



Agenda

October 3, 2013

Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Palm Beach County
Commission on Ethics
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West Palm Beach, FL 33401
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Commissioners
Robin N. Fiore, Vice Chair

Daniel T. Galo

Patricia L. Archer

Salesia V. Smith-Gordon

Michael S. Kridel

Executive Director
Steven P. Cullen

Intake Manager
Gina A. Levesque

Staff Counsel
Megan C. Rogers

Senior Investigator
Mark E. Bannon

Investigator
Anthony C. Bennett

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from September 12, 2013
- V. Proposed Settlement C12-013
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 13-017
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Proposed Advisory Opinions
 - a. RQO 13-016
- IX. Discussion Re: Response to OPPAGA Report
- X. Revisions to Rule of Procedure 4.2
- XI. Executive Director Comments
- XII. Commission Comments
- XIII. Public Comments
- XIV. Adjournment

If a person decides to appeal any decision made by this Commission with respect to any matter considered at this meeting or hearing, (s)he will need a record of the proceedings, and that, for such purpose, (s)he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

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

SEPTEMBER 12, 2013

**THURSDAY
1: 34 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. SWEARING IN OF NEW COMMISSIONERS

Chief Judge of the 15th Judicial Circuit Jeffrey Colbath administered the Oath of Office to Michael Kridel and Salesia Smith-Gordon as new commissioners.

II. CALL TO ORDER

III. ROLL CALL

MEMBERS:

Robin N. Fiore, Ph.D., Vice Chair
Patricia L. Archer
Daniel T. Galo, Esq.
Michael S. Kridel, CPA
Salesia Smith-Gordon, Esq.

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Senior Investigator
Anthony C. Bennett, COE Investigator
Steven P. Cullen, Esq., COE Executive Director
Gina A. Levesque, COE Intake Manager
Megan C. Rogers, Esq., COE Staff Counsel

ADMINISTRATIVE STAFF:

Dominique Marseille, Deputy Clerk, Clerk & Comptroller's Office

IV. INTRODUCTORY REMARKS

Commissioner Fiore asked that all electronic devices be silenced. She added that anyone wishing to speak should submit a public comment card with the item number included.

Commission on Ethics (COE) Executive Director Steven Cullen, Esq., stated that a quorum existed.

Commissioners Archer and Fiore welcomed the newly seated Commissioners Kridel and Smith-Gordon.

Commissioner Smith-Gordon said that she was honored to join the COE and appreciated the support from her family, the community, and the Bar associations.

Commissioner Kridel said that he was privileged to join the COE. He added that he looked forward to bringing perspective, balance, some professional skepticism, and fair judgment to the COE on behalf of the citizens of Palm Beach County.

V. CHAIR NOMINATION/VOTE

Commissioner Fiore asked for nominations for the chair and Commissioner Archer nominated Commissioner Fiore.

MOTION to elect Robin Fiore as chair. Motion by Patricia Archer, seconded by Salesia Smith-Gordon, and carried 5-0.

Commissioner Fiore thanked the COE members for electing her as chair and she stated that she would do her best in the position.

VI. VICE CHAIR NOMINATION/VOTE

Commissioner Fiore stated that the floor was open for vice-chair nominations and she nominated Commissioner Archer.

Commissioner Archer said that she was willing to serve as the vice chair.

MOTION to elect Patricia Archer as vice chair. Motion by Robin Fiore, seconded by Daniel Galo, and carried 5-0.

VII. MANUEL FARACH AND RONALD HARBISON AWARD PRESENTATIONS

Commissioner Fiore said that the COE valued the service of former Commissioners Farach and Harbison. She added that their work ethic had set a high standard for the COE.

(CLERK'S NOTE: Former Commissioners Farach and Harbison were presented with awards at this time.)

Former Commissioner Manuel Farach, Esq. said that the community should be thanked for supporting the COE in its efforts to improve the county.

Former Commissioner Ronald Harbison, CPA, thanked the COE for his recognition and said that the COE always put intellectual energy into making the right decisions. He added that the COE was guided by the COE's mission statement of restoring trust in the government.

Commissioner Galo said that he enjoyed working with former commissioners Farach and Harbison and that they both had achieved commendable accomplishments while working with the COE. Commissioner Archer added that the former commissioners had left a positive legacy that would be continued.

VIII. APPROVAL OF MINUTES FROM AUGUST 15, 2013

Commissioner Archer said that a space was needed between the words "the" and "specific," on page 10 of the minutes, under item V. She added that an extra letter "r" on page 13, under item XI.c., in the first line of the second paragraph, should be deleted.

MOTION to approve the August 15, 2013, minutes as amended. Motion by Patricia Archer, seconded by Daniel Galo, and carried 5-0.

IX. DISCUSSION RE: OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY (OPPAGA) DRAFT REPORT

Mr. Cullen said that:

- The COE was audited by the Office of Program Policy Analysis and Government Accountability (OPPAGA) in April 2013.
 - A draft report of OPPAGA's findings was provided to the commissioners and to the public.
 - The COE was asked to send an official response about the draft report by September 20, 2013.
 - Staff needed direction on completing a formal response to OPPAGA.
 - A workshop could be held to discuss the matter.

