



Agenda

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

Executive Session from 1:45pm to 2:15pm Regular Agenda will begin at 2:30pm

Palm Beach County

Commission on Ethics

2633 Vista Parkway
West Palm Beach, FL 33411

561.233.0724

FAX: 561.233.0735

Hotline: 877.766.5920

E-mail:

ethics@palmbeachcountyethics.com

Commissioners

Manuel Farach, Chair

Robin N. Fiore, Vice Chair

Ronald E. Harbison

Daniel T. Galo

Patricia L. Archer

Executive Director

Alan S. Johnson

Executive Assistant

Gina A. Levesque

Staff Counsel

Megan C. Rogers

Senior Investigator

Mark E. Bannon

Investigator

James A. Poag

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes
 - a. September 6, 2012
 - b. October 4, 2012
- V. Executive Sessions
 - a. C12-012
- VI. Status Check Re: Settlement/Final Hearing C12-003
- VII. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 12-069
- VIII. Items Pulled from Consent Agenda
 - a.
- IX. Proposed Advisory Opinions
 - a. RQO 12-070
 - b. RQO 12-071
- X. Revisions to Rules of Procedure
 - a. Section 4.6.1 – Referral to Other Authorities
- XI. Community Outreach
- XII. Executive Director Comments
- XIII. Commission Comments
- XIV. Public Comments
- XV. Adjournment

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

SEPTEMBER 12, 2012

**WEDNESDAY
1:33 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

(CLERK'S NOTE: At 1:20 p.m., Judge Peter Evans led a swearing-in ceremony for the appointment of Patricia L. Archer to the Commission on Ethics.)

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

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

STAFF:

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

ADMINISTRATIVE STAFF:

Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Commission on Ethics (COE) Executive Director Alan Johnson stated that a quorum was present.

IV. APPROVAL OF MINUTES FROM AUGUST 2, 2012

Commissioner Daniel Galo said that in the second to last paragraph on page 12, of the August 2, 2012, minutes, the word, decline, should be changed to the word, define.

MOTION to approve the August 2, 2012, minutes as amended. Motion by Daniel Galo, seconded by Ronald Harbison, and carried 5-0.

V. NEGOTIATED SETTLEMENT – C11-027

Mr. Johnson said that the item involved C11-027's offer of negotiated settlement from the respondent and Pro Bono Advocate Joseph Small. He recommended that Mr. Small present the negotiated settlement, and at the COE's request, the respondent, his representative, and Mr. Small could respond.

Commissioner Galo disclosed that he had a conflict, and that the appropriate form was prepared and filed with the Clerk & Comptroller's Office. He disclosed that he currently worked for a law firm that represented an insurance company that insured a homeowners' association in which Dr. Scott Swerdlin was a board member.

(CLERK'S NOTE: Commissioner Galo left the meeting.)

Mr. Small read the following negotiated settlement:

The Respondent admits to having violated Count One, *Misuse of public office*, and Count Three, *Disclosure of voting conflicts*. He will be assessed the maximum fine as to each count, which is \$500. As a term of this negotiated settlement, he will also receive a letter of reprimand, which we have gone over, and we propose to the Commission that it's acceptable to us. The Commission on Ethics will, therefore, as a term of this agreement, dismiss Count Two, which is *Corrupt misuse of official position*.

Dr. Scott Swerdlin was the chairman of the Equestrian Preserve Committee.

Mr. Small interjected that Dr. Swerdlin was no longer an Equestrian Preserve Committee member.

V. – CONTINUED

Mr. Small continued by reading that:

At the time, as an advisory board of the Village of Wellington, all members of the advisory board are appointed by the Village council, and thus are under the jurisdiction of the Palm Beach County Commission on Ethics as of June 1, 2011. This complaint against Dr. Swerdlin is based around his participation on December 14, 2011, as chairman of the Equestrian Preserve Committee in which he participated in the Equestrian Village project discussion for which Equestrian Sports Productions, which is affiliated with Mark Bellissimo, was the applicant. However, Dr. Swerdlin abstained prior to a vote on the matter.

