commerce Lane, Suite 1
Jupiter, FL 33458

Re: RQO 12-025
Lobbyist Registration Ordinance

Dear Ms. Schaukowitch,

The Commission on Ethics (COE) considered your request for an advisory opinion and rendered its opinion at a public meeting held on May 3, 2012.

YOU ASKED two questions in your email dated March 27th, 2012. First, whether landscape architecture firm staff members who meet with Palm Beach County staff members for the purpose asking technical questions related to a project are "lobbying" for the purpose of the lobbyist registration ordinance. Second, when the Vice President of your organization is a registered lobbyist for a principal and he attends a meeting as a lobbyist, and is assisted by several staff members including engineers, for the purpose of assisting him or answering technical questions, must accompanying staff members or traffic engineers also register as lobbyists.

IN SUM, a lobbyist is *any person who is employed and receives payment, or who contracts for economic consideration for the purpose of lobbying on behalf of a principal*. Lobbying is defined as *seeking to influence a decision through oral or written communication or an attempt to obtain the goodwill of an official or employee with respect to the passage, defeat or modification of any item which may foreseeably be presented for consideration to the advisory board or governing body*.

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

The FACTS as we understand them are as follows:

Cotleur and Hearing (CH) provide professional services in landscape architecture, residential landscape design, land planning and environmental consulting. Don Hearing, vice-president of CH, is a registered lobbyist for Palm Beach County. While Mr. Hearing is a lobbyist, members of CH staff are planners, landscape architects, environmental consultants and are engaged in property maintenance and management. Staff members are assigned to work on particular projects based upon their professional expertise. Meanwhile, Mr. Hearing may be lobbying the county in conjunction with these projects. You are seeking clarification as to whether, when Mr. Hearing meets with county staff for the purpose of lobbying, CH staff who attend the meeting in order to answer technical questions are required to register as lobbyists. Up and until this point the CH general staff member would have worked on the

project in his professional capacity and without contact with public employees or officials. Similarly, should CH's client hire another professional, such as a traffic engineer to meet with staff or elected officials alongside Mr. Hearing, would the traffic engineer be considered a lobbyist and required to register under the code of ethics.

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

Section 2-353 of the lobbyist registration ordinance requires all lobbyists, prior to lobbying, to register by electronic submission via the "Central Lobbyist Registration Site" or by paper submission. Whether or not a person appearing before a public official or employee must register as a lobbyist depends upon whether they are a lobbyist as defined by the ordinance. Section 2-352 contains the definitions of lobbyist and lobbying.

Lobbying shall mean seeking to influence a decision through oral or written communication or an attempt to obtain the goodwill of any county commissioner, any member of a local municipal governing body, any mayor or chief executive officer that is not a member of a local municipal governing body, any advisory board member, or any employee with respect to the passage defeat or modification of any item which may foreseeably be presented for consideration to the advisory board, the board of county commissioners, or the local municipal governing body lobbied as applicable.

Lobbyist shall 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 shall include an employee whose principal responsibility to the employer is overseeing the employer's various relationships with the government or representing the employer in its contacts with government.

If a member of CH staff, who does not otherwise lobby the county, meets with county staff for the purpose of gathering information for a project, asking technical questions only and not providing information to county staff other than what is needed to meet technical requirements for required approvals, under these facts a CH staff member is not engaged in lobbying and is not required to register as a lobbyist. Lobbying is defined as seeking to influence a decision of a public employee or official on an issue which foreseeably will come before a board or commission for advice or approval. When information flows from county staff to a CH employee developing a project, the exchange of information is one sided. Input is provided by county staff, not by CH staff. Accordingly, a CH employee cannot be described as "seeking to influence" county staff in this exchange and is not engaged in lobbying. However, once there is an exchange or negotiation as to the manner, substance or interpretation of a matter, technical or otherwise, the exchange ceases to be merely an extraction of information. Such an interchange inherently involves input on the part of the CH staffer, and that constitutes lobbying under the code.

The exclusionary language contained within the definition of lobbyist, limiting the scope of the definition to employees *whose principal responsibility to the employer is overseeing the employer's relationships with government*, applies to lobbying by an employee directly on behalf of their employer and not under these facts where their employer, CH, is retained by an outside principal for the purpose of lobbying.

Whether or not a member of CH staff or a contracted professional who accompanies a CH registered lobbyist to a meeting with a public employee or elected official must register as a lobbyist involves the

same analysis. A lobbyist is a person who receives compensation for the purpose of lobbying on behalf of a principal.

Therefore, under the facts and circumstances you describe, if a staff member of your firm accompanies Mr. Hearing and performs a purely ministerial function such as the taking of notes, he or she is not engaging in lobbying. Likewise, if a traffic engineer or landscape designer is present to assist Mr. Hearing in his presentation, but does not otherwise engage directly in the negotiation or other lobbying activity that Mr. Hearing performs, they too would not be participating in lobbying activity. Akin to the analysis whereby professionals meet directly with staff to establish criteria, submit required information, or otherwise comply with established process, where their presence is only to extract relevant information or assist Mr. Hearing with information relevant to his ability to communicate with the public employee or official, and they do not attempt to influence a decision, they are not engaged in lobbying. Once your staff member engages in the process of influencing a public decision by participating in a negotiation or other exchange, they are lobbying on behalf of CH's principal and must therefore be registered as required by the code.