Commissioner Fiore said that the COE could request that staff respond to OPPAGA, or a workshop could be held at the next scheduled COE meeting.

Commissioner Galo said that a response to OPPAGA would be appropriate and necessary. He said he was concerned that the changes referenced in the report would alter the COE's work process. He added that the report's suggestion of delegating probable-cause proceedings to an administrative judge concerned him, since the COE would eventually lose its input on policy and discretionary decisions.

Commissioner Fiore said that OPPAGA may have misunderstood staff's process of producing a probable cause recommendation. She added that a judgment of probable cause was first evaluated by the COE's executive director before the COE's approval.

Commissioner Galo stated that the executive director determined whether a matter's allegations were legally sufficient before an investigation took place. He said that he could independently determine probable cause. He added that other ways existed to handle probable cause other than utilizing a third party.

IX. – CONTINUED

Commissioner Archer said that the COE should be involved in the entire evolution of a case. She said that OPPAGA misunderstood how the COE worked. She added that the COE's current procedures should utilize educational tools.

Commissioner Fiore said that some of the commissioners were reluctant to recuse themselves regarding conflict of interest.

Commissioner Galo said that he understood OPPAGA's objection over the commissioners being unable to recuse themselves. He added that commissioners could still choose to recuse themselves on a matter and disclose concerns about that same issue.

Commissioner Fiore requested that Mr. Cullen circulate a previous correspondence between former COE Executive Director Alan Johnson and the attorney general regarding recusal. She added that according to OPPAGA, the COE could create its own recusal procedure; however, that was contrary to the attorney general's instructions.

Commissioner Archer said that the commissioners had not recused themselves from voting except in the instance that conflict of interest could produce a financial benefit. She added that the commissioners should always disclose relationships, and that the policy should be incorporated into the COE's guidelines.

Commissioner Fiore said that concern existed whether the commissioners' disclosures would imply that they could not be fair.

Commissioner Smith-Gordon expressed concern that OPPAGA's report had revealed that a conflict of interest could be caused if a commissioner knew someone in the community. She said that since the commissioners served in the community, OPPAGA's conditions were too broad. She added that knowing someone did not mean that a relationship existed.

IX. – CONTINUED

Staff Counsel Megan Rogers stated that:

- Under section 2-443 of the Code of Ethics (Code), recusal was appropriate when evidence of a financial interest was present.
- Under recusal circumstances, a commissioner would not participate in the matter; however, the commissioner would abstain from voting, file an 8B form with the Clerk and Comptroller's office, and read the reasons for his/her recusal at the following meeting.
- Provisions existed in the Code for bias, prejudice, and interests that were mentioned in the OPPAGA report.

Commissioner Kridel said that disclosure was a good preventative method in most cases; however, one should look at the context of a potential conflict, not just the conflict itself.

Commissioner Fiore said that the question was whether an individual was making an independent decision, not whether he/she had any interests. She said that people were created with interests, so it was necessary to look past those interests and make a judgment based on the facts. She requested that Mr. Cullen review the COE's nonfinancial disclosures policy.

Mr. Cullen suggested that an immediate response to OPPAGA should indicate the COE's concerns and that the matter would be discussed by the COE after further study.

PUBLIC COMMENT:

Chief Assistant State Attorney Alan Johnson suggested that the COE respond to the OPPAGA report, since it was a public document. He said that the COE should not follow suggestions with which it disagreed. He added that the COE could inform OPPAGA that it only met once a month, and that the September 20, 2013, deadline was impossible to meet. The COE could inform OPPAGA that it would respond after the next COE meeting or after a workshop, he suggested.

Commissioner Archer suggested that the COE should refer to OPPAGA by October 20, 2013, since it only met on a monthly basis.

IX. – CONTINUED

MOTION to refer to OPPAGA by October 20, 2013. Motion by Patricia Archer, seconded by Salesia Smith-Gordon, and carried 4-1. Daniel Galo opposed.

Commissioner Galo suggested responding to OPPAGA, by the September 20, 2013, deadline since the report was already out. He added that if no objections to OPPAGA's findings existed, a response was unnecessary.

Commissioner Fiore stated that Commissioners Kridel and Smith-Gordon may have been unable to read the draft report or background information.

Commissioner Archer clarified that her motion was to respond and request an extension before the September 20, 2013, deadline.

Commissioner Smith-Gordon said that she agreed with Commissioner Archer's clarification. She said that the COE needed to be detailed in its response to OPPAGA.

Commissioner Fiore said that under the Sunshine Laws, a workshop should be scheduled to discuss the draft report.

Mr. Cullen suggested that the draft report be discussed at the next scheduled COE meeting. He said that OPPAGA would not grant a request unless a workshop had been scheduled by OPPAGA's deadline.

Inspector General Sheryl Steckler said that the COE could request an extension of OPPAGA by telephone. She said that the COE could inform OPPAGA that it would schedule a workshop, ask for an extension or, respond immediately.

Commissioner Fiore said that the draft report could be discussed at a regular COE meeting.

Commissioner Galo said that he was unsure whether the COE should incorporate a workshop into a regular meeting.

The COE intake manager, Gina Levesque said that the report's discussion could be scheduled on the next meeting agenda and labeled as a workshop item with a specific timeframe.

