



*Ethics In Action*

# 2012 Annual Report

**Palm Beach County Commission on Ethics**

***"Honesty, Integrity, Character"***



# 2012 ANNUAL REPORT

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PALM BEACH COUNTY COMMISSION ON ETHICS



2633 VISTA PARKWAY  
WEST PALM BEACH,  
FLORIDA 33411





# Palm Beach County Commission on Ethics

## Commissioners

Manuel Farach, Chair  
Robin N. Fiore, Vice Chair  
Ronald E. Harbison  
Daniel T. Galo  
Patricia L. Archer

## Executive Director

Alan S. Johnson

January 2, 2013

Chairman Manuel Farach  
Palm Beach County Commission on Ethics  
2633 Vista Parkway  
West Palm Beach, FL 33411

Dear Chairman Farach,

The Commission on Ethics has completed its second full calendar year of operation. Established in May, 2010, the COE has been delegated the authority to review, interpret, render advisory opinions and enforce the Countywide Code of Ethics, County Post-employment and Lobbyist Registration Ordinances. Additional duties include ongoing ethics training for public officials, employees, vendors, lobbyists and their principals as well as the development of community outreach programs.

With these duties and mandates in mind I am pleased to present the 2012 annual report to the Palm Beach County Commission on Ethics.

In 2012, COE staff processed 85 advisory opinions, 16 sworn complaints and 33 Inquiries based on anonymous or attributed unsworn "tips" and other information provided by the citizens of Palm Beach County. Additionally, staff handled 58 advisory opinion requests by referring the requesting party to prior COE opinions directly addressing the submitted issues. The office hot-line received 560 calls and visits to the COE website exceeded 394,000 for the year. COE staff made 102 referrals to other local, state or federal governmental agencies. We are currently fully staffed with five full-time employees.

In our first two and one half years of service, continuing community collaborations, training and outreach have been critical components of our mission. In 2012, staff participated in over 40 live training sessions for public employees, officials, vendors and lobbyists as well as 15 community presentations, forums, workshops and other events before civic and social organizations, non-profits and professional associations. Our staff completed a training compliance audit of the county and all municipalities. Eight entities were found to be not in compliance with the Code. Currently, staff is working with municipalities to assist administrators in their establishment by policy of a mandatory training schedule for all public officials and employees. The audit results can be found on our website at <http://www.palmbeachcountyethics.com/audits.htm>

COE Staff has requested that the Palm Beach County Board of County Commissioners proclaim March 7, 2013, *Ethics Awareness Day*. In addition to offering outreach programs throughout the month of March, the COE will present several public events to celebrate ethics within our community. Programs will be scheduled at the Palm Beach County Governmental Center, and will include panel discussions, public Q & A, and an ethics bowl team demonstration by the winning teams selected by the Palm Beach County School Board to participate in the National Ethics Bowl finals.

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Website: [www.palmbeachcountyethics.com](http://www.palmbeachcountyethics.com)

In addition, we continue to maintain a vibrant and viable web presence, expanding our social media footprint to include Facebook – [www.facebook.com/pbccoe](http://www.facebook.com/pbccoe) and Twitter – [@pbccoe](https://twitter.com/pbccoe). In addition to providing web-based training modules for public officials, employees and vendors, we maintain a public database for annual and quarterly gift reports, voting conflict of interest disclosures and outside employment waivers. We also continue to maintain links to Palm Beach County maintained databases, including lists of active registered vendors, registered lobbyists and their principals, as well as annual lobbyist expenditure reports. All sworn complaints, related documents and live hearings are posted to our website once the cases become public record. Additionally, all COE advisory opinions are posted and catalogued by subject matter. Our website is fully searchable including all processed complaints and advisory opinions. From our inception, through December 31, 2012, the commission has issued 243 advisory opinions.

Throughout 2012, we continued our efforts to save taxpayer dollars by utilizing cost saving initiatives such as the COE Volunteer Advocate Program in conjunction with the Legal Aid Society of Palm Beach County. Former prosecutors and public defenders, now in private practice, continue to volunteer their time to process complaints before the ethics commission on a pro bono basis. This year, the Legal Aid Society will be recognizing two of our advocates for its 2012 Ethics in Government pro bono award. By continuing our careful stewardship in regards to staff, operational and procurement costs, the COE continues to come in under budget, resulting in a fiscal year 2011-2012 savings of approximately \$70,000.

We have invited Independent and Special Taxing Authorities to voluntarily submit to the jurisdiction of the COE and Code of Ethics through memoranda of understanding. In 2012, both the Delray Beach Community Development Agency and Delray Beach Housing Authority began the process of contracting for the services of the COE. The Lake Worth Community Development Agency renewed their contract as well.

On the legislative front, effective April, 2012, a revised Lobbyist Registration Ordinance became effective in Palm beach County and 35 of its municipalities. This ordinance regulates certain lobbying activities, sets forth registration requirements for lobbyists and their principals, and establishes rules and guidelines for annual mandatory lobbying expenditure reporting. Central registration and expenditure databases, maintained by Palm Beach County Administration, have been established and are accessible to the public.

Our second full year of operation has been both challenging and rewarding. While I will be leaving the COE as your Executive Director shortly after the New Year, I am confident that upon taking over the helm, my replacement will find a vibrant, efficient, effective and fiscally prudent operation dedicated to increasing awareness of, and compliance with, county ethics rules. As always, I appreciate your support of our operations and your ongoing efforts to promote the highest standard of public service within Palm Beach County.

Sincerely,



Alan S. Johnson,  
Executive Director

ASJ/gal

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## MISSION STATEMENT

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The mission of the Palm Beach County Commission on Ethics is to foster integrity in public service, to promote the public's trust and confidence in that service, and to prevent conflicts between private interests and public duties.

We strive to accomplish this mission by conducting ongoing educational programs, community outreach, providing clear and timely advice, and fairly and impartially interpreting and enforcing the conflict of interest and financial disclosure laws. In doing so, the commission is guided by principles of fairness, clarity, and common sense. We encourage you to spend time learning about our efforts by going to our website at [www.palmbeachcountyethics.com](http://www.palmbeachcountyethics.com) and to contact our office with any questions or comments.

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## HISTORY

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*In framing a government which is to be administered by men over men the great difficulty lies in this: you must first enable government to control the governed, and in the next place, oblige it to control itself.*

- Federalist #51

Now in its third year, the Commission on Ethics is an independent organization that administers and enforces the Palm Beach County Code of Ethics, Lobbyist Registration Ordinance and Post Employment Ordinance. The Code of Ethics is designed to help ensure that public officials and employees perform their public responsibilities impartially, do not use their public positions for private gain, and to foster public confidence in the integrity of local government. The Lobbyist Registration Ordinance was enacted to regulate certain lobbying activity and enhance lobbying transparency by establishing a central lobbyist registration and expenditure reporting system. While the commission has statutory license to punish offenders, commission staff strives to educate public employees, public officials, vendors, and lobbyists on how the new rules will affect governance and implementation of policy throughout the county.

Palm Beach County has a current population of 1.3 million residents and has grown significantly in the past decade in terms of size and diversity. The county has over 6,000 full and part-time employees and approximately 1,000 volunteer officials staffing 95 committees and boards. There are 38 municipalities within Palm Beach County who are served by over 9,000 full and part time employees, 258 municipal boards and committees with more than 1,800 volunteer advisory board members, and 198 elected officials.

As recommended by a 2010 grand jury convened to monitor the progress of the new ethics measures, a county-wide referendum was included on the November 2010 ballot. Voters overwhelmingly supported the measure to place the Commission on Ethics provisions into the county charter, expanding the jurisdiction of the ethics commission to all local municipal governments. In 2012, the Lobbyist Registration Ordinance was adopted by 35 of the 38 municipalities within the County. Commission staff stands ready to inform citizen groups, county and municipal governments alike about the services and benefits of the Commission on Ethics and Code of Ethics initiatives.