IN SUMMARY, based on the information you provided, CH staff who are not engaged in lobbying activities and merely seek to extract information may meet with county staff in order to obtain that information without registering as a lobbyist. Any attempt to engage in negotiation, or otherwise influence the process will likely change the relationship to one of lobbying and will require registration. The same analysis applies to professional staff, including contracted engineering professionals, who accompany a registered lobbyist, where they directly participate in seeking to influence a decision.

This opinion construes the Palm Beach County Code of Ethics and Lobbyist Registration 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/mcr/gal

May 4, 2012

Suzanne Mulvehill, Commissioner
City of Lake Worth
7 North Dixie Highway
Lake Worth, FL 33460-3787

Re: RQO 12-026

Dear Commissioner Mulvehill,

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 May 3, 2012.

YOU ASKED in your submission dated March 30, 2012, whether you may initiate a proclamation declaring May 20-26, 2012, as Small Business Week in the City of Lake Worth (the City) concurrently with the United States Business Administration's National Small Business week. In addition to your position as City Commissioner, you hold a position as a Certified Business Analyst for the Small Business Development Center (SBDC) at Palm Beach State College (PBSC).

IN SUM, the Code of Ethics does not prohibit you from initiating a general proclamation declaring May 20-26, 2012, as Small Business Week, notwithstanding your employment position with PBSC, provided that your actions do not specially financially benefit you, in a manner not shared with similarly situated members of the general public, or result in a *quid pro quo* benefit in exchange for a public action.

THE FACTS as we understand them are as follows:

You are a Commissioner of the City of Lake Worth (the City). Currently you have a position as a Small Business Development Consultant at Palm Beach State College (PBSC). Previously, the Commission on Ethics (COE) issued an opinion on your ability to be employed by PBSC and serve as City Commissioner.¹

The facts surrounding your employment are unchanged from that prior issued opinion.

Palm Beach State College is the host institution for the Small Business Development Center (SBDC), a governmental entity funded in part through a cooperative agreement with the U.S. Small Business Administration. The SBDC provides free counseling, advice and seminars to small business owners throughout the region. The SBDC at PBSC sets and provides your salary. Your position entails, among other things, providing one-on-one counseling to small or medium size enterprises (SME), contacting SME's in the region and recruiting SME's for the SBDC's growth acceleration program, and attending business events on behalf of the SBDC. From time to time, businesses that operate in the City may come to the SBDC to request your advice and businesses that you have counseled may appear before you as a member of the City Commission.

You would like to have the City join in the U.S. Small Business Administration's National Small Business Week, being held May 20-26, 2012, by initiating a City proclamation. You have requested such a proclamation in the past as a City Commissioner in 2009, prior to your employment with PBSC.

¹ RQO 11-031 OE

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

An analysis of the misuse of office sections of the Code of Ethics as well as relevant definitions of *outside employer* and *customer or client* as it pertains to your circumstances may be found in RQO 11-031 OE, and a companion proposed opinion set before this commission.² So long as you do not specially benefit yourself, in a manner not shared with similarly situated members of the general public³, or otherwise use your position with wrongful intent, in a manner inconsistent with the proper performance of your duties as City Commissioner, there is not a conflict under the code. The general proclamation affects all small businesses equally; both businesses that you may counsel and those that you do not counsel, and thereby does not specially financially benefit any particular enterprise. In addition, for reasons discussed in the aforementioned opinions, PBSC, a government entity, is not considered an outside employer as defined by the code. Therefore, §2-443(a), financial misuse of office, would not apply unless you obtained a special financial benefit for yourself as a result of an official action. Lastly, because the proclamation is general and not targeted, issues of impropriety as discussed in RQO 12-027 are eliminated.

IN SUMMARY, based on the facts and circumstances you submitted, you are not prohibited from sponsoring a general proclamation declaring May 20-26, 2012, as Small Business Week in the City concurrently with the United States Business Administration's National Small Business week, provided that your official action does not specially financially benefit you personally and you do not otherwise obtain a *quid pro quo* benefit in exchange for your actions.

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 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/gal

² RQO 12-027

³ §2-443(a)(1), §2-443(b)

May 4, 2012

Commissioner Suzanne Mulvehill,
City of Lake Worth
7 North Dixie Highway
Lake Worth, FL 33460-3787

Re: RQO 12-027
Conflict of Interest

Dear Commissioner Mulvehill,

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 May 3, 2012.

YOU ASKED in your email submission dated March 30, 2012, whether as a Commissioner of the City of Lake Worth (the City), you can meet with a vendor of the City to assist their development as a small business in the context of your position as a Certified Business Analyst for the Small Business Development Center (SBDC) at Palm Beach State College (PBSC) and whether such a meeting will result in a conflict of interest should this company appear before the City Commission in the future.