Mr. Small interjected that he had asked for further factual basis, and that the COE could view the proposed letter of reprimand. He continued reading that:

Dr. Swerdlin and his related entities did volunteer their time at the Winter Equestrian Festival and received advertising in return that exceeded \$10,000 over a 24-month period. Procedurally, after the Commission on Ethics found probable cause, this matter was set for a final hearing in which three full days have been reserved starting in October. Ongoing discovery indicates that Dr. Swerdlin, at the time of the hearing back in December, was not trying to get a financial benefit for himself or his related business, but, rather, the project was, he believed, was in the best interest of the community. After numerous discussions with Attorney Seymour and Dr. Swerdlin, the advocate is of the opinion at this time that Dr. Swerdlin understands that knowing what he knows now, that he should not have participated in the discussion on December 14, 2011; and, further, after he abstained, he should have filed the 8B voting conflict form.

Mr. Small interjected that the 8B voting conflict form (Form 8B) should have been filed since Dr. Swerdlin did have a conflict, or that he now knew he did. He continued reading that:

Advocate, therefore, does not contest or object that the Commission on Ethics finds that these violations committed were unintentional at the time they were committed.

V. – CONTINUED

Mr. Small asked that the COE accept the negotiated settlement, He said that Dr. Swerdlin would pay an allowable, total maximum fine of \$1,000; that he had prepared and would file Form 8B after the COE accepted the settlement negotiation; and that he would also accept the letter of reprimand.

Dr. Swerdlin's counsel, Brian Seymour, Esq., said that Dr. Swerdlin was present with co-counsel, William Hyland, Esq. He added that he had seen the related documents before today, and he believed that they were acceptable.

Dr. Swerdlin stated that:

- He did not intend to violate the ordinance. On December 14, 2011, he knew that Equestrian Sports Productions and Wellington Equestrian Partners were corporate entities but not that each shared a close proximity to one another.
- Had he known this information on December 14, 2011, and from what he learned in listening to the COE members and their recommendations, he would not have participated in a meeting but would have recused himself.
- He misunderstood the ordinances, and he hoped everyone could accept the fine and move forward.

Commissioner Ronald Harbison said that he believed Dr. Swerdlin was sincere, and that the appropriate course of action was taken.

Commissioner Robin Fiore said that if the COE members agreed with the facts as set forth, then Form 8B should have been filed.

Mr. Seymour said that:

- He had discussed the decision to not file Form 8B with Mr. Small and Mr. Johnson.
- If the COE had not accepted the settlement, counsel would have continued to contest the filed documents.
- The form had been filled out on his computer, and that once an address was added, it would be printed, signed, and filed.

V. – CONTINUED

Commissioner Pat Archer commented that the settlement was in everyone's best interest, and that the COE's role was to educate others in what was considered important and necessary, and a conflict. She added that a lesson had been learned, and it was time to move forward.

MOTION to accept the negotiated settlement. Motion by Robin Fiore, seconded by Pat Archer, and carried 4-0. Daniel Galo absent.

Commissioner Fiore read the following public report and final order:

In Re: Scott Swerdlin, C11-027, Public Report and Final Order.

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

Pursuant to chapter 2, article V, division 8, section 2-258(a) of the Palm Beach County Code of Ethics, the Commission on Ethics is empowered to enforce the Code of Ethics.

Pursuant to chapter 8, article XIII, section 2-443(a), *Misuse of public office of 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 in 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:*

V. – CONTINUED

- (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; or,*
- (5) a customer or client of the official or employee's outside employer or business.*

Pursuant to chapter 8, article XIII, section 2-443(c), Disclosure of voting conflicts, County and municipal officials, as applicable, shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. 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, section 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).

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

(This space intentionally left blank.)