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## AN INDEPENDENT ETHICS INSTITUTION

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- Ethics is knowing the difference between what you have the right to do and what is the right thing to do.*  
- Justice Potter Stewart

The Ethics Commission oversees, administers and enforces local governmental ethics laws; receives and investigates complaints; provides formal advice to persons who fall within the jurisdiction of the Commission; conducts training sessions for the community, municipal and county employees, and vendors; and proposes governmental ethics law reform.

Governmental ethics laws include the Ethics Ordinance, the Lobbyist Registration Ordinance, and the Post Employment Ordinance. The Ethics Commission accepts sworn complaints regarding alleged violations of these laws and protects individuals from retaliation for reporting violations.

Persons who fall within the jurisdiction of the Ethics Commission include:

- County and Municipal Elected Officials
- County and Municipal Advisory Board Members and other non-elected officials
- County and Municipal staff and contract employees
- Lobbyists and their principals
- Vendors
- Entities subject to jurisdiction pursuant to contract or Memoranda of Understanding

Our specific statutory authority is derived from Palm Beach County Code §2-254. This ordinance grants the Ethics Commission the power to review, interpret, enforce and render opinions regarding the above-mentioned County ordinances.

The key to our ethics commission is independence. In fact, by definition the Commission on Ethics is an independent office. Ethics commissioners cannot be removed or otherwise influenced by the County Commission and are appointed by various non-political civic, educational and professional organizations. The position of commissioner is nonpartisan and nonpolitical. Appointees may not participate in or contribute to a candidate for state or local office or allow his or her name to be used in support of or against a candidate or ballot issue. *Appointees may not participate in or contribute to political action committees, campaign for office or referenda, and may not hold office in a political party or committee.*

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## ABOUT THE COMMISSION

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The Commission on Ethics is composed of five volunteer members who serve staggered terms of four years each. Each member of the commission on ethics must also have an outstanding reputation for integrity, responsibility, and commitment to serving the community. Moreover, as representatives of Palm Beach County, appointments are made with an eye towards the racial, gender and ethnic make-up of the community.

Members are appointed by the following individuals or institutions:

- **President of the Palm Beach County Association of Chiefs of Police**- one appointment with the following qualifications: A former law enforcement official with experience in investigating white collar crime or public corruption.
- **President of the F. Malcolm Cunningham, Sr. Bar Association, the President of the Hispanic Bar Association of Palm Beach County and the President of the Palm Beach County Bar Association** – one shared appointment with the following qualifications: An attorney with experience in ethics regulation of public officials and employees.
- **President of Florida Atlantic University (FAU)** - one appointment with the following qualifications: A faculty member who teaches at an institution of higher education with a campus located in the county and who has taught a course in professional legal ethics or has published or performed services in the field of professional legal ethics.
- **President of the Palm Beach Chapter of the Florida Institute of Certified Public Accountants (CPA)** – one appointment with the following qualifications: A member with at least five (5) years experience as a CPA with forensic audit experience.
- **Palm Beach County League of Cities** - one appointment with the following qualifications: A person who has served as a former elected official for a governmental entity in the county.

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## THE COMMISSION ON ETHICS

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### **Manuel Farach, Esq., Chair**

Mr. Farach is a real estate and business lawyer practicing in West Palm Beach. Mr. Farach counsels businesses and individuals in complex transactions as part of his practice, and his experience advising businesses includes time spent as outside general counsel for a savings and loan association; he is Board Certified by The Florida Bar in both Real Estate Law and Business Litigation. Mr. Farach has served as an arbitrator for the American Arbitration Association for over twenty years and has significant FINRA (formerly the NASD) arbitration experience.

Mr. Farach has also served in different capacities regarding the ethical practice of law, including Chair of the Fourth District Court of Appeal Judicial Nominating Commission, President of the Craig S. Barnard Inn of Court, President of the Palm Beach County Bar Association, and as an expert witness for The Florida Bar in lawyer disciplinary matters.

Mr. Farach graduated the Florida State University College of Law *cum laude*. He graduated from Stetson University in 1981 with a dual major in English and Business.



### **Robin N. Fiore, Ph.D., Vice-Chair**

Dr. Fiore joined the University of Miami Ethics Program at the University Of Miami Miller School Of Medicine in 2010. Previously, she served as the Adelaide R. Snyder Professor of Ethics at Florida Atlantic University. Dr. Fiore specializes in biomedical ethics and professional ethics. She has served as an ethics consultant or ethics advisory committee member for a number of governmental agencies, including the Florida Public Service Commission, Florida Department of Health, Florida Department of Corrections Bioethics Committee, Florida Department of Children and Families and Florida Developmental Disabilities Council.

Dr. Fiore earned her Doctorate in Philosophy from Georgetown University in Washington, DC, after post-baccalaureate studies in religion and ethics at Drew University Graduate and Theological School in Madison, New Jersey. From 1977 through 1990, she enjoyed a corporate career in employee benefits consulting.



### **Ronald E. Harbison, CPA**

Mr. Harbison is the founder of Valuation Analysts, LLC; a business valuation and financial forensics firm, focusing on estate and gift, commercial litigation and family law. In addition, Mr. Harbison has provided forensic accounting services, been a consultant on mergers and acquisitions, and has served as an Agent for the United States Internal Revenue Service, where he conducted tax examinations of corporations, partnerships and high net worth individuals. He has also served as an Adjunct Professor of Accounting for Palm Beach Atlantic University and is currently the Chairman of the Ethics and Disciplinary Committee of the Institute of Business Appraisers.

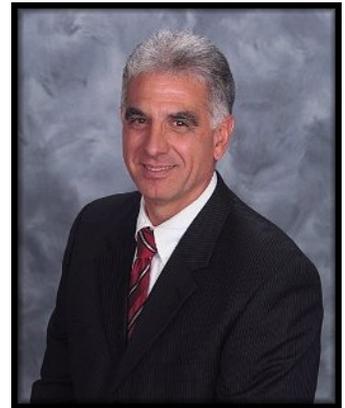
Mr. Harbison graduated from Florida State University with a Bachelor of Arts in Government/Pre-Law, and earned a Master of Science in Management/Accounting from Rollins College.



**Daniel T. Galo, Esq.**

Mr. Galo is an attorney with a local law firm in Boca Raton, practicing in the areas of Personal Injury matters. Prior to joining the firm, Mr. Galo was an Assistant State Attorney with the 15th Judicial Circuit in and for Palm Beach County for over twenty-one years. As an Assistant State Attorney Mr. Galo tried numerous high profile felony and homicide cases and held several supervisory positions.

The recipient of the Palm Beach County School Board's 2006 Gold Medal Award as a Community Leader, Mr. Galo has also been a member of the Village of Wellington Planning, Zoning and Adjustment Board from 2006 to 2008; a member of School Advisory Committees for Binks Forest Elementary School and Wellington Landings Middle School where he held the positions of Chairman and Vice Chairman; a board member of Meadow Wood Home Owners Association; and the Treasurer for the Craig S. Barnard Inn of Court.



A 1981 graduate with honors of the University of Florida with a BA degree in Economics, Mr. Galo received his Law Degree from the University of Florida College Of Law with honors in 1986.