IN SUM, while the financial misuse of office section of the Code of Ethics prohibits you from using your official position to specially financially benefit yourself, your outside business or employer or a customer or client of your outside business or employer, the code specifically excludes other government entities in the definition of outside employer. PBSC does not constitute an outside employer as defined by the code. By extension, the small business in question is a client of PBSC, a government entity. It does not qualify as a customer or client of your outside employer for purposes of financial misuse of office. Therefore, unless there is a special financial benefit to you personally, or a corrupt use of your position for your personal benefit or the benefit of others, inconsistent with the proper performance of your office, the code does not prohibit you from assisting the small business, a current vendor of the City.

While there may be no per se prohibited conflict of interest created under the Code of Ethics, even where the small business is a current or potential future vendor of the City, there may be an appearance of impropriety, especially if the small business vendor appears before you in the future.

THE FACTS as we understand them are as follows:

You are a Commissioner of the City of Lake Worth (the City). Currently you have a position as a Small Business Development Consultant at Palm Beach State College (PBSC). Previously, the Commission on Ethics (COE) issued an opinion on your ability to be employed by PBSC and serve as City Commissioner.¹ The facts, unchanged from the initial opinion, are as follows:

Palm Beach State College is the host institution for the Small Business Development Center (SBDC), a governmental entity funded in part through a cooperative agreement with the U.S. Small Business Administration. The SBDC provides free counseling, advice and seminars to small business owners throughout the region. The SBDC at PBSC sets and provides your salary. Your position entails, among other things, providing one-on-one counseling to small or medium size enterprises (SME), contacting SME's in the region and recruiting SME's for the SBDC's growth acceleration program, and attending business events on

¹ RQO 11-031 OE

behalf of the SBDC. From time to time, businesses that operate in the City may come to the SBDC to request your advice and businesses that you have counseled may appear before you as a member of the City of Lake Worth Commission. Lake Worth employs a sealed, competitive bid process, at the completion of which staff presents the top five bids to the Commission including the low bid. The City Commission has discretion to select from among those bids.

Currently, you are working on behalf of SBDC with business owners in Boca Raton, Jupiter and North Lauderdale. You were referred to assist a street sweeping company. The owner/manager of this company advised that it had a current contract with the City. You were not aware of this contract and do not recall if you had previously voted on the contract or whether it pre-dated your position on the Commission. You have an appointment scheduled to counsel this company on their business growth. Your meeting is in the context of your SBDC position to provide one-on-one counseling to small and medium size enterprises (SME). This is a free service to the company through the PBSC program.

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

The code defines *outside employer* in sec. 2-442

Outside employer or business includes:

Any entity, other than the county, the state, or any other federal regional, local, or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced. (emphasis added)

The definition of *outside employer or business*, specifically excludes "county, state, or any other federal regional, local or municipal government entity." The Palm Beach County Commission on Ethics has previously addressed whether a state college or university is a government entity under the code.² §1001.60, Florida Statutes, establishes the Florida College system. As one of 28 public colleges in the State of Florida, PBSC is, therefore, considered a governmental entity. As a result, you are not prohibited from accepting employment with PBSC even though PBSC maintains contracts with Lake Worth.

The SME that you will be assisting is a vendor of the City and may appear before the City for future contracts for services.

The following sections of the code address that potential conflict.

- (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) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
 - (5) A customer or client of the official or employee's outside employer or business;

² RQO 10-028-OE, RQO 10-037-OE, RQO 11-026

This Commission has previously opined on the issue of whether your relationship with PBSC and its clients presents a financial misuse of office.

Neither the PBSC, nor SBDC clients fall under the prohibitions of the misuse of public position section of the code as an outside business, employer or customer or client. Not only is your employer a government entity and thus exempt from the definition of *outside employer*, but the services of SBDC are free to the public. Therefore, the businesses you contact or advise on behalf of the SBDC are not *customers* or *clients* as defined by the code of ethics. Notwithstanding these exemptions, you may not use your official position to gain a special financial benefit for yourself.³

Section 2-443(b) prohibits corrupt use of office. The prohibition extends to any benefit for yourself or anyone else and requires a wrongful intent that is inconsistent with the proper performance of your official duties and obligations to the City. Therefore, you may not use your official position to corruptly give a benefit to the SME or obtain a benefit for yourself as a *quid pro quo* in exchange for an official act.

The Commission on Ethics normally would not opine as to whether, in order to prevent the appearance of impropriety, you should either refrain from counseling the SME vendor of the City, or in the alternative, abstain and not participate in any future issues that may come before the City Commission involving the counseled company. While the relationship may not constitute a prohibited conflict under the Code of Ethics, it does create a strong appearance of impropriety.⁴ This is especially true if the official acts are of a discretionary nature.⁵

IN SUMMARY, you are not prohibited from counseling an SME vendor of the City in your capacity as growth acceleration program consultant with the Small Business Development Center at Palm Beach State College provided you do not use your official position to corruptly benefit yourself or the SME or otherwise use your official position to financially benefit yourself.

However, the COE is of the opinion that counseling the SME may result in an appearance of impropriety if you participate or vote on an issue should the company appear before the City Commission in the future.

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 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/gal

³ RQO 11-031 OE

⁴ §2-441 Title; statement of purpose (“...Officials...shall act and conduct themselves so as not to give occasion for distrust of their impartiality”), Art. V, Division 8, §2-260.9. Advisory opinion. (“...to establish a standard of public duty, if any), Section 2.8(f), COE Rules of Procedure (“If deemed appropriate by the COE, additional comment regarding ethics, appearance of impropriety or similar advice to the requesting party based upon the factual scenario as presented.”)