V. – CONTINUED

On January 30, 2012, the Complaint was determined by staff to be Legally Sufficient. On March 1, 2012, in executive session, the Commission on Ethics (COE) found Probable Cause to believe a violation may have occurred and set the matter for final hearing. On September 12, 2012, the Respondent and Advocate submitted a Negotiated Settlement, including a Letter of Reprimand, to the COE for approval. Respondent stipulates to the facts and circumstances as contained in the aforementioned Letter of Reprimand.

According to the Negotiated Settlement and based on the facts as set forth in the Letter of Reprimand, Respondent admits to the allegations contained in Counts One and Three of the Complaint that he violated section 2-443(a) and (c) of the Palm Beach County Code of Ethics. Respondent agrees to accept a Letter of Reprimand and to pay a total fine of \$1,000. Count Two is Dismissed. Pursuant to the Commission on Ethics ordinance section 2-260.1, *Public hearing procedures*, the Commission finds that the violation was intentional/unintentional. As to Count One, the Commission assesses a fine of \$500; as to Count Three, the Commission assesses a fine of \$500; and the Respondent has been issued a Letter of Reprimand.

Therefore, it is:

Ordered and Adjudged that this matter is concluded upon acceptance of the Letter of Reprimand and payment of the aforementioned \$1,000 fine.

Done and Ordered by the Palm Beach County Commission on Ethics in public session on this 12th day of September, 2012.
Manuel Farach, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the public report and final order.)

Mr. Johnson said that since the original proposed public final order said, intentional, unintentional, he requested that the COE make a specific. He added that although Mr. Small and Mr. Seymour had addressed the issue, a vote was needed on how the COE viewed the violations.

V. – CONTINUED

Commissioner Fiore said that she had misread the order containing the words, intentional, unintentional.

Mr. Small reiterated that based on the facts, the ongoing discovery, and Dr. Swerdlin's belief that a conflict now existed, he recommended a COE determination that Dr. Swerdlin's actions were unintentional. Mr. Seymour said that he agreed with Mr. Small's statement.

Mr. Johnson said that in viewing the facts and circumstances, staff believed that at the time, an actual attempt was not made to obtain a financial benefit, which weighed heavily in Mr. Small's recommendation of unintentional.

Commissioner Fiore stated that she had difficulty accepting that Dr. Swerdlin's actions were unintentional. She added that:

- She understood that Dr. Swerdlin's actions were an attempt to get a special financial benefit; however, the second issue was failing to file Form 8B.
- Many COE conversations occurred regarding Dr. Swerdlin being repeatedly advised by Village of Wellington attorney, Jeffrey Kurtz, Esq., not to participate or vote on the matter.
- Although Dr. Swerdlin disagreed with Mr. Kurtz, she did not conclude that the violation was unintentional but that it was erroneously intentional.
- She needed further clarification on what unintentional meant since it was difficult to determine intent.

Mr. Johnson said that:

- It was difficult to ascertain the defined meaning of intentional and unintentional.
- Philosophically, intentional meant that a person acted and intended his or her actions.
- Legally, the best meaning for unintentional came from illustrations.

V. – CONTINUED

- An example was if someone did not believe that he or she had violated a code at the time, and the facts and circumstances supported that reasonable person's belief.
- No bright line existed regarding the meaning of unintentional.
- Legal intent, which could be defined as individuals who proceeded anyway knowing that they or their outside employers would financially benefit, should be applied in the COE's determination.

Commissioner Farach said that in this circumstance, he viewed the term, intentional, at almost the criminal requirement level of a mens rea.

Mr. Johnson responded that the threshold would not be that high, although it was moving towards that level. He added that no one could know someone's intent except by the issue's facts and circumstances.

Commissioner Fiore said that under the facts and circumstances, training was provided and received by Dr. Swerdlin, and Mr. Kurtz had advised him.