**Patricia L. Archer**

Ms. Archer is a former Vice Mayor of Delray Beach and served as a Delray Beach City Commissioner from 1999-2006. Ms Archer has been a member of or served on the following boards: the Delray Beach Planning & Zoning Board, the Parking Management Advisory Board (founding member), the South County Regional Wastewater Treatment Board (former chair), the Regional Trans. Authority Citizens Advisory Committee (former vice chair), the Palm Beach County Metropolitan Planning Organization, the Florida League of Cities Inter-Government Affairs Committee, the Delray Beach Chamber of Commerce (former board of directors member), Chamber Government Affairs Committee (former co-chair), Rotary Club of Delray Beach (past president & member), AVDA (past president & member), Delray Beach Sister City Tanzania Committee (former member, lead first delegation to Tanzania), and the Sherwood Forest Home Owner's Association (former vice president).



Ms. Archer is a graduate of the following municipal programs: Florida League of Cities Municipal Leadership, the Delray Beach Citizens Police Academy, Leadership Delray, and Palm Beach County World Class Schools.

Ms. Archer has been a Real Estate Broker/Salesperson, a Mortgage Broker, a Life & Health Insurance Salesperson and held a Series 7 Securities License.

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## EDUCATION

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One of the Commission's critical responsibilities is to inform county and municipal employees, officials, persons with or seeking government contracts, lobbyists and the public about the ethical standards expected by the Code of Ethics and related ordinances.

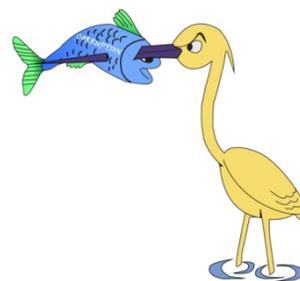
### *Employee and Official training*

Ethics training is required for all county and municipal elected officials, employees, contract employees and volunteer officials and advisory board members. The Commission and its staff seek at all times to be proactive in its outreach efforts and its relationship with the community in order to increase citizen understanding and participation in government accountability efforts. In 2012, COE staff conducted over 40 in-person trainings and provided over 50 training DVD's to County departments and municipalities.

### *Other Training*

Staff designed and conducted other ethics training seminars or presentations for both government and non-government personnel, including new specialized trainings for vendors and lobbyists subject to the code. This past year, these included:

- Palm Beach County School District
- Leadership Palm Beach Forum
- Association of Fundraising Professionals
- Secular Humanists of Palm Beach County
- Palm Beach County Bar Association
- International Association of Administrative Professionals
- Leadership Boca
- Palm Beach County Department of Economic Sustainability
- State Attorney's Office for the 15<sup>th</sup> Judicial District
- Wellington Chapter of the Palm Beach County Tea Party
- Jewish War Veterans
- 6 Pillars Forum: Palm Beach County Chamber of Commerce
- West Palm Beach Kiwanis Club
- The Mosaic Group
- Palm Beach County Planning Congress Ethics Conference



**“Edgar the Ethigret”**

### *Web-Based Training*

In addition to the employee and official training programs provided by Commission staff, an interactive online quiz is also available. The Ethics Quiz addresses fifteen of the most frequently asked questions on the Code of Ethics.

### *Social Media*

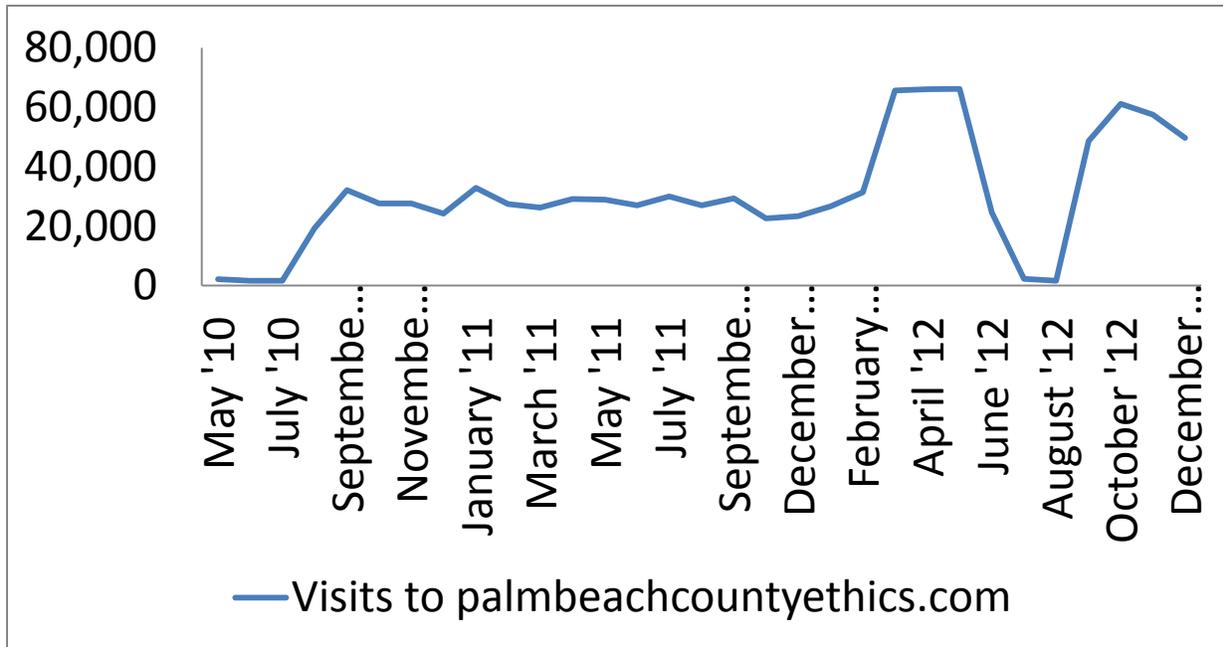
With pages on Facebook and Twitter the public can now access the COE through their favorite new media sites. In this way, individuals as well as organizations can stay up to date with recent COE decisions, meeting dates, and related reporting on ethics within the county, state and nationwide. The COE looks forward to launching its own YouTube channel in 2013. You can contact the COE on Twitter at @PBCCOE or visit us on Facebook at [www.facebook.com/PBCCOE](http://www.facebook.com/PBCCOE).

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## WEBSITE

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In 2010, Commission staff launched the COE website. With over **394,000** visits to the website in 2012, the site is designed to enhance transparency, outreach efforts and provide public access to all relevant forms, documents, databases, advisory opinions and investigations.



### *Multimedia*

Video of commission meetings, drafting committee meetings and channel 20 programming can be found under the Multimedia tab.

### *Complaints*

New in 2012, all investigative materials, reports and audio files of sworn complaints referred to the COE are available for review under the Complaints tab at the top of the COE main page.

### *Training*

Commission staff provides both in-person and video trainings. In addition to the over 40 in-person trainings provided to municipal and county employees and officials by COE staff and the over 50 DVD's distributed to the county and 38 municipalities, employees and officials can complete their training requirement by streaming training videos at home or at work. Under our training tab you will find a full text copy of the code of ethics and plain language guides for public employees and advisory board members. These trainings and guides are available not only to officials and employees, but also to members of the public who are interested in learning more about the code of ethics and its real world application. Employees, officials and advisory board members can always access their training acknowledgement forms via our website. Ongoing Code of Ethics training is mandatory for all public officials and employees. Most jurisdictions require ethics training every two years. Recently, the COE conducted a compliance audit of the county and all municipalities. Results of the 2012 audit can be found on our website at <http://www.palmbeachcountyethics.com/audits.htm>

### *Searchable Databases*

The commission website currently maintains gift reporting, outside employment and voting conflicts databases. This feature allows the public to view employee and official filings with the COE. Moreover advisory opinions are now searchable through a search bar available at the top of our website.

### *Other Information*

Serving as a gateway to information on ethics both locally and nationwide, the COE website provides users with access and links to the Palm Beach County Inspector General, the State Attorney's Office, the Palm Beach County lobbyist registration database and county vendor database. We hope in the near future to be able to provide a searchable list of vendors by municipality. The public, employees, and officials will always be able to access up to date information on the Code of Ethics, applicable forms and other resources on our site, including frequently asked questions.