IX. – CONTINUED

Mr. Cullen stated that the report would be discussed at the October 3, 2013, COE meeting.

PUBLIC COMMENTS CONTINUED:

Palm Beach County League of Cities Executive Director Richard Radcliffe said that the OPPAGA report missed points regarding how the COE functioned. He said that a lacking element from the COE was county and city governmental knowledge of ethics through education. He added that the report should have noted that the County had the best lobbyist registration in the state.

Alexandria Larson said that the COE should focus on lobbyist interactions with the county's leaders rather than on non-ethical matters. She added that the county's citizens cared about what the COE was doing.

Commissioner Fiore said that if appropriate, Mr. Cullen should prepare a draft response to OPPAGA.

Ms. Levesque said that State law noted that a reasonable notice for workshops was not necessarily 10 days in advance. She added that the COE could discuss the report on October 3, 2013, since it would already be noticed.

Commissioner Fiore stated that the COE would request a month-long deferral, and notify OPPAGA of the October 3, 2013, workshop.

RECESS

At 2:52 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 3:56 p.m., the meeting reconvened with Commissioners Archer, Fiore, Galo, Kridel, and Smith-Gordon present.

(CLERK'S NOTE: At the request of Commissioner Fiore, a roll call was taken and all members were present.)

X. Pages 10-11

XI. EXECUTIVE SESSION – C13-012

Commissioner Archer read the following public order and final order of dismissal:

Complainant, Diana Demarest, filed a complaint on June 5, 2013, alleging a possible ethics violation involving Respondent, Jay Foy, Mayor of the Town of Haverhill.

On August 23, 2013, after reviewing the complaint, supporting affidavit, and memorandum of inquiry, the complaint was determined by staff to be legally insufficient. The Commission on Ethics' jurisdiction is limited to officials appointed by the Palm Beach Board of County Commissioners or a municipal governing body pursuant to section 2-442 of the Palm Beach County Code of Ethics. The Respondent was appointed to the Water Resources Task Force by the Palm Beach County League of Cities, and was not acting as Mayor of the Town of Haverhill. Therefore, on September 12, 2013, staff recommended that the Commission on Ethics dismiss the complaint as legally insufficient.

The Commission on Ethics reviewed the complaint and memorandum of inquiry and determined that it is not within the jurisdiction of the Palm Beach County Code of Ethics. Based on the information contained in the complaint, the commission recommended that this matter be referred to the Florida Commission on Ethics for further review in compliance with section 2-260.2 of the Commission on Ethics ordinance.

Therefore, the commission has determined it does not have jurisdiction over the Respondent, Jay Foy, in his official capacity as a member of the Water Resources Task Forces Advisory Board and dismissed the complaint on September 12, 2013, due to no legal sufficiency.

Therefore, it is:

Ordered and adjudged that the complaint against Respondent, Jay Foy, is hereby dismissed.

XI. – CONTINUED

Done and ordered by the Palm Beach County Commission on Ethics in public session on September 12, 2013. Signed: Robin N. Fiore, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the public report and final order of dismissal. Item X. was taken at this time.)

X. DISCUSSION RE: COMMISSIONER TRAINING

Mr. Cullen said that:

- The commissioner training project was underway, and staff taping of training sessions was almost completed.
- Commissioners were provided with a schedule and with the topics that would be covered in training.
- Training would be provided in a video format that was seven or eight hours.
- Staff anticipated that the COE members would be provided disks with the training video, within the next few weeks.
- The two new commissioners were given the Florida Sunshine Manual and all materials concerning the ordinances, codes, and rules that the COE used.

Commissioner Archer suggested that the COE members review the training materials in a workshop format. She added that at certain intervals in the year, the commissioners should review various training modules to remain knowledgeable.

Commissioner Smith-Gordon suggested that experiences that the COE encounters in its dealings with matters, could be incorporated onto the COE's Web site to serve as a refresher to the commissioners and as a resource to the public.

X. – CONTINUED

Commissioner Kridel said that a powerful learning process existed when group interaction occurred. He suggested that deadlines be set when certain training modules should be finished. He added that the training could incorporate a workshop environment at the beginning and end of the training timeline.

Commissioner Fiore said that she would prefer to participate in the training at her convenience; however, she added, she would consider opportunities for the commissioners to discuss training materials.

Mr. Cullen informed the COE that the training had no transcript and that it consisted of Microsoft PowerPoint slides that could be reproduced.

Commissioner Fiore said that she was concerned about the accessibility of training materials for individuals who were unable to watch a video or hear a soundtrack. She added that the COE and staff should consider ways to make the materials available to everyone.

Commissioner Galo said that although the training should be accessible to the public, the materials did not need to be posted online. He added that the commissioners should watch the training videos to acquaint themselves with the Code, quasi-judicial hearings, and advisory opinions.

XII. EXECUTIVE DIRECTOR COMMENTS

XII.a.

DISCUSSED: Commission on Ethics' Web Site.

Mr. Cullen said that a graphic intern from Palm Beach State College would help to revise the COE Web site and to work on other projects in conjunction with the County's Information Technology Department. He added that staff had new screen shots of the COE's updated Web site.

Ms. Levesque said that David Kelly of the Palm Beach County Public Affairs Department and the new intern had spent extensive time working on the COE's Web site. She said changes included a side bar with fewer options, and a training information page with different videos and available materials. The COE's mascot could be included on the new Web site and that the COE's palm cards were being revised, she concluded.