⁵ RQO 11-037 (Building official reviewing work approved by his sibling’s company as private resident inspector)

May 4, 2012

Anna Stewart
Drowning Prevention Coalition of Palm Beach County
405 Pike Road
West Palm Beach, FL 33411

Re: RQO 12-030
Gift Law Exclusions

Dear Ms. Stewart,

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 May 3, 2012.

YOU ASKED in your e-mail of April 18, 2012, whether the Drowning Prevention Coalition of Palm Beach County (DPC), a county governmental entity, may accept booth space donated by a local swim school, at a public event. The DPC purpose in sharing the booth space is to distribute drowning prevention literature and otherwise inform the public about this issue.

IN SUM, an official may not use his or her official position to obtain a special financial benefit for him or herself, a spouse or domestic partner or their outside business or employer, as well as a number of additional persons or entities with whom the official has some financial or fiduciary relationship. No member of your staff has such a relationship with Small Fish, Big Fish Swim School (SFBF), which is the local swimming school that is donating the booth space.

Additionally, since the donated booth space will be used on behalf of DPC, a county department, for use solely by the county in conducting its official business, the donation is not considered a gift under the Code of Ethics. Therefore, the gift prohibitions and reporting requirements of the Code do not apply.

THE FACTS as we understand them are as follows:

You are the Manager of the Drowning Prevention Coalition of Palm Beach County (DPC). The DPC is funded in part by Palm Beach County and The Children's Services Council of Palm Beach County, a non-profit organization. Notwithstanding the funding source, DPC is an entity of Palm Beach County government within the Palm Beach County Fire Rescue Department.¹

Small Fish, Big Fish Swim School (SFBF) is a for-profit company located in West Palm Beach and provides swimming lessons for students of all ages. SFBF has offered to share its booth space with DPC at Sunfest, a waterfront music and art festival held annually in downtown West Palm Beach. SFBF is not a vendor or lobbyist of the county, nor is SFBF an outside employer or business of anyone on the DPC staff. While DPC provides information to the public about swimming lessons, it does not list or endorse SFBF on its county website. DPC would like to bring its own water safety and drowning prevention literature to disseminate at Sunfest.

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

Section 2-443(a) prohibits employees from using their official position or office in a manner which they know 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 themselves, a relative, spouse or domestic partner or their outside

¹ RQO 10-040

business or employer, or other persons or entities with whom they may have a financial or fiduciary relationship. No member of DPC staff or their spouse, relative or household members work for or are owners of SFBF, or otherwise have the type of economic or fiduciary relationship with SFBF prohibited by the Code of Ethics, thus section 2-443(a) is not implicated.

The COE cannot opine as to any potential benefit that may flow to a private entity appearing in common with a government department at an event unless the facts and circumstances indicate a potential violation of the Code of Ethics. Where there is no financial or fiduciary conflict or a corrupt misuse of office, the Code does not prohibit such public/private appearances.

Sec. 2-444(g) – For the purposes of this section, “gift” shall refer to the transfer of anything of value...

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

- e. Gifts solicited by county employees on behalf of the county in performance of their official duties for use solely by the county in conducting official business.

Since the donation of the booth space is accepted by DPC on behalf of the county for use solely by the county for county purposes, the donation is not a gift as defined by the Code of Ethics. Any gift received in conjunction with this event *not used exclusively for county purposes* would be considered a gift and subject to the prohibitions and reporting requirements within the Code.

IN SUMMARY, the Code of Ethics does not prohibit you from accepting the donation of booth space from SFBF so long as you are doing so on behalf of the county in your official capacity and solely for a county 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/mcr/gal

May 4, 2012

Bill Orlove, District 1 Commissioner
City of Boynton Beach
100 East Boynton Beach Blvd.
Boynton Beach, FL 33425

Re: RQO 12-032
Misuse of Office/Expense Accounts

Dear Commissioner Orlove,

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 May 3, 2012.

YOU ASKED in your e-mail submission on April 19, 2012, whether the Palm Beach County Code of Ethics regulates or prohibits you, as an elected official of the City of Boynton Beach (the City), in receiving a monthly expense allowance, established by the City Commission by resolution and contained in the City personnel policy manual, *to cover travel and expense expenditures made in the performance of their official duties*. You also asked whether a record of these expenditures should be submitted by the City Commissioners for purposes of transparency.

Additionally, you asked whether you can use a portion of the expense stipend to make charitable contributions supporting non-profit organizations within the community, including a school that employs your wife.

IN SUM, an official may not use his or her official position to obtain a special financial benefit for him or herself, a spouse or domestic partner or their outside business or employer, as well as a number of additional persons or entities with whom the official has some financial or fiduciary relationship. In addition, an official may not use their official position to obtain any benefit, for any person, if done corruptly.

A government body may transparently resolve to advance travel and other expenses to the Mayor and City Commissioners, incurred in the performance of their official duties. However, if the expense funds are used for personal benefit and not in the *performance of official duties*, such use may constitute a financial misuse of office or a corrupt misuse of office, depending upon the facts and circumstances.