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## FISCAL REPORT

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In fiscal year 2011-2012, the COE expended eighty-eight percent of budgeted expenditures, a savings of four percentage points over projected savings, a savings of approximately \$70,000.

PALM BEACH COUNTY COMMISSION ON ETHICS  
STATEMENT OF REVENUES, EXPENDITURES,  
AND CHANGES IN FUND BALANCES

Budget and Actual- General Revenue Funds  
October 1, 2011 to September 30, 2012

#### REVENUES:

	<u>Budget</u>	<u>Actual</u>	<u>Variance- Favorable</u> <u>(Unfavorable)</u>
Ad Valorem Funding	475,626	475,626	0
Fines	<u>0</u>	<u>1000</u>	<u>1000</u>
<b>Total Revenues</b>	<b>\$475,626</b>	<b>\$476,626</b>	<b>\$1000</b>

#### EXPENDITURES:

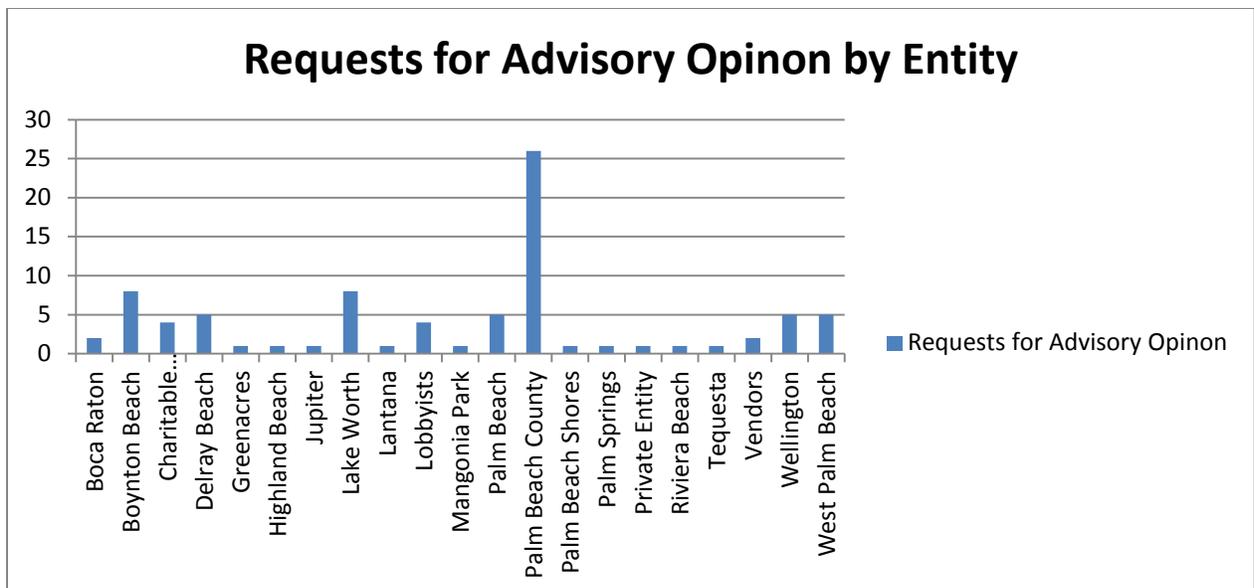
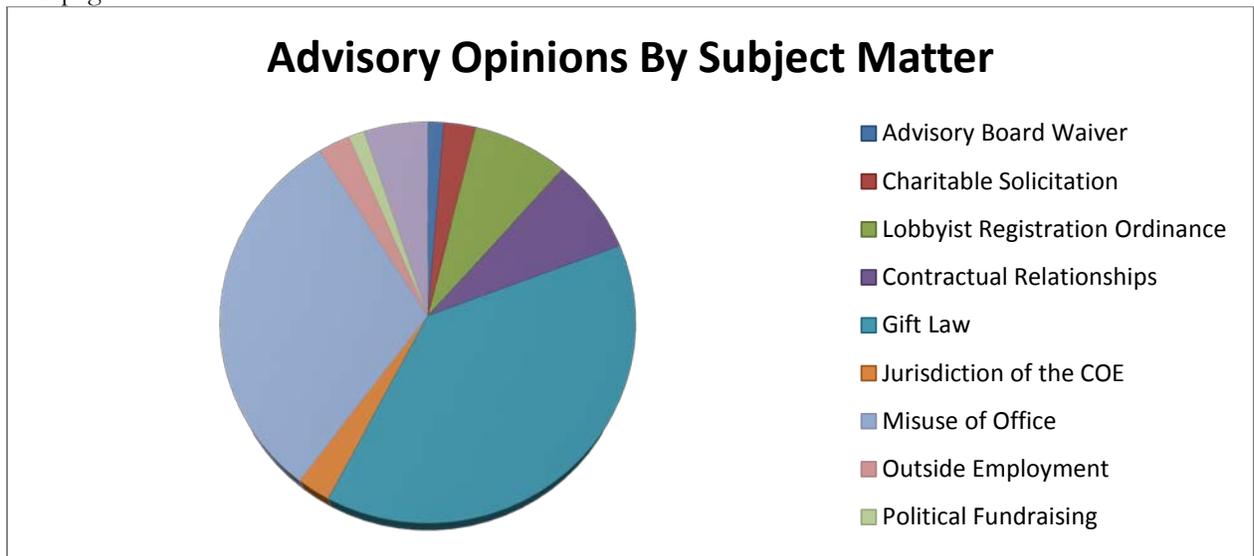
	<u>Budget</u>	<u>Actual</u>	<u>Variance-Favorable</u>
Personal Services	488,246	474,117.15	14,128.85
Operating Expenses	77,362	26,175.26	49,186.74
Capital	<u>6,500.00</u>	<u>0</u>	<u>6,500.00</u>
<b>Total Expenditures</b>	<b>\$570,108</b>	<b>\$500,292.41</b>	<b>\$69,815.59</b>

#### BALANCES BROUGHT FORWARD :

	<u>Actual</u>	<u>Variance-Favorable</u>
Balance Brought Forward 2010	70,770	70,770
Balance Brought Forward 2011	<u>90,112</u>	<u>90,112</u>
Balance Brought Forward 2012	<u>(19,406)</u>	<u>(19,406)</u>
<b>Cumulative department reserves</b>	<b>\$141,476</b>	<b>\$141,476</b>

## ADVISORY OPINIONS: ASK FIRST, ACT LATER

In 2012, the Commission on Ethics issued 85 advisory opinions. Advisory opinions are designed to assist employees, officials and advisory board members and any other persons or entities subject to the Code of Ethics or related ordinances in understanding their obligations under the codes. When in doubt about the applicability or interpretation of the ethics codes, employees, officials and advisory board members may submit the facts of their particular situation to the Commission on Ethics in writing and request an advisory opinion. As long as the facts submitted to the Commission are complete and accurate, the requesting party may rely on the Commission's response. Advisory opinions concern only the application of the Palm Beach County Code of Ethics and do not analyze other rules or laws that may apply. Copies of every advisory opinion issued since the Commission's establishment are available in PDF format on the COE website. They are indexed by subject matter and are searchable by clicking on the Google search bar available at the top of each page.



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## SUMMARIES OF NOTABLE 2012 ADVISORY OPINIONS

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The Code of Ethics is an 11 page document that does not account for every possible scenario or situation but provides overall guidance to employees, officials, government vendors, lobbyists and their principals. Accordingly, the COE must interpret the words of the code and offer common sense advice to those subject to its jurisdiction. The following summaries are based upon actual advice given in the form of advisory opinions issued by the Commission during 2012. They are included here for educational purposes only. Summaries are not intended as legal advice.<sup>1</sup> If you have a question, please ask commission staff to prepare an advisory opinion as each opinion is based upon the specific facts and circumstances associated with that opinion. On occasion, COE staff may refer callers to prior opinions when the issues involve settled general interpretation of the Code. Over the past year, Commission staff provided 58 referrals to existing opinions to local officials, employees, vendors, lobbyists, members of the public and the media.