XII.a. – CONTINUED

Ms. Rogers said that staff was attempting to notify the public about future meetings and national and countywide ethical issues through the COE's Twitter and Facebook accounts.

Mr. Cullen said that staff had reviewed all of the advisory opinions to create a brief five-line summary and headnote of each subject matter for the COE's Web site. He added that the review was expected to take approximately 60 days.

Ms. Levesque informed the COE that advisory opinions were available on the Web site in portable document format, categorized numerically, and listed by subject matter. She added that Mr. Cullen and Ms. Rogers had handled categorizing advisory opinions and opinions were filed in order.

XIII. COMMISSION COMMENTS

XIII.a.

DISCUSSED: Welcome and Recognition.

Commissioner Smith-Gordon said that she was glad to be a part of an esteemed group of individuals.

Commissioner Kridel said that the COE's attention to detail was remarkable and that the commissioners' level of integrity was an outstanding model for other counties.

Commissioner Fiore said that every commissioner and staff member had left an enormous contribution to the COE. She added that she was looking forward to working with the new commissioners.

Commissioner Archer said that she was excited about seeing the COE evolve with the addition of the commissioners.

Commissioner Galo said that he welcomed the new commissioners.

XIV. Pages 6-8

XV. ADJOURNMENT

MOTION to adjourn. Motion by Salesia Smith-Gordon, seconded by Patricia Archer, and carried 5-0.

At 4:23 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

Negotiated Settlement

In Re: Marlene Ross

C12-013

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, Marlene Ross, believes it to be in her 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 that the allegations contained in the complaint as to Count 1, *Corrupt misuse of official position*, if true, could reasonably create a perception of "corrupt intent".
2. Pursuant to this Proposed Settlement Agreement, the Commission on Ethics agrees to dismiss Count 2 of the Complaint, *Corrupt misuse of official position*, issue a Letter of Instruction and impose a \$500 fine as prescribed under section 2-448(b) of the Palm Beach County Code of Ethics, believing that the public interest would not be served by proceeding further and that the alleged violation was inadvertent and unintentional.
3. 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.
4. 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 she is doing so freely, voluntarily and without duress; that she is competent to enter this agreement; that she has been given the opportunity to review this Proposed Settlement Agreement with an attorney; and that she has fully and completely read and understands the terms and conditions herein.
5. 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.
6. Evidence of this offer of compromise and settlement is inadmissible to prove any of the allegations alleged.
7. Respondent understands and agrees that **NO OFFER IS FINAL UNTIL ACCEPTED BY THE COMMISSION ON ETHICS**.

Kai Li Fouts, Esquire
Volunteer Advocate

Date

Marlene Ross, Respondent

Date

Scott Richardson, Esquire

Date

FINAL ORDER

COMPLAINANT, Terry Aperavich, filed the above-referenced COMPLAINT on October 4, 2012, alleging possible ethics violations involving RESPONDENT, Marlene Ross, City of Boynton Beach Commissioner. The COMPLAINT alleges two Code of Ethics violations:

COUNT 1 alleges that on or about July 7, 2011 and September 3, 2011, RESPONDENT submitted false correspondence to Interim Boynton Beach City Manager, Laurie LaVerriere, regarding a City of Boynton Beach (the City) investigation into alleged lobbying activities of David Katz, in violation of Article XIII, Section 2-443(b), *Corrupt misuse of official position*, of the Palm Beach County Code of Ethics.

COUNT 2 alleges that on or about January 3, 2012, RESPONDENT nominated Katz to serve on the City Financial Advisory Committee (FAC) to prevent the exposure of certain photographs that would cause her embarrassment, in violation of Article XIII, Section 2-443(b), *Corrupt misuse of official position*, of the Palm Beach County Code of Ethics.

Pursuant to Chapter 8, Article XIII, Section 2-443(b), *Corrupt misuse of official position* prohibits any official or employee from using his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

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 (COE) is empowered to enforce the county code of ethics.

Based upon the filing of a sworn COMPLAINT, and pursuant to COE Rule of Procedure 4.1.3, a preliminary inquiry was commenced. Although it was determined that the initial COMPLAINT was NOT LEGALLY SUFFICIENT, after obtaining sworn statements from material witnesses and documentary evidence during the inquiry, sufficient

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

competent evidence was obtained to warrant a legally sufficient finding. Thereafter, a MEMORANDUM OF LEGAL SUFFICIENCY was entered on November 15, 2012, a COMPLAINT was filed on November 19, 2012 by Alan Johnson, Executive Director of the COE, and an investigation was commenced pursuant to Article V, Division 8, Section 2-260(d). Information obtained during the inquiry was adopted into the investigation and presented to the COE on December 6, 2012, with a recommendation that PROBABLE CAUSE be found that Code of Ethics violations occurred. At that time, the COE held a hearing in the matter and found that PROBABLE CAUSE existed to believe that RESPONDENT violated the Code of Ethics. The COMPLAINT was subsequently set for final hearing before the COE on March 21, 2013. Subsequently, on October 3, 2013 the COE ADVOCATE and RESPONDENT submitted a NEGOTIATED SETTLEMENT to the Commission for approval.