Based on the facts and circumstances you submitted, the City Resolution does not define *performance of official duties* or *public purpose* in relation to these stipends. Although you have taken it upon yourself to submit an accounting of expenses, there is no such requirement in the City Resolution. In addition, funds not expended are not returned to the City, but retained by the elected officials. Under this process, officials run the risk of violating the Code of Ethics as a result of the following: first, *official duties* is undefined and may lead to circumstances which support allegations of misuse; second, there is no transparent accountability as to how these monies are spent, and; third, the retention of unspent monies would appear to be a special financial benefit to the official. While the COE cannot speculate as to facts and circumstances not presented, the process itself lacks transparency and presents an appearance, if not the risk of impropriety.

Lastly, as neither you nor your spouse are officers or directors of a non-profit organization, use of expense funds would not violate the misuse of office section specific to those conflicts. The COE cannot opine as to whether such donations would violate City ordinance, policy or procedure. However, donations to a non-

profit that employs your spouse may violate the prohibition against using your official position to specially benefit the *employer or business* of your spouse.

THE FACTS as we understand them are as follows:

You are an elected City Commissioner of the City of Boynton Beach (the City). In 2002 the City Commission authorized by resolution that *the Mayor and City Commission each receive a monthly allocation to cover expenses incurred in the performance of their official duties.*¹ The City Resolution is not limited to travel and related expenses. While, the allowance is further codified under the City Personnel Policy Manual,² the policy reference is contained within the *Travel Reimbursement* section of the manual. The resolution allowance is an allocation and not a reimbursement of travel and related expenses as authorized by State Statute.³

Neither the resolution nor the City policy requires that these expenses be reported. The bi-weekly gross amount allocated to your expense account is \$203 which comes to \$5278 annually. There is no mechanism for monies not expended under this resolution to be returned. Each Commissioner receives approximately \$1000 per month gross salary in addition to the expense allowance.

According to the information you provided, the expense allowance is taxable income. According to IRS guidelines, when expense allowances are advanced to recipients and there is no accountability to the employer or they are expended on otherwise non-deductible items under the IRS code, they are considered disbursed under a "non accountable plan" and the income is treated as taxable to the recipient.

As interpreted by the City, at their option, City Commission members can use their expense allowance to meet some of these expenses or other expenses incurred in the performance of their official duties as authorized by City Resolution No. 02-097. However, as noted above, reporting of the use of expense allowance for this purpose is not required. Your staff researched if other Florida public agencies had an advance expense allowance and how they handle expenses of elected officials. Only five cities responded and none had a monthly expense allowance similar to the City. All five cities reimburse travel and related expenses on a per diem basis in accordance with §112.061, Florida Statutes, which is similar to how the City deals with its staff employees.

In the interest of transparency you personally file a monthly report with the City Clerk showing how your expense account is used. To your knowledge, you are the only elected official in the City to do so. As previously indicated, there is no ordinance or policy requirement to file such a report.

It is your understanding that the expense account can be used for any activity that involves you in your official capacity as an elected official. There are no specific guidelines in either Resolution 02-097 or the City Personnel Policy Manual as to what constitutes *official duty* or a *public purpose*. You understand a *public purpose* to mean meals purchased when meeting with city staff, registered lobbyists, other elected officials or a constituent to discuss City business or issues. In addition, from time to time you may use the account by making donations in support of non-profit organizations in your community. Neither you nor your spouse is a director or officer of these non-profit organizations, however, you have donated a portion of this stipend to your wife's school, located in the City, to provide books for students and assist children who want to attend the safety patrol trip to Washington, DC. You have been advised

¹ City of Boynton Beach Resolution No. 02-097

² B. Expense Allowance for Public Officials:

1) Public Official shall receive, in lieu of reimbursements, a monthly expense allocation to cover travel and expense expenditures. The amount of expense allocation shall be established, and may be amended, by resolution of the City Commission.

³ §112.061, Florida Statutes, authorizes reimbursement of per diem and travel expenses of public officers

by the City Attorney that your practice is permitted under the city's ordinance and personnel policy manual.

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

Section 2-443(a) prohibits you from using your official position or office in a manner which you know 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 yourself, a relative, spouse or domestic partner or their outside business or employer, and a number of other persons or entities with whom you may have a financial or fiduciary relationship. Likewise, section 2-443(c) prohibits participating and voting on an issue where such a conflict exists.

Activities related to your official position may be broadly interpreted, and decisions by governing bodies, where there is transparency and public input, will rarely be disturbed. For example, the City Commission can vote on a resolution to provide a salary to the Mayor and Commissioners.⁴ However, section 2-443(b), *corrupt misuse of office*, would apply to a situation where an official or governing body uses their official position to *corruptly secure or attempt to secure a special privilege, benefit or exemption* for themselves or any other person. Corruptly means done with a wrongful intent and for the purpose of obtaining any benefit which is inconsistent with the proper performance of their official duty.⁵ Absent a factual scenario that would support such a corrupt intent, City officials are permitted to transparently make such salary and expense decisions without violating the financial misuse section of the code.