### Lobbyists and Lobbying

A lobbyist is defined as someone who is paid to lobby on behalf of a principal. A lobbyist can be an outside contractor or an employee whose principal responsibility is lobbying government on behalf of their employer. The Code of Ethics defines lobbying 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. The Code prohibits lobbyists from giving gifts in excess of \$100 to a person the lobbyist knows is an elected official or advisory board member of the county or municipality they are lobbying. Moreover, lobbyists engaged in lobbying activities are required to register pursuant to the Countywide Lobbyist Registration Ordinance effective April 2, 2012.

**Question:** 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. *RQO 12-025*

**Answer:** 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.

When information flows from staff to an employee of a registered lobbyist developing a project, the exchange of information is one sided. Input is provided by county staff, not by the lobbyist’s staff. Accordingly, an employee of a lobbyist 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 lobbyist’s staffer, and that constitutes lobbying under the code.

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<sup>1</sup> To the extent that these summaries differ from the language of the original advisory opinion or ordinance, the language in the ordinance and opinion controls.

**Question:** A vice-president of marketing and development for a local corporation asked whether members of a company's executive team are required to register as lobbyists if they meet with elected officials or county and municipal staff from time to time on behalf of their employer. *RQO 12-033*

A lobbyist is any person who is employed and receives payment, or who contracts for economic consideration for the purpose of lobbying on behalf of a principal, and *shall include an employee whose principal responsibility to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government.* Whether or not a particular individual is captured within this definition is determined by the specific facts and circumstances surrounding the person's status and the nature of the contact between that individual and public employees and officials.

However, when an owner or employee of a business lobbies directly on behalf of his or her business or employer, rather than on behalf of a principal of their business or employer, and lobbying is not their principal employment responsibility, the owner or employee is not required to register as a lobbyist.

### **Misuse of Office**

The Code of Ethics prohibits employees, officials and advisory board members from using their position to give a *special financial benefit*, not shared with *similarly situated members of the general public*, to 1) themselves; 2) a household member, spouse or domestic partner or their outside business or employer; 3) certain relatives or their outside business or employer; 4) their outside employer or business or someone who they know works for that business; 5) a customer or client of their outside employer or business (\$12,000 in goods or services over the preceding 24 months); 6) a debtor or creditor of an employee or official (at least \$10,000, not including financial institutions); 7) a non-profit organization where the employee or official serves as an officer or director. Simply put, a financial benefit is anything of value. Similarly situated means that everyone in the class of persons or entities affected by a decision benefits in the same way.

**Question:** A municipal employee asked whether, as a certified urban planner for a City, he may work in his professional capacity to develop a City transit project when he is a co-owner of a property within the development area. *RQO 12-070*

**Answer:** City employees are prohibited from using their official position to give themselves a financial benefit, not shared with similarly situated members of the general public. In evaluating conflict of interest under the Palm Beach County Code of Ethics, the Commission considers 1) the number of persons who stand to gain from a decision and 2) whether the gain or loss is remote and speculative.

Where the class of persons who stand to gain from a decision is small, it is more likely that an employee will have a conflict. Based upon the facts presented here, the economic benefit or loss affects a class large enough (over 500 properties) so as to eliminate any prohibited individual financial benefit and the employee may begin work on the project for the City.

## Gifts

The Code of Ethics prohibits employees, officials and advisory board members from accepting anything of value in exchange for the past, present, or future performance of their job. This includes thank you gifts or tips for an official public action or legal duty performed, withheld, or violated. Employees and officials are prohibited from soliciting gifts of any value from someone they know to be a vendor, lobbyist or principal of a lobbyist who sells, leases or lobbies their governmental entity for their personal financial benefit, the benefit of a relative or household member, or another employee. Over the course of the calendar year, employees and officials may not solicit or accept gifts worth more than \$100 in the aggregate from a person they know or reasonably should know to be a vendor or lobbyist of their public employer. Gifts in excess of \$100 that are not prohibited are reportable unless one of several exceptions applies.

**Question:** A municipal employee asked whether she may accept hotel rewards points earned while traveling in her official capacity and where her public employer has reimbursed the cost of her travel.  
*RQO 12-034*

**Answer:** The Code provides that publicly advertised offers for goods or services available to an employee under the same terms and conditions as offered or made available to the general public are not gifts. Hotel rewards points are available to all members of the general public. Furthermore, the calculable value of these programs is *de minimus*; the value and frequency at which points may be provided is so small and sporadic that accounting for value is unreasonable and impracticable.

Notwithstanding, an employee or official may not use their official position to financially benefit themselves by specifically targeting a commercial hotel or carrier, resulting in an increased cost to their public employer, for the purpose of obtaining greater rewards through a particular program. Lastly, an individual government employer, or government department, may impose more stringent regulations than are required by the Palm Beach County Code of Ethics, including a policy ban on acceptance of rewards points.

**Question:** A municipal employee asked whether family members may accompany her on official government travel. *RQO 12-036*

**Answer:** An employee may not use his or her official position to provide a special financial benefit to his or her relatives as specified in §2-443(a)(3) of the Palm Beach County Code of Ethics.

Where there is no difference between a hotel single occupancy room rate and double occupancy room rate, there would be no additional benefit or *value added* and thus, no improper financial benefit as contemplated under the Code. However; if the hotel provides an upgrade to accommodate additional persons or generally charges an additional fee for a second person, payment of this amount to the hotel or to the applicable county/municipal revenue fund, within 90 days, would eliminate the “financial benefit,” and assure that no violation of the code of ethics occurs in this matter.

## Voting Conflicts

Section 2-443(c), voting conflicts, addresses the scenario where, by participating or voting on an issue, an elected official would violate the misuse of office section of the code by giving a special benefit to one of the prohibited persons or entities listed under §2-443(a). In such a scenario officials and advisory board members must 1) disclose the nature of his or her conflict before their board discusses the 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 recording clerk and the Palm Beach County COE.

**Question:** A town attorney asked whether an employee of a corporation that owns property within a study area district may serve on an advisory board created specifically to review potential development proposals for that district, and if so, whether he may participate and vote on any ultimate recommendation submitted to the town. In total, based upon the study area legend, prepared by town staff and submitted to COE staff, there are 15 property owners who may be affected by changes in the study area. Recommendations ultimately could include land use changes affecting density, height restriction and permitted uses within the study area. Changes could have a significant impact on property values; however, it is unknown at this time whether the board will ultimately recommend such changes.

*RQO 12-063*

**Question:** A municipal advisory board member asked whether he was prohibited from voting on a matter coming before his board regarding a new development in one of the subdivisions within his property owners association. *RQO 12-071*

**Answer:** Advisory board members are prohibited from using their official position, participating or voting on an issue that would give a financial benefit to their outside employer not shared with similarly situated members of the general public. There is no bright line as to whether a contingent financial benefit creates a conflict. In evaluating conflict of interest under the Palm Beach County Code of Ethics, the COE considers 1) the number of persons who stand to gain from a decision, and 2) whether the gain or loss is remote and speculative. Where the class of persons who stand to gain from a decision is small, it is more likely that a member will have a conflict. Similarly, where a gain or loss to an official or his or her employer is not subject to significant contingencies, it may result in a conflict of interest under the Palm Beach County Code of Ethics.

Under the facts and circumstances submitted, where the official's employer is one of 15 affected landowners and the recommendations of the committee will likely have a direct financial impact on the value of their properties, a conflict exists and the official may not participate and vote on issues related to the study area.