According to the NEGOTIATED SETTLEMENT, RESPONDENT agrees to pay a Five Hundred (\$500) Dollar fine and accept a LETTER OF INSTRUCTION. Count two is DISMISSED.

Therefore it is:

ORDERED AND ADJUDGED THAT this matter is concluded upon the payment of the aforementioned Five Hundred (\$500) Dollar fine and issuance of a letter of instruction.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on this 3rd Day of October.

Palm Beach County Commission on Ethics

By: _____

Robin N. Fiore, Chair

LETTER OF INSTRUCTION

Terry Aperavich (Complainant) filed the above captioned complaint against Marlene Ross, former City of Boynton Beach Commissioner (Respondent), alleging violations of the Palm Beach County Code of Ethics, Article XIII, Section 2-443(b), *Corrupt misuse of official position*. The complaint alleges, in part, that submitted false correspondence to Interim Boynton Beach City Manager, Laurie LaVerriere, regarding a City of Boynton Beach investigation into alleged lobbying activities of David Katz and nominated Katz to serve on the City Financial Advisory Committee (FAC) to prevent the exposure of certain photographs that would cause her embarrassment, in violation of Article XIII, Section 2-443(b), *Corrupt misuse of official position*, of the Palm Beach County Code of Ethics.

- **Facts and Analysis**

The facts as to Count One are as follows:

In July, 2011, the City of Boynton Beach (the City) was conducting an investigation into alleged lobbying activity by David Katz regarding a towing contract with the City. At the time, the City had its own lobbyist ordinance which has subsequently been withdrawn and replaced with the Palm Beach County Lobbyist Registration Ordinance. Respondent, a sitting City Commissioner, was asked by the City Manager, pursuant to the City investigation, whether Katz had lobbied her regarding the towing contract issue. Katz prepared a letter stating that he had never lobbied Respondent and Respondent signed the letter on July 7, 2011. Additionally, Respondent was asked by the City Manager to confirm the contents of the letter and did so in an email on September 3, 2011. She stated in the email that Katz had never lobbied her. As a result, Katz, who was fined \$750 for violating the City Ordinance by lobbying other officials, was not fined, exposed or otherwise sanctioned for allegedly lobbying Respondent. According to the City Manager, had Respondent been truthful and forthcoming, Katz would "very possibly" have received additional fines for lobbying Respondent because there is a \$250 penalty per incident.

Subsequently, in August, 2012, a complaint was submitted to the Public Integrity Unit of the Office of the State Attorney (SAO) alleging that Katz had harassed, intimidated and pressured Respondent into falsifying the letter and email to the City Manager. In a sworn statement to SAO investigators, and in documents submitted to the SAO investigators at their request, Respondent cooperated and candidly acknowledged that Katz had in fact lobbied her regarding the subject matter of the City investigation and that she had submitted false information to the City Manager. Respondent alleged that Katz had extorted her through his aggressive and harassing actions and that she was in fear that Katz was in possession or had knowledge of photographs and that he would publish or otherwise use his knowledge of these pictures to negatively impact her reputation and political career. Respondent's relationship with Katz was longstanding and included his active participation in her campaigns for City Commissioner between 2007 and 2011. The only public statement made by Katz implying the existence of

photographs was made at a City Commission meeting on September 4, 2011, approximately one year after the submission of false statements by the Respondent.

- **Holding**

Sec. 2-443(b) – Corrupt Misuse of Official Position, states:

An official or employee shall not use his or her official position or office, or any property or resources which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit or exemption for himself, herself, or others. For the purposes of this subsection, “corruptly” means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

Section 2-260.3 – Dismissal of Complaints, states in part:

Notwithstanding any other provisions of this division, the commission on ethics may, at its discretion: (a) dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further.

The Commission is mindful of the facts and circumstances surrounding this matter. According to the Negotiated Settlement and based on the facts set forth in this Letter of Instruction, Respondent admits that the allegations contained in count one of the complaint could lead to a finding by the Commission that she used her official position to corruptly secure a special benefit for herself and Katz in a manner which was inconsistent with the proper performance of her public duties. The basis of this complaint was derived from a State Attorney Public Integrity Unit (PIU) investigation which began because Respondent came forward and cooperated with the State Attorney’s Office and admitted to the above acts. While Respondent alleged that Katz extorted her by fear, harassment and intimidation, the PIU investigative report found that Respondent had voted against Katz’s interests on a number of occasions. Moreover, pursuant to the Boynton Beach ordinance in effect at the time, a lobbyist was defined as a person who was either employed and receives payment for or who contracts for economic consideration for the purpose lobbying on behalf of a principal. Respondent relied on the opinions of others that Katz was paid for and engaged in lobbying activities. Witness testimony revealed the Respondent’s statement to LaVerriere did not impede the overall investigation into Katz’s status as a lobbyist. LaVerriere notified Katz that her investigation determined that he did violate the Boynton Beach lobbying ordinance and he was subsequently fined a total of \$750. Finally, following a finding of Probable Cause by the Commission, Respondent immediately resigned her position as a public official.

In light of the facts and circumstances known to the Commission on Ethics has determined that the public interest would not be served by proceeding further and this matter is appropriately addressed through imposition of a \$500 fine and issuance of this letter of instruction. 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. During your service as an elected official, you were an agent of the people and held 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 employees.