A problem occurs when there is no guidance as to what constitutes an *official duty* or a *public purpose*. Under the facts and circumstances you have submitted, interpretation is left entirely up to the individual elected official. While you have asked the City Attorney for some guidance as to what is permitted under the code, there is little or no transparency required in how these expenses are actually being used. To your credit, you submitted an accounting of these expenditures. However, there is no official requirement that these expenditures be submitted and in most cases, no accounting is made.

Additionally, there is no requirement that unused funds be returned. Such a practice may violate the Code of Ethics if unspent funds result in a special financial benefit to the official.⁶

This Commission has processed a number of advisory opinions involving an interpretation of what constitutes a public purpose in the context of travel expense reimbursement and the gift law.⁷ Regarding public employees, the determination of a public purpose involves supervisory oversight.⁸ In determining the existence of a public purpose in the context of an elected official, only the electorate or the governmental body as a whole can perform such an oversight function. Under these facts and circumstances, without more specific guidance in the City Resolution and a transparent accounting, there is no effective oversight as to these expenditures. In fact, the City Personnel Policy Manual only refers to reimbursement of travel expenses and is not applicable to these upfront expense accounts.

As previously stated, the City Commission has the power to increase the salary of the Mayor and Commissioners through a transparent legislative process. Although treated as income by the IRS, an

⁴ Such an ordinance is already in place in the City. City of Boynton Beach Ordinance No. 03-037

⁵ In Bell, California, public elected officials allegedly appropriated \$5.5 million dollars in salary and benefits for themselves and high ranking city staff, including six-figure salaries for city council members.

⁶ §2-443(a) *Misuse of public office or employment*

⁷ §2-443(f) Accepting travel expenses, §2-444(g)(1)h. (attendance at educational seminars and conferences for governmental purposes),

⁸ RQO 12-011, RQO 12-013, RQO 12-014

ordinance providing upfront expense stipends for official duties or public purposes must allow the public to participate in an equally transparent process, whereby the definition of these terms is specified. Likewise, without an accounting, the public has neither knowledge nor input as to these expenditures. Had this been a reimbursement for actual expenses, as defined within City policy and procedure, the appearance or risk of impropriety would be significantly lessened.

IN SUMMARY, while an elected body has great discretion as to how public monies are spent, and similar discretion in determining the public purpose of expenditures arrived at through a transparent legislative process, the individual actions of an official are subject to Code of Ethics scrutiny. Unlike a salary, an expenditure stipend designated for the performance of official duties is regulated as to use. Where a process is in place that provides upfront stipends for expenditures for official duties but fails to specify the nature of those official duties, there is a risk that an interpretation by an official is not in compliance with the Code of Ethics. Likewise, where there is no requirement to account for these expenditures, there is no transparency or accountability built within the process. This is compounded by the fact that unspent expenditure stipends are not required to be returned. Retaining these funds for personal use would appear to constitute a special financial benefit to the official, and potentially be a violation of the misuse section of the Code of Ethics.

Lastly, the prohibition against using your official position to specially financially benefit a non-profit organization is not violated, provided you (or your spouse) are not an officer or director of the recipient organization. The COE cannot opine as to whether or not use of these funds for such a purpose is permissible under your City Resolution. However, the Code of Ethics prohibits you from using your official position to specially financially benefit your spouse's employer.

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 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson
Executive Director

XI – Expedited Advisory Opinions

RQO 12-039 Tom Carney

Staff Analysis:

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

Staff Recommendation:

In RQO 11-067, the Commission addressed the questions of 1) whether a member of a municipal Community Appearance Board may present client projects to other City boards, such as the City Council or Planning and Zoning boards and 2) up to what point may a board member work with board staff on a client's project. The Commission reasoned that a municipal advisory board member was not prohibited from presenting before other municipal advisory boards, however once the matter came before his specific board the member was prohibited from participating in the proposal from that time on with his board staff. The member was not prohibited from continuing to work with, in his professional capacity alone, with non-board staff or from presenting before other City advisory boards.

Accordingly, it is staffs' recommendation that an elected official is not prohibited from appearing before City advisory boards in his professional capacity as an attorney. That being said, were he to use his official position in *any way* to give a special financial benefit to himself, outside business or customer or client such action would trigger the misuse of office prohibitions. Similarly, were he to use his elected office to corruptly benefit an advisory board member in exchange for securing support for his client's project he would be in violation of §2-443(b) corrupt misuse of official position. The elected official is subject to §2-443(c), voting conflicts, should any aspect of this project come before his City Commission.

May 1, 2012

Thomas Carney, Vice Mayor
100 N.W. First Avenue
Delray Beach, FL 33444

Re: RQO 12-039
Voting Conflicts

Dear Vice Mayor Carney,

Your request for an expedited advisory opinion pursuant to Commission on Ethics Rule of Procedure 2.6 was received and set for review at the next scheduled meeting of the Palm Beach County Commission on Ethics (COE). The issue was considered and the COE rendered its opinion at a public meeting held on May 3, 2012.

YOU ASKED in your email of May 1, 2012, whether you, as an elected official of the City of Delray Beach (the City), may represent a customer or client of your firm in front of the Delray Historic Preservation Board so long as you abstain from voting and do not participate in any part of the decision-making process when the matter eventually reaches the City Commission.

