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Commission on Ethics**
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For Immediate Release

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Summary of Palm Beach County Commission on Ethics Meeting Held on August 7, 2014

The Palm Beach County Commission on Ethics (COE) took the following actions at its monthly public meeting held on August 7, 2014.

Nine (9) advisory opinions were approved. The full opinions are published and available at:

<http://www.palmbeachcountvethics.com/opinions.htm>

ROO 14-013: The director of development for the city of Boynton Beach asked if employees of the city of Boynton Beach, who are eligible property owners, may participate in the city's Energy Edge Energy Efficiency Rebate Program, which is available to any resident of the city who meets the eligibility requirements.

The COE opined as follows: City employees are not prohibited from participating in the rebate program because it applies to all similarly situated residents of the city. A discount available to all similarly situated city residents does not violate the code, provided that no "quid pro quo" or other benefit is offered or accepted because of any official public action taken, or legal duty performed or violated, by a public official or employee. A gift is defined as "the transfer of anything of economic value." A rebate is unquestionably a thing of economic value. However, the code excludes certain transfers of economic value from the definition of a gift. One of these exceptions is a publicly advertised offer made available to the general public. Here, because the rebate program is a publicly advertised offer made available to the general public, it is not considered a gift. The employee's public status bears no relationship to eligibility for the rebate, and, therefore, any rebate received is not a reportable gift.

ROO 14-014: The vice mayor of the town of Loxahatchee Groves asked if he is allowed to keep the fill that was taken out of a town canal by the Loxahatchee Groves Water Control District and placed on his property.

The COE opined as follows: The vice mayor is not prohibited from keeping and using the fill that was taken out of a town canal by the water control district and placed on his property. The code prohibits the vice mayor from using his official position in a manner which would result in him receiving a special financial benefit not shared with similarly situated members of the general public or to corruptly secure a special benefit. The code also prohibits the vice mayor from using information not available to members of the general public and gained by reason of his official position. Under the facts submitted, since he contacted the water control district in his personal capacity to inquire about the fill, as did two other landowners who also received the fill, and the amount of fill available for the public was so small that it was distributed on a first-come, first-served basis, there is no indication that he used his official position as vice mayor to obtain the fill for his property.

ROO 14-015: The assistant village attorney for the Village of Wellington asked if Councilwoman Gerwig is prohibited from participating in and voting on the selection of a design and award of a contract to construct a bridle and multipurpose path adjacent to the Palm Beach Point community, when the Palm Beach Point Property Owner's Association (POA) is a client of the councilwoman.

The COE opined as follows: Councilwoman Gerwig is not prohibited from participating in and

voting on the selection of a design and award of a contract to construct a bridle and multipurpose path adjacent to the Palm Beach Point community. The code prohibits Councilwoman Gerwig from using her official position in any way when she knows or should know with the exercise of reasonable care that it would result in a special financial benefit to a client or customer of her outside business. Since her outside business has supplied goods or services in excess of \$10,000 over the previous 24 months to the POA, the POA is a customer or client of her outside business. In the context of the code, financial benefit constitutes economic gain or loss. To constitute a prohibited voting conflict, the possibility of the financial gain or loss must be direct and immediate, rather than remote and speculative. For a financial benefit to be "special," the benefit must inure uniquely to the prohibited person or entity, rather than benefiting the municipality as a whole.

Based on the facts presented here, although the POA has been involved in the Village of Wellington meetings regarding the construction of the path and crossing options and has taken a position by opposing two of the three proposed options, there is no prohibited special financial benefit involved. None of the options would provide a direct financial benefit to the POA. Because every resident of the Village of Wellington who uses Palm Beach Point Boulevard would be affected equally by the selected plan, there is no prohibited special financial benefit to the POA.

ROO 14-016: The chief of police for the Manalapan Police Department asked if using holiday money donated by residents of the Town of Manalapan to purchase personal firearms for all of the sworn members of the police department and vest covers for police officers' vest plates would violate the code, and if these purchases are acceptable, will the recipients need to file a gift report form for the items.

The COE opined as follows: The code does not prohibit the purchase of vest plate covers and firearms with the holiday money donated by town residents. The town may accept holiday money from residents to give to the police department employees, as long as funds in excess of \$100 were not accepted from any vendor or lobbyist of the town and the distribution to employees is based on each worker's status as sworn employees of the town and not on the past, present or future performance of a legal duty. Employees who receive any gift worth more than \$100 must file an annual gift disclosure report with the COE no later than November 1 for the period ending September 30 of each year.

ROO 14-017: The assistant village attorney for the Village of Wellington asked if the Palm Beach County Lobbyist Registration Ordinance requires registered lobbyists to disclose their lobbyist status on the record or on a Village of Wellington comment card if they are appearing in their personal capacity as residents or as members of an organization, and if it is not required, if the Village of Wellington is prohibited from requiring such disclosure.