You are hereby admonished and urged to consider the letter and spirit of the Palm Beach County Code of Ethics and apply them in all future actions as a member of any public body to which you may be a part.

This letter of instruction is issued by the Palm Beach County Commission on Ethics in public session on October 3, 2013.

Palm Beach County Commission on Ethics,

By:

Robin N. Fiore, Chair

PROPOSED



Palm Beach County Commission on Ethics

Commissioners

Robin N. Fiore, Chair
Patricia L. Archer, Vice Chair
Daniel T. Galo
Salesia V. Smith-Gordon
Michael S. Kridel

Executive Director

Steven P. Cullen

In Re: Marlene Ross

C12-013

ORDER

As part of the Negotiated Settlement, the Commission on Ethics imposes Five Hundred (\$500) Dollar fine. Therefore, it is hereby:

ORDERED AND ADJUDGED that The Palm Beach County Board of County Commissioners, c/o the Palm Beach County Commission on Ethics, located at 300 North Dixie Highway, Suite 450, West Palm Beach, FL 33401, shall have and recover from the Respondent, Marlene Ross, the sum of Five Hundred (\$500) Dollars. Said sum is to be made payable to the Board of County Commissioners in the form of a certified check or money order no later than November 3, 2013.

Pursuant to Article V, Division 8, §2-260.1(g), this Order may be enforced by application to any Circuit Court of The State of Florida, which shall have jurisdiction to order Respondent to comply with an Order of the Commission on Ethics.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in Public Session on this 3rd day of October, 2013.

Palm Beach County Commission on Ethics

Robin N. Fiore, Chair



Palm Beach County Commission on Ethics

Commissioners

Robin N. Fiore, Chair
Daniel T. Galo, Vice Chair
Patricia L. Archer
Salesia V. Smith-Gordon
Michael S. Kridel

Executive Director

Steven P. Cullen

R. Bryan Shutt, Esq.
City Attorney
City of Delray Beach
200 NW 1st Avenue
Delray Beach, FL 33444

Re: RQO 13-017
Voting Conflict

Dear Mr. Shutt,

Your request for an advisory opinion dated September 16, 2013 has been received and reviewed. The opinion rendered is as follows:

YOU ASKED in your letter of September 16, 2013 whether Mayor Glickstein is correct in his intention to recuse himself and not vote on a matter expected to come before the City Commission in the future regarding the City's actions on a contract with a development company of which he is president. Additionally you asked whether Mayor Glickstein is correct in his intention to recuse himself and not to vote on a potential future matter which may come before the City Commission in the event that the City does not exercise an option under the contract and he dedicates land to the City for additional open space.

IN SUM, Mayor Glickstein has correctly concluded that voting on these matters would violate Sec. 2-443(a) of the Code of Ethics. His decision to abstain from voting on these matters is correct. He is obligated to follow the procedures in Sec. 2-443 (c) disclosing the conflict publicly, not voting and filing the proper 8b form.

THE FACTS as we understand them are as follows:

On May, 2007 the City of Delray Beach entered into a contractual agreement with Cannery Row, LLC (Developer) regarding a residential development located within the city. A Purchase and Sale Agreement, referenced in the contract was executed on July 31, 2007. Cary Glickstein, the president of Cannery Row, LLC, was elected Mayor in March 2013.

You have provided a copy of both agreements. The contract provides that the Developer is to dedicate part of the project for open space in return for the waiver of certain impact fees. The Purchase and Sale Agreement at Clause 41 further provides that the City has an option to purchase a building or vacant property from the Developer for a specified "not to exceed" price. Under the same provision, the City may terminate the contract and purchase nothing from the Developer. The Developer has indicated that it will be providing the required 60 day notice under this provision creating the need for the City Commission to vote on the matter.

In the event that the city terminates the contract and does not purchase the land, Mayor Glickstein has indicated an intention to dedicate the land to the City for additional open space. This event, if it comes about, would require City Commission approval.

Mayor Glickstein has preemptively determined that voting on either of these matters may constitute prohibited conduct under the Code of Ethics. He, therefore, seeks this advisory opinion to confirm the correctness of his intention to disclose the conflict and not vote on these matters.

THE LEGAL BASIS is as follows. The Palm Beach County Code of Ethics provides:

Sec. 2-443. Prohibited conduct.

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

Because Mayor Glickstein is the president of Cannery Row, LLC (the Developer), any action(s) taken by the City on the existing contract and Purchase and Sale Agreement will result in a special financial benefit, not shared with similarly situated members of the general public, to one or all of the persons or entities enumerated under Sec. 2-443 (a) (1) & (4). He therefore is obligated by the Code to abstain from voting, and not participate in any matter, publicly disclose the nature of the conflict and file State of Florida Commission on Ethics Conflict Form 8b, all in compliance with Sec. 2-443 (c).

IN SUMMARY, Mayor Glickstein's intention to recuse himself and not vote on these two matters is correct. He should comply fully with the requirements of Sec. 2-443 (c) in these matters.

This opinion construes the Palm Beach County Code of Ethics and is based upon the facts and circumstances submitted. It answers only the questions you have asked. It 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) 355-1937 should you have any further questions in this matter.