**Answer:** Public officials are prohibited from using their position to give themselves a financial benefit, not shared with similarly situated members of the general public. In evaluating conflict of interest under the Palm Beach County Code of Ethics, the Commission considers 1) the number of persons who stand to gain from a decision and 2) whether the gain or loss is remote and speculative. Where the class of persons who stand to gain from a decision is small, it is more likely that an advisory board member will have a conflict.

While the board member's home was within the affected POA, he was one of approximately 1450 owners in the POA. Even as one of 1450 owners, the Code would prohibit a board member from voting on this matter if facts and circumstances showed that the location, ownership, or size of the board member's property in relation to the site plan, would provide a unique benefit to him. Because the board member's home was over a mile away from

the proposed development site and his interest in the area, as a similarly situated member of the POA, is less than one-tenth of a percent, the economic benefit or loss affects a class large enough so as to remove any prohibited individual financial benefit. Therefore, the board member was not prohibited from voting or participating in this matter.<sup>2</sup>

**Question:** A member of a City Historical Preservation Advisory Board asked whether she may participate and vote in a matter involving a proposed construction in a vacant lot adjacent to her home, where she has filed objections to the proposed construction. Additionally, she asked whether she may attend and participate as an individual homeowner, should she be required to abstain. *RQO 12-058*

**Answer:** Under the facts and circumstances submitted, an advisory board member may not participate and vote on a matter involving proposed construction in a vacant lot adjacent to her home. Furthermore, as a member of the Historical Preservation Advisory Board, she is prohibited from participating in the discussion, even in her personal capacity as a homeowner.

### Charitable Solicitation

The code prohibits an official from using his or her official position to give a special financial benefit to a non-profit organization if they are an officer or director of that organization. Therefore, solicitation of charitable donations made on behalf of a non-profit organization by an officer or director in one's official capacity, for example Commissioner or Police Chief, is *per se* a violation of section 2-443(a)(7), *misuse of office*, of the Palm Beach County Code of Ethics. In order for an official to use their official title to solicit donations on behalf of the non-profit they serve, they must resign their position with the charity. Public officials and employees may not solicit or accept anything of value because of the performance of an official act, or the past, present or future performance or violation of a legal duty. Nor may they solicit a gift of *any value* from a vendor, lobbyist, principal or employer or a lobbyist who sells, leases or lobbies the municipality they serve for their own personal benefit, the benefit of their relatives or household members or the benefit of another employee. If a public official or employee solicits on behalf of a charitable organization recognized under the Internal Revenue Code, the official or employee must maintain a log of any solicitation in excess of \$100 from vendors, lobbyists, principals or employers of lobbyists and submit the log to the Palm Beach County Commission on Ethics within 30 days of the event, or if no event, within 30 days of the solicitation.

**Question:** A municipal elected official asked whether he may participate in a fundraising event as a "celebrity chef" for the benefit of a 501(c)(3) non-profit organization. *RQO 12-039*

**Answer:** 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 log requirements of the code.

<sup>2</sup> State of Florida CEO Opinion 01-8, June 12, 2001

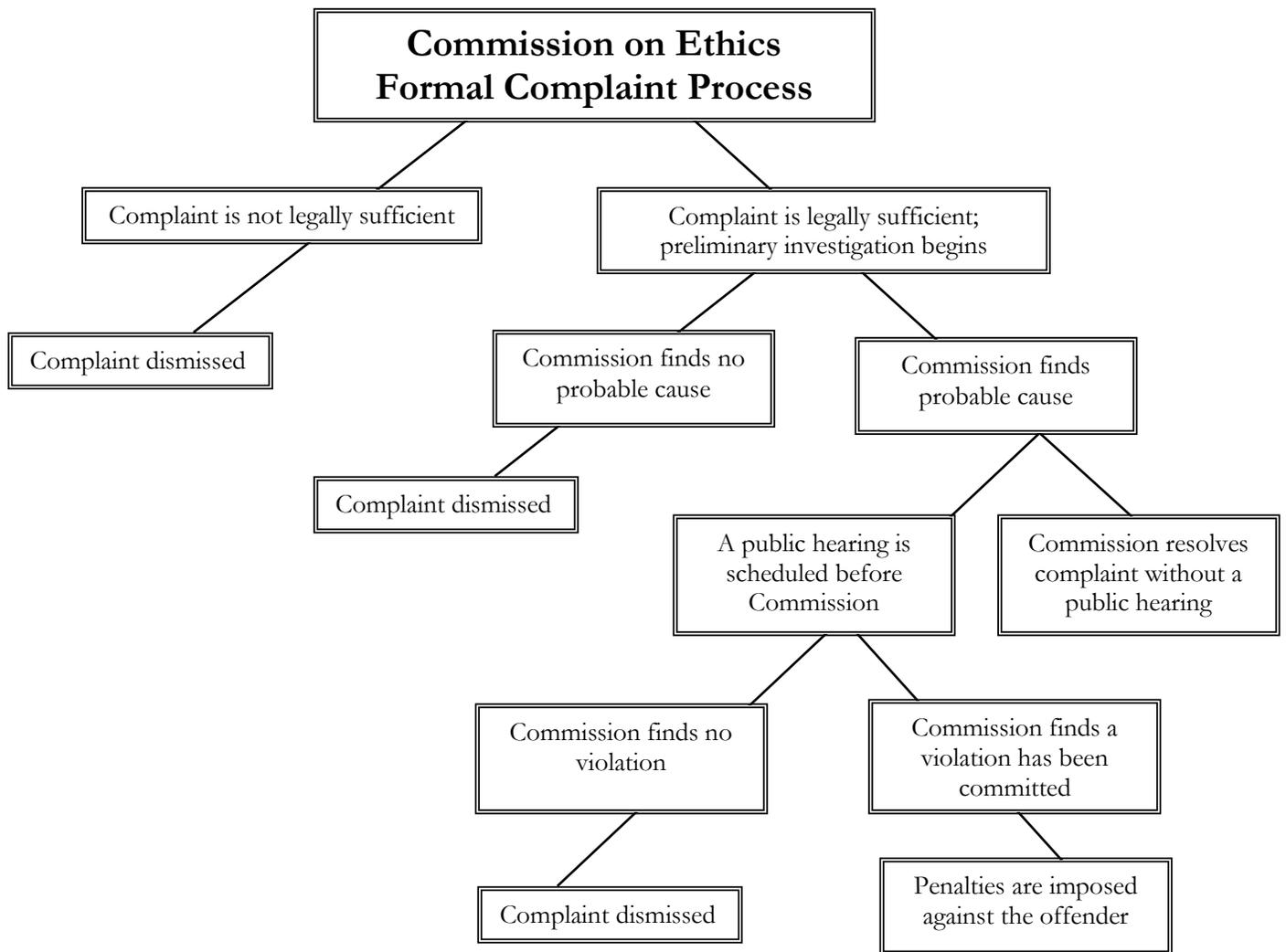
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## THE COMPLAINT PROCESS

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Any person can file a complaint with the Commission on Ethics by submitting a written notarized complaint executed on an approved form available by mail or on our website ([www.palmbeachcountyethics.com](http://www.palmbeachcountyethics.com)). The complaint must allege a violation of the code of ethics, lobbyist registration or post-employment ordinance, be based substantially upon personal knowledge and be signed under oath or affirmation by the complaining person. The commission maintains a searchable library of all public reports and final orders regarding the disposition of all sworn complaints. You may request a copy of a complaint form or visit our website.