IN SUM, as an elected official you are prohibited from using your official position to give yourself, your outside business, or a customer or client of your outside business a *special financial benefit* not shared with similarly situated members of the general public. Voting on a client's proposal or related issues pending before the City Commission, participating in conversations, or attempting to influence your fellow commissioners, city staff or advisory board members in your official capacity constitutes a misuse of office. The prohibition extends to you or someone using your official position on your behalf.

An appearance before a City advisory board is not prohibited provided that you do not use your official position in any manner to obtain a special financial benefit for yourself or your client. This includes interaction with City staff as well as advisory board members.

THE FACTS as we understand them are as follows:

You are a Commissioner and current Vice Mayor of the City of Delray Beach (the City). In addition, you are a practicing attorney, specializing in corporate, land use and real estate transactions.

The City has created a number of boards to deal with various development applications. These include, among others, Planning & Zoning, Site Plan Review, and the Historic Preservation Board (HPB). The HPB is charged with reviewing all development, improvement, and redevelopment applications within a designated historic district and has seven members.

According to the City Charter and in practice, the various City boards are completely independent of the City Commission in their deliberations and approvals. However, the City Commission does appoint volunteer members to these boards. Appointments to advisory boards are based upon a rotation of City Commissioners as vacancies become available. Once a Commissioner has nominated a person to fill a board vacancy, the nomination is voted on by the entire Commission. Last year, you appointed a member of the public to the HPB. You made this appointment based upon a list of persons interested in

serving provided to you by the City Clerk. You do not have a personal relationship with your current appointee to the HPB, nor have you developed such a relationship with any member of the HPB. The other six members were nominated by other City Commissioners. In addition, the City Commission has no operational control over City advisory boards, their decisions or findings.

You have a client who is in the process of preparing an application to develop a vacant piece of land within the historic district. In this regard, the new building will be reviewed by the HPB for compliance with the various zoning requirements and historic requirements, as well as the "compatibility" to the surrounding buildings/structures.

As a land use attorney, your typical representation includes, in addition to assisting with the application and variance waiver support letters, appearing together with the applicant at the time the presentation is made to a particular Board, and in most cases, participating in the presentation as it relates to the justifications submitted for the variances.

The proposed design will require a variance and three waivers of the City's land development regulations. The approval/disapproval of the variance and two of the three waivers are subject to the decision-making authority of the HPB. One of the waivers will likely require specific approval by the City Commission following approval by the HPB. In addition, if any of the approvals/disapprovals by the HPB are appealed, these appeals are heard by the City Commission. If there are no objections or appeals, the City Commission would be asked to ratify the decisions through a Consent Agenda Item.

After reviewing the Code of Ethics, applicable advisory opinions and training materials, you understand that when this matter comes before the City Commission you must disclose the nature of your conflict, that your firm represents the client's plan subject to the Commission's approval, abstain from voting and not participate in any discussion surrounding the vote. Subsequent to the abstention, you understand that you are required to file a state conflict form 8B as required by statute.

You are seeking further guidance as to whether you are able to participate and appear before City boards in your professional capacity and have requested an expedited consideration of this matter based upon an upcoming hearing before the HPB on May 16, 2011.

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

Section 2-443(a) prohibits you from using your official position to give yourself, your outside business, or a customer or client of your outside business a financial benefit, in a manner which you *know 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*. A customer or client is defined as a person or entity to whom your outside business has supplied goods or services in excess of \$10,000 over the previous 24 months.¹

Section 2-443(c) similarly prohibits you from voting on an issue or participating in a manner that would result in a special financial benefit attributable to yourself, your outside business or customer as previously described. Essentially, the voting conflict section addresses the scenario whereby in voting or participating in an issue you would violate the misuse of office prohibitions of the code. In such a scenario you are required to 1) disclose the nature of your conflict before your board discusses the

¹ §2-442, Definitions

issue; 2) abstain from any discussion or vote or otherwise participate in the matter; and 3) File a state voting conflict form (8B), submitting a copy to the CAB clerk and the Palm Beach County COE. The language of §2-443(c) is as follows:

County and municipal officials...shall abstain from voting and not participate in any matter that will result in a special benefit as set forth in subsections (a)(1) through (7) above...Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other 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...

In this context, “participate” means that you may not present your client’s project to the City Commission or take part in any presentation or discussion regarding your client’s project with your fellow Commissioners. You are not prohibited from meeting with and presenting to Zoning staff and other related city advisory boards, such as the HPB.²

While you may submit and discuss your client’s project with staff prior to the matter coming before the Commission and you may present your proposal to advisory boards independent of the Commission, you must *take great care not to use your official position to influence the process*³. The misuse of office and voting conflict prohibitions apply to you personally, or someone using your official title or position at your direction. Therefore, you are not prohibited from working with City staff on your client’s project up and until it goes before the City Commission, so long as it is in your professional as compared to your official capacity. Additionally, this provision does not prohibit other owners or employees of your outside business from representing your client’s interests in these matters.

While there may be no *per se* prohibited conflict of interest created under the Code of Ethics, there may be an appearance of impropriety where you are appearing in your professional capacity before members of a board who may have been appointed by or may ultimately be reappointed by you as a member of the City Commission. Accordingly, you must also take great care not to use your official position or title in *any way* to influence members of staff or sitting advisory board members resulting in a special financial benefit for yourself, your outside business or your customer or client.