The COE opined as follows: The Palm Beach County Lobbyist Registration Ordinance does not require registered lobbyists to disclose their lobbyist status when they are appearing in their personal capacity as residents or as members of an organization, as long as the agenda items on which they are commenting does not pertain in any way to a principal they represent in exchange for compensation. However, the Palm Beach County Lobbyist Registration Ordinance does not prohibit the Village of Wellington from imposing a stricter standard of conduct upon registered lobbyists. Registered lobbyists must comply with the rules or other policies and procedures that the Village of Wellington imposes as long as those procedure are not in conflict with the Palm Beach County Lobbyist Registration Ordinance.

ROO 14-018: The former interim city attorney for the city of Delray Beach asked if the former acting Delray Beach city manager, who retired from city employment on June 16, 2014, could accept the use of a city vendor's condominium after retirement.

The COE opined as follows: The former acting city manager is not prohibited from accepting the use of a city vendor's condominium after retirement so long as it was not in exchange for the past, present or future performance of an official act or legal duty while he was still employed with the city. The code prohibits public employees from using their official position in a manner which would result in them receiving a special financial benefit not shared with similarly situated members of the general public or to corruptly secure a special benefit. Public employees are also prohibited from accepting any gift of any value as a quid pro quo or in exchange for the performance or nonperformance of an official action or legal duty. However, once the city manager retired, he was no longer under the jurisdiction of the code. Here, because the use of the condominium will take place after his retirement from the city and he did not use his official position to obtain this arrangement, he is not prohibited from accepting it.

ROO 14-019: The town attorney for the town of Palm Beach asked if Edward Cooney, a member of the Landmarks Preservation Commission of the town of Palm Beach, is prohibited from voting on the certificate of appropriateness application filed by the town of Palm Beach for renovations to the Town Hall Historic District because he is a part-time employee at the Buccan Restaurant, a restaurant within the Town Hall Historic District area.

The COE opined as follows: Edward Cooney is not prohibited from voting on the certificate of appropriateness for renovations in the district because there is no special financial benefit to the Buccan. The code prohibits public officials from using their official position, by participating or voting on an issue, to give their outside employer a special financial benefit not

shared with similarly situated members of the general public. Whether a matter rises to the level of prohibited conduct with a voting conflict turns on whether a special financial benefit is shared with similarly situated members of the general public. Financial benefit constitutes economic gain or loss, and the possibility of a financial gain must be direct and immediate, rather than remote and speculative. For a financial benefit to be "special," the benefit must be unique to the Buccan, rather than benefiting the town of Palm Beach as a whole.

Here, any financial benefit attributable to the Buccan is shared with similarly situated businesses in the district and does not constitute a unique circumstance. The renovation of the district area will affect all the businesses in the district in the same way. The additional parking spaces will be for public parking and not reserved for the restaurant's customers. Because all existing similarly situated businesses in the district area would be affected equally by the renovations, there is no prohibited special financial benefit.

ROO 14-020: A Palm Beach County employee asked if her spouse is prohibited from purchasing advertising on the county's internal website.

The COE opined as follows: The county employee's spouse is not prohibited from purchasing advertising on the county's internal website, so long as the fee he pays for the advertising is the same amount that any other businesses would pay. The code prohibits a public employee from using her official position in any way when she knows or should know that it would give a special financial benefit to her spouse or the spouse's outside employer or to corruptly secure a special benefit for any person. Whether a matter rises to the level of a prohibited conduct turns on whether a special financial benefit is shared with similarly situated members of the general public. Financial benefit constitutes economic gain or loss, and similarly situated means that everyone affected by a decision benefits in the same way. For the financial benefit to be "special," the benefit must be unique to her husband or his outside employer. Here, since the opportunity to purchase advertising on the internal website is available to any business, there is no special financial benefit to her husband or his outside employer.

ROO 14-021: An employee of the town of Lantana asked if her fiancé, who works as a marketing coordinator for a business, may provide a free catering order to the Town Hall for town of Lantana employees to share, and if he is allowed to provide this gift, what implications would it have on the town employees who receive it.

The COE opined as follows: Since Jersey Mike's Subs is not a vendor of the town, her fiancé does not fall under the jurisdiction of the code. Therefore, he is not prohibited from providing a free catering order to the town employees to share as long as other businesses in the area will also receive free food. However, as a public employee, she will have an ongoing responsibility to refrain from using her official position to corruptly secure a special benefit for him. This would include any improper action involving the awarding of town business to her fiancé's employer. Although the code prohibits employees from accepting gifts of any value if given for the past, present or future performance of a public act or legal duty, a general gift that is not tied to a public act or duty is not prohibited. Here, the town employees may accept the free catering order but would need to report the gift if the value exceeds \$100. To determine the individual value of a gift of food given to multiple employees, the total value of the gift is divided by the number of employees who share in that gift. If the individual value exceeds \$100, the gift must be reported by the employees.

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

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