In addition, citizens can leave information and tips anonymously on the Commission on Ethics hotline at 877-766-5920 or by email to [ethics@palmbeachcountyethics.com](mailto:ethics@palmbeachcountyethics.com). If you chose to remain anonymous, you must be sure to provide specific, detailed information that will allow investigators to determine the identity of persons may have personal knowledge of the alleged violation, as well as any available documentary evidence of a violation, or where such documents may be located.



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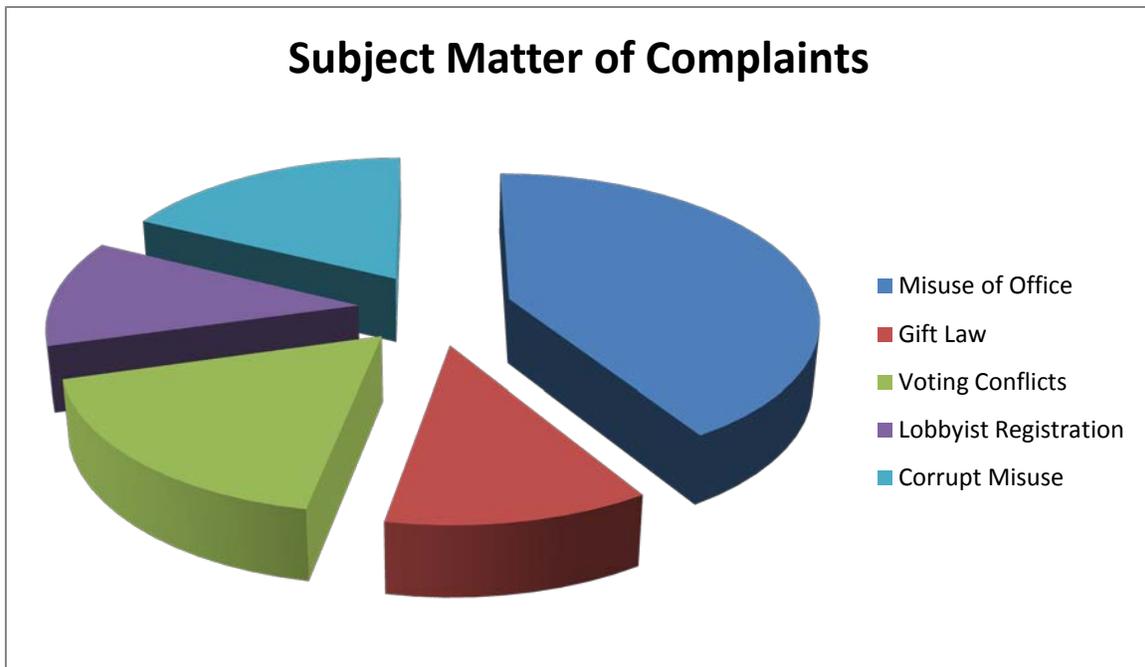
## COMPLAINTS

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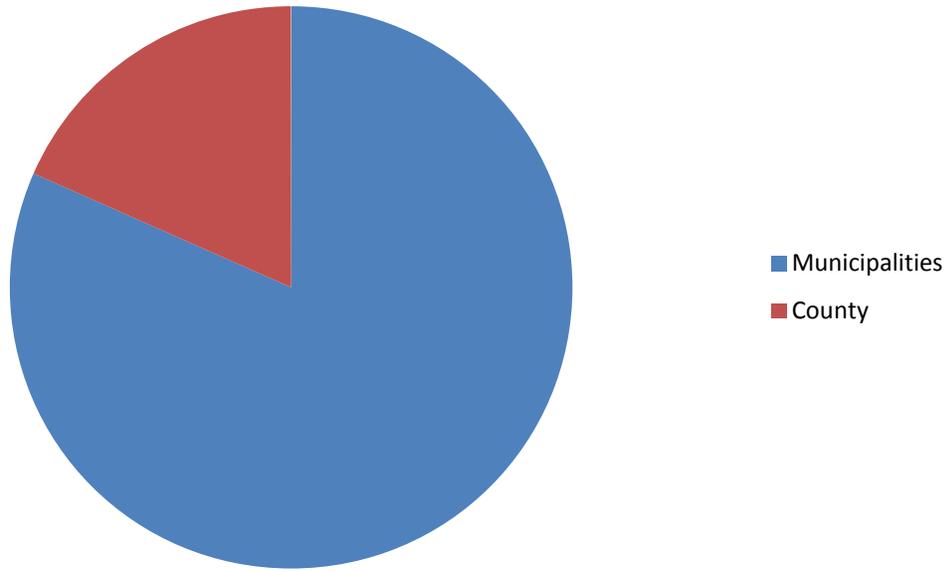
### STATISTICAL SUMMARY OF COMPLAINTS FILED JANUARY 1, 2012 THROUGH DECEMBER 31, 2012

The COE receive 10 sworn complaints and self-initiated 6 complaints in 2012. There were 5 sworn complaints dismissed for lack of legal sufficiency and 7 sworn complaints found to be legally sufficient. There are 4 additional cases pending legal sufficiency and probable cause determinations. Of the 7 cases found to be legally sufficient, 5 were dismissed at probable cause hearings and probable cause was found in the remaining 2 cases. The first case, C12-003, resulted in a settlement agreement and the second case, C12-013 has been set for final hearing.

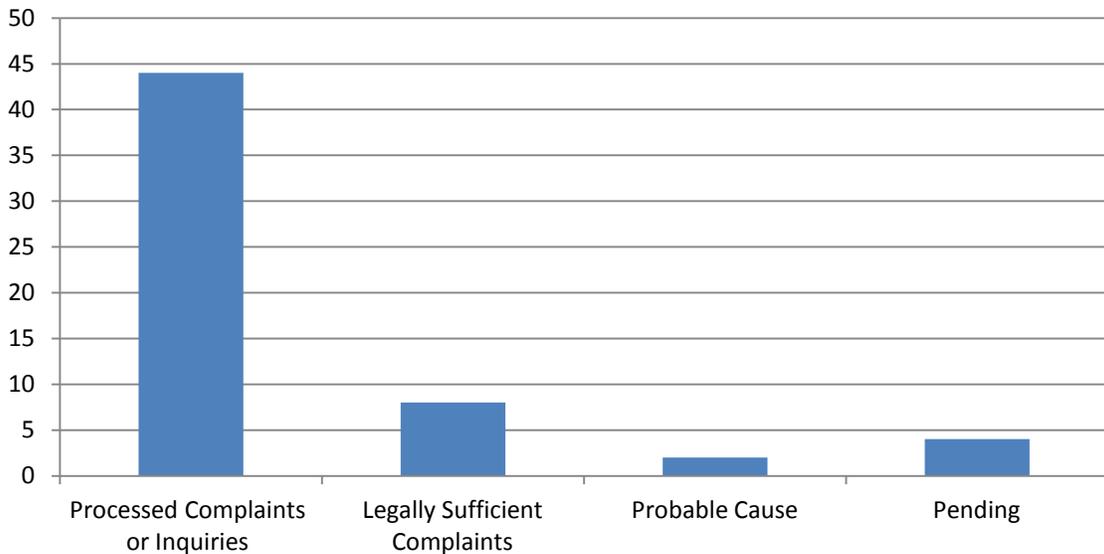
In addition to handling the 10 sworn complaints received in 2012, staff opened inquiries into 33 matters based upon information received other than by formal complaint. Of these inquiries, 21 were closed as not legally sufficient, 5 became the basis for a self-initiated complaint and 7 inquiries are ongoing. In 2012, the COE staff fielded 560 calls on the COE Hotline (1-877-766-5920), 102 calls were referred to another agency and 23 calls resulted in an inquiry or investigation.