Lastly, you may not use your official position to corruptly offer or give a *quid pro quo* or any subsequent benefit to any HPB member in exchange for supporting your client’s project before the HPB. Doing so would violate §2-443(b) corrupt misuse of official position.

IN SUMMARY, based on the facts and circumstances presented, you are not prohibited from representing a client and appearing before the HPB in your private professional capacity. However, you may not use your elected office to corruptly benefit a Board member in exchange for supporting your project. Additionally you may not use your official position, or influence others, to give yourself, your outside business or a customer or client of your outside business a special financial benefit, not shared with similarly situated members of the general public.

² RQO 11-067 (a municipal advisory board member is prohibited from representing a client before the board on which he sits, but is not prohibited from discussing client matters with staff and other municipal advisory boards in his professional capacity as a landscape architect). This case differs from *Miklos* in that you are seeking advice as to appearing before a board on which you do not sit nor directly control.

³ See, *Siplin v. Commission on Ethics*, 59 So.3d 150, 2011 (in order to violate the misuse of office prohibitions of the Palm Beach County and State of Florida codes of ethics, a public official must not only use their official position to obtain a special financial benefit, but must also obtain that sought after benefit based upon their official position).

Subsequently, as Vice Mayor, if any issue related to your client comes before the City Commission, you must disclose the nature of that conflict, refrain from participating and file the required conflict disclosure form 8B. The Code of Ethics does not prohibit a business associate or other individual from representing your client's interests before the City Commission provided they do not indirectly use your official position to benefit the client.

While the code of ethics does not prohibit you from appearing before City advisory boards in your professional capacity as an attorney, based upon your status as a sitting City Commissioner you must take great care not to use your official position or title in *any way* to influence members of staff or sitting advisory board members resulting in a special financial benefit for yourself, your outside business or your customer or client.

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/mcr/gal

PROPOSED



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SF Sheriff's dept. gets a new leader as Mayor Lee suspends Ross Mirkarimi & appoints Vicki Hennessy. <http://bit.ly/GGzIN3>

Office of the Mayor : 3/19/12 Mayor Lee Suspends Ross Mirkarimi & Appoints Law Enforcement Veteran V
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Christopher Di Giacomo LOL
March 21 at 1:09pm · Like



Jono Acquisti Good, this city is full of Hippocrates already, we do NOT need an elected one, especially a sheriff guilty of wrongful imprisonment. I am a true believer that we all make choices, some good, some bad, but you must live with the consequences of your actions. Sheriff or not. I know I have had to!
March 21 at 1:22pm · Like · 2



Billy-Shane Andrews ftp!
March 21 at 1:34pm · Like



Summer Hill Hehe there's a new sheriff in town, and it's a woman... I wonder if I can get arrested. ♥ a woman in uniform!
March 21 at 1:45pm · Like



Xochitl Selena Martinez Good move mayor lee, we need a woman leader and that was a great choice
March 21 at 1:53pm · Like



Dennis Joseph crocodile tears
March 21 at 2:07pm · Like



Charlene Fachner Mori Way to go Mayor Lee.
March 21 at 3:05pm · Like · 1



Kym Cadle new respect for Mayor Lee here for taking a stand and upholding the office. The arrogance of Mirkarimi is consistent with his unacceptable behavior toward his wife.
March 21 at 4:48pm · Like · 3



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The Lobbyist Electronic Filing System will be down for maintenance from 5:00 pm, April 26, 2012 to 10:00 am, April 27, 2012. We apologize for the inconvenience.

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San Francisco Ethics Commission: Documents relating to official misconduct charges against Sheriff R
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-  **MO Ethics Commission** @MOEthics 26 Apr
Incumbent candidates who already filed PFD for Aug election, not required to file another PFD by May 1
-  **MO Ethics Commission** @MOEthics 25 Apr
If served/worked in PFD reqrd filing position @ any time last year, even if not still there, file PFD with info thru 2011 date served
-  **MO Ethics Commission** @MOEthics 24 Apr
Annual PFD filer, time reported thru is 1/1/11-12/31/11 unless you started during 2011 then is date started thru 12/31/11
-  **MO Ethics Commission** @MOEthics 23 Apr
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Currently working on an online project market
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Geoffrey Alpert (4 of 4): Lessons for L...

TheJusticeDepartment 20 views 1 day ago

I think lesson number one is we've got to protect our officers and we've got to provide them with the tools and the training to use those tools so they can reduce any kind ...

1:43



Geoffrey Alpert (3 of 4): Training Is Ke...

TheJusticeDepartment 8 views 1 day ago

I think officers have to be trained to understand what they're facing. How do you deal with a threat? They've all been through defensive tactics. They've all been through I...

1:22



Geoffrey Alpert (2 of 4): Proper Use of...

TheJusticeDepartment 11 views 1 day ago

A conducted energy device is a wonderful tool for law enforcement if used properly. Having been hit with one, I can tell you it's very painful. It takes away your muscle co...

2:44

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May 3, 2012

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 - Paypal, ebay, banking
- Cost
- Staffing Considerations