Sincerely,



Steven P. Cullen
Executive Director

SPC /gal

October 4, 2013

C. Duane Drawdy
Drawdy Construction Company, Inc.
10201 Lantana Road
Lake Worth, Florida 33449

Re: RQO 13-016
Contractual Relationships-Low Bid Exception

Dear Mr. Drawdy,

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 October 3, 2013.

YOU ASKED in your submission dated September 3, 2013, whether as a County advisory board member a prohibited conflict of interest is created if your outside business bids for and is awarded a contract with Palm Beach County. You have indicated in your letter that all such contracts are awarded via "competitive bids."

IN SUM, you may not use your official position as an advisory board member to give or influence others to give you or your outside business a special financial benefit. In addition, the code prohibits you or your outside business from contracting with Palm Beach County. However, there is an exception to the contractual relationship prohibition.

The code provides an exception for contracts entered into under a process of sealed, competitive bidding, where your outside business is the lowest bidder, provided that you have not participated in the bid specifications or determination of the lowest bidder, have not used your position in any way to influence the award, and have disclosed the nature of your interest in the business submitting the bid. If you fully comply with these requirements, the code does not prohibit you or your outside business from contracting with the County.

THE FACTS as we understand them are as follows:

You are the Vice President of Drawdy Construction Company, Inc. (DCC). DCC builds concrete highway bridges in and for Palm Beach County. All projects that DCC has applied for in the past have been awarded through a sealed, competitive bid process. It is anticipated that any future contracts will also be awarded by this process. You serve on the Palm Beach County Construction Board of Adjustments and Appeals (CBAA). The CBAA interprets the provisions of various building, electrical, plumbing and other construction codes adopted by the Board of County Commissioners (BCC) and hear appeals of decisions made by the Building Official for Palm Beach County.

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

Section 2-443(a) prohibits you, as an advisory board member from using your 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 yourself, your spouse or domestic partner or an outside business of yours or your spouse or domestic partner, among other listed persons or entities.

Section 2-443(d) states as follows:

Contractual relationships. No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to §2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable.

Section 2-443(d) prohibits you or your outside business¹ from entering into any contract or other transaction for goods or services with the County, directly or indirectly, unless one of several exceptions applies. Specifically, §2-442(e)(1) provides an exception for contracts awarded under a system of sealed, competitive bidding, where your company is the lowest bidder. The sealed bid exception applies so long as an advisory board member does not 1) participate in the determination of bid specifications, 2) use their official position to influence or persuade their government entity other than by the mere submission of the bid, and 3) files a statement with the Supervisor of Elections and the Commission on Ethics disclosing the nature of the interest in the outside business prior to submitting the bid. Each individual bid submission must comply with the exception requirements listed in §2-443 (e)(1)a, b, and c.² So long as your bid submission comports with these requirements, you are not prohibited from applying and accepting bids awarded under this exception to the contractual relationship prohibition.

IN SUMMARY, as a county advisory board member you may not use your official position to give a special financial benefit to your outside business. In addition, you may not enter a contract for goods or services with Palm Beach County unless it is through a sealed bid process as prescribed by §2-443(e)(1)a, b, and c of the Code of Ethics.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It 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,

Steven P. Cullen,
Executive Director

SPC/mcr/gal

¹ §2-442(2) 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 receives compensation for services rendered or goods sold or produced.

² RQO 11-090

RESPONSE

Commission staff is pleased to furnish the following in response to OPPAGA's Preliminary *DRAFT* Final Report.

Finding 1: "Commission practices sometimes blur the roles of investigators and the staff counsel."

Response: This finding describes some of the dynamics inherent in a small staff. Specifically, staff counsel may both serve as both as policy and procedure advisor to the commission as well as serve as advocate. Additionally, staff counsel and the lead investigator (also an attorney) may serve as advocates during probable cause hearings. To preserve independence and save costs, a volunteer advocate program has been created and expanded. This program provides for the use of skilled pro bono attorneys prosecuting cases before the commission.

Budgetary constraints prohibit the outsourcing of either investigative or prosecutorial functions. It is estimated that doing so would raise the budget by 100-200%. The investigative staff does not make any recommendation as to probable cause. The commission believes that the current system best balances competing concerns while maintaining fiscal control.

Finding 2: "Commissioners determine both probable cause and the outcome of a final hearing."

Response: The Commission on Ethics Ordinance sections 2-260 (d) and §2-260.1 require commissioners to perform both functions. The standard for determining probable cause is whether there are reasonably trustworthy facts and circumstances for the commission to believe that a violation has occurred. The standard at a final hearing is proof by clear and convincing evidence. Commissioners, serving in a quasi-judicial capacity are more than capable of separating these functions and judging the evidence against the (different) legal standards. Circuit judges perform these differing functions frequently. Outsourcing the trial function to DOAH judges is cost prohibitive.

Finding 3: "Conflict of interest provisions continue to be a source of concern for commissioners and others."

Response: State law requires commissioners to vote on business before the commission unless they meet the grounds for recusal (Fla. Stat. §286.012, Palm Beach County Code of Ethics §2-443). Only a significant legal change, which the commissioners have no control over, would allow them to recuse themselves if they feel "uncomfortable" about making a decision but lack a financial interest in the matter.