### Complaint and Inquiry Origination



### Complaint and Inquiry Disposition



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## LEGISLATIVE ACTIVITIES AND INITIATIVES

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The Commission on Ethics is charged with reviewing statutes and ordinances relating to ethics in government and making policy recommendations to the Board of County Commissioners. After the 2010 referendum, a drafting committee was established to review and revise the Commission on Ethics and Code of Ethics Ordinances. The Commission, through the Executive Director, was actively involved in developing and revising the Code of Ethics to include municipal governments. The revised code of ethics contains a number of substantive changes and took effect on June 1, 2011. For example, and perhaps most notably, the revised code includes vendors in those sections dealing with prohibited gifts.

Public employees and officials may not accept a gift over \$100 annually in the aggregate from a vendor, lobbyist, principal or employer of a lobbyist. Similarly, vendors and lobbyists have a duty under the revised code not to offer a prohibited gift to someone they know is a public employee or official who is employed by or serves a government the vendor or lobbyist vends, leases or lobbies. Holding vendors responsible for knowing violations of the gift law sends a strong message to the business community that the giving of prohibited gifts is actionable under the law. Provisions such as these make the Palm Beach County Code of Ethics among the most proactive in the United States.

Also, the Commission worked with the Palm Beach County League of Cities and Palm Beach County Administration to establish a county-wide lobbyist registration ordinance regulating certain lobbying activities and creating a central registration database. Effective April 2, 2012, lobbyists in 35 municipalities and the county will need to register, provide yearly expenditure reports and sign contact logs maintained by the public entity they lobby. In addition, vendors and lobbyists are subject to a “cone of silence” contact prohibition when bids and proposals are pending.

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## COMMISSION STAFF

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### **Alan S. Johnson, Executive Director**

Prior to his selection as Executive Director, Mr. Johnson was a 17 year state prosecutor for the 15th Judicial Circuit in Palm Beach County. As an Assistant State Attorney Mr. Johnson has tried numerous high profile felony cases and in 2001 became Chief of the Felony Division. In 2005 Mr. Johnson took over the role of Chief Assistant State Attorney until 2009 when he became Senior Counsel for a newly established State Attorney Public Integrity Unit. Mr. Johnson has also served in various capacities as a member and chairman of the Florida Bar Grievance Committee and the Unlicensed Practice of Law Committee as well as regularly serving as a volunteer youth court judge. Since 2000, Mr. Johnson has been a frequent instructor for the Florida Prosecuting Attorneys Association in areas including ethics for prosecutors, victim rights, homicide prosecution, evidence and jury selection.



Mr. Johnson graduated from Columbia University in 1973 and obtained his law degree from Georgetown University Law Center in 1976.

**Gina Levesque, Intake Manager/Executive Assistant**

Ms. Levesque is a former certified law enforcement officer and worked at the Broward County Sheriff's Office for 4 years. In addition to her law enforcement experience, Ms. Levesque served as a legal secretary in the Office of the State Attorney, 15th Judicial Circuit from 1999-2010. Her duties included victim/witness coordination, expungement processing, attorney/witness travel facilitation, case file management and maintaining trial statistics.

Ms. Levesque graduated with a degree in education from Southern Illinois University at Edwardsville in 1988.



**Mark Bannon, Senior Investigator**

A U.S Army veteran, Mr. Bannon spent nearly 25 years serving as a deputy sheriff, supervisor and Commander with the Palm Beach County Sheriff's Office where he worked in patrol, investigative and community support assignments before retiring from policing in 2005.

He is a graduate of Florida Atlantic University, and holds a Master of Public Administration degree from Nova Southeastern University. Mr. Bannon attended law school at the University of Miami, and was admitted to the Florida Bar in 2005. He is also a former Assistant State Attorney who prosecuted criminal cases in the 15th Judicial Circuit before entering private law practice.



Mr. Bannon authored a book on criminal procedure for law enforcement officers, which was published in 2003 and has taught criminal justice courses to both police officers and undergraduate students. He brings a unique blend of law enforcement and legal education and experience to the Commission.

**Megan Rogers, Staff Counsel**

Megan Rogers joins the Commission on Ethics from AARP Foundation in Washington, D.C. where she worked on age-discrimination matters. During law school, she served as the Training Editor of the Denver Journal of International Law and Policy and interned with the Colorado Office of the Attorney General and the Colorado Division of Civil Rights. In these positions, she worked on cases involving federal and state discrimination statutes. Upon graduation, Ms. Rogers clerked for the Honorable William Robbins of the Colorado District Court.

Ms. Rogers graduated from Trinity University in 2005 with degrees in political science and history and obtained her law degree in 2008 from the University Of Denver-Sturm College Of Law. Ms. Rogers is admitted to practice in Florida, Colorado and the District of Columbia.



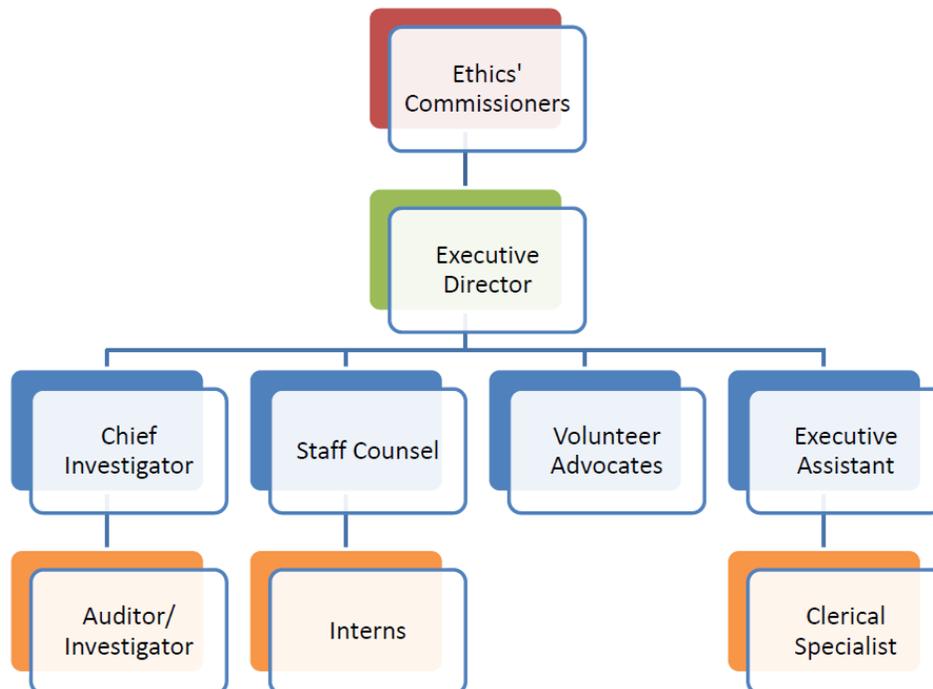
## James Poag, Investigator

As the latest addition to the Commission on Ethics, James joined the office 16 months after inception. Mr. Poag has over 15 years of progressive experience in supervising and conducting criminal and civil investigations. As the Broward County Director of the Office of Professional Standards he was responsible for the oversight of 7000 government employees, including the Airport, Seaport, and Visitors and Convention Bureau to ensure compliance with all Federal, State and Local rules, regulations, and ordinances. In addition he also served as the Interim Director of the Broward County Office of Equal Opportunity where he was responsible for the oversight of Broward County's Small Business Development Division, Civil Right Division, Disability Affairs Section, and Equal Opportunity Section.



Mr. Poag is a certified law enforcement/correctional officer; in addition he possesses a Masters Degree in Justice Administration and a Graduate Certificate in Public Management from St. Thomas University, and a Bachelors Degree in Criminal Justice from Florida A&M University.

## Commission on Ethics Organizational Chart





*Ethics In Action*

**[PalmBeachCountyEthics.com](http://PalmBeachCountyEthics.com)**

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**HOTLINE:**  
**(877) 766-5920**