Finding 4: "The commission could benefit from clarifying commissioner disqualification terms and procedures."

Response: The existing disqualification procedure is in line with the general law of judicial recusal. The commissioner against whom a disqualification motion is directed hears the motion. A commissioner faced with a motion to disqualify filed outside of the time restrictions of the rule would have discretion to hear the motion. A rule change permitting a motion to be files at any time may be considered.

Finding 5: "The commission's expanded jurisdiction changes the nature of appointments and could diminish its independence."

Response: Any change in the way commissioners are appointed would require a recommendation for such change, the work of a drafting committee and approval by the Board of County Commissioners. Any of the other existing appointing entities (including the local bar associations, the CPA institute and Florida Atlantic University) could easily have members within their ranks subject to the Code of Ethics. These members might include county or municipal employees, elected officials or advisory board members.

Finding 6: "Vendors and lobbyists are now subject to the county ethics ordinance but not required to receive training."

Response: Any change to require training for vendors and/or lobbyists and/or principals, or employers of lobbyists would require a recommendation for such change, the work of a drafting committee and approval by the Board of County Commissioners. The countywide Lobbyist Registration Ordinance was effective on April 2, 2012. Live training was provided before the effective date. A video training has been available through our website since the effective date and is currently being revised. Live training presentations continue to be available upon request.

Finding 7: "The commission could benefit from enhanced commissioner training."

Response: Staff has just completed a comprehensive commissioner training video. This approximately 8 hour program includes a comprehensive review of all ordinances, rules, procedures, investigative overview, advisory opinions, quasi-judicial functions, best practices during hearings and the Sunshine Law. All commissioners have been provided with a complete copy of all ordinances, rules, Policy and Procedure Manuals and the Government in the Sunshine Manual. Yearly updates and retraining are planned.

Finding 8: "The commission could improve its performance accountability system."

Response: Staff has expanded the performance measures contained in the annual budget documents. Additionally, surveys have been placed upon the website to collect user data. Website analytics have been placed to identify patterns of use. Surveys distributed at trainings are collecting data on the effectiveness of training and to gauge the effect of ethics reforms. These data will be used to develop enhanced strategic plans

Respectfully Submitted,

Steven P. Cullen, Esquire
Executive Director
Palm Beach County Commission on Ethics

SPC/gal

Copies to: COE Website

Item X – Revisions to Rule of Procedure 4.2

Staff analysis:

Article V., Division 8, §2-260. Procedure on Complaints filed.

- (d) *Preliminary investigation and public hearing.* 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. If the commission on ethics finds from the preliminary investigation probable cause to believe that a violation has been committed, it shall set the matter for a public hearing and notify complainant and respondent via certified mail, hand delivery, or courier. The commission on ethics may conduct such further investigation as it deems necessary, and may enter into such stipulations and settlements as it finds to be just and in the best interest of the citizens of the county. (emphasis added)

Rule 4.2 of the COE Rules of Procedure, promulgated in 2010, contains language requiring legally insufficient Complaints to be submitted to the COE for dismissal. The language of §2-260 requires only legally sufficient Complaints to be submitted to the COE for a probable cause finding or dismissal. Legally insufficient Complaints are not actionable as a matter of law.

Staff recommendation:

There is no provision within the Commission on Ethics ordinance that supports the current COE Rule requiring legally insufficient Complaints be brought before the Commission for dismissal. Requiring COE dismissal of legally insufficient Complaints creates unnecessary paperwork, an inefficient use of staff, and ultimately results in unwarranted financial expense and wasted resources. It should be noted that aside from the fact that the Complainant files a formal Complaint under oath, a sworn Complaint is no different from an anonymous or unsworn tip. The Commission on Ethics ordinance provides specific guidelines as to the legal sufficiency of a Complaint; it must be sworn, allege a violation of an ordinance within the jurisdiction of the COE occurring after the effective date of the code, filed within 2 years of the alleged violation and be based substantially on the personal knowledge of the Complainant. If a Complaint lacks legal sufficiency, the COE is prohibited from further action. To require by rule that such a matter come before the COE merely for purposes of dismissal where no such requirement is found in the COE ordinance is unnecessary and wasteful.

Staff recommends that Rule 4.2 be amended as follows:

- d) The Executive Director or designee shall prepare a memorandum regarding the legal sufficiency of all complaints. If the Executive Director or designee finds the complaint to be legally insufficient, the ~~recommendation to dismiss the~~ complaint must be presented to the Commission.
- e) Upon a finding of no legal sufficiency by the Executive Director or designee, the complaint, memorandum of no legal sufficiency and all documents related thereto shall

become a public record and constitute a public record.

- f) ~~(e)~~ Upon a finding of legal sufficiency and Pursuant to Section 112.324, Florida Statutes, the Commission may meet in executive session to determine whether probable cause exists. ~~at any time prior to a finding of probable cause and may find the complaint to be insufficient~~ Upon hearing the matter the commission may find probable cause; dismiss it, and ~~notify the complainant that no investigation will be made~~ or take such other action as may be appropriate. In any case where a complaint is ~~found legally insufficient and~~ dismissed, the public report and order dismissing the complaint together with the complaint itself and all documents related thereto shall become a public record and constitute a public record.