Mr. Seymour said that:

- Dr. Swerdlin had received training and had reviewed its materials, but he did not understand the distinction between the two corporate entities until now.
- Dr. Swerdlin's and Mr. Kurtz' issues were more complicated partly due to the attorney/client relationship.
 - A disputed fact existed as to what Mr. Kurtz did or did not say to Dr. Swerdlin before the meeting.
 - Everyone agreed that at the beginning of the meeting, Mr. Kurtz had informed Dr. Swerdlin that if he had a conflict, he should recuse himself. Not understanding the issues, Dr. Swerdlin did not believe that a conflict existed.

V. – CONTINUED

- Additional discussion occurred after the public hearing, and Mr. Kurtz told Dr. Swerdlin that he could not tell him whether he had a conflict. At that point, Dr. Swerdlin recused him, although he did not completely understand the conflict.
- The public hearing minutes indicated that Dr. Swerdlin had participated in the process.

Commissioner Fiore said that she understood that Dr. Swerdlin had been advised not to participate in the public hearing. Mr. Seymour responded that no substantiated facts existed.

Commissioner Archer said that due to Mr. Seymour's previous statements, she believed that Dr. Swerdlin's actions were an inadvertent oversight.

MOTION to accept a finding that the violation was unintentional. Motion by Ronald Harbison, seconded by Pat Archer, and carried 3-1. Robin Fiore opposed, and Daniel Galo absent.

Mr. Seymour asked that Commissioner Fiore's reading of the word, intentional, be retroactively changed to state, unintentional.

Commissioner Farach clarified that the final order signed and issued by the COE would state, unintentional.

Mr. Johnson said that although a vote was unnecessary, the proposed letter of reprimand should be accepted and published.

Commissioner Fiore read the following letter of reprimand:

September 12, 2012. Letter to Dr. Scott Swerdlin, 13125 Southfields Road, Wellington, Florida 33414. Re: Complaint No. C11-027, Letter of Reprimand.

(This space intentionally left blank.)

V. – CONTINUED

Dear Dr. Swerdlin:

When the Commission on Ethics met in executive session on March 1, 2012, it found that probable cause existed to believe that you may have violated the Palm Beach County Code of Ethics, specifically section 2-443(a), (b), and (c). On September 12, 2012, you admitted to violating section 2-443(a) of the Palm Beach County Code of Ethics entitled, "Misuse of public office of employment" and section 2-443(c) of the Palm Beach County Code of Ethics entitled, "Disclosure of voting conflicts." The settlement agreement in this case provides for you to accept this public reprimand.

Chapter 8, article XIII, section 2-443(a), *Misuse of public office of 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; or*
- (5) a customer or client of the official or employee's outside employer or business.*

Chapter 8, article XIII, section 2-443(c), *Disclosure of voting conflicts. County and municipal officials, as applicable, shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. 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, section 112.3143.*

V. – CONTINUED

Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the County Commission on Ethics. Officials who abstain and disclose a voting conflict, as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

The facts are as follows:

You were the Chairman of the Equestrian Preserve Committee (the Committee), an advisory board of the Village of Wellington. On December 14, 2011, the Committee met to discuss and vote on planning and zoning amendments for the proposed Equestrian Village Project (the Project). A Project applicant was Equestrian Sports Productions (ESP), and the Project was presented at the hearing by Mr. Mark Bellissimo on behalf of Wellington Equestrian Partners (WEP). Mr. Bellissimo is the Managing Member of WEP and Chief Executive Officer of ESP. ESP is a wholly owned subsidiary of WEP. ESP produces the 12-week Winter Equestrian Festival (the Festival) as well as other equestrian events. You are the manager/owner and registered agent of Palm Beach Equine Medical Centers and Palm Beach Equine Clinic. Palm Beach Equine Medical Centers and/or Palm Beach Equine Clinic have been the official veterinarians for ESP events since 2009. As the official veterinarians, your staff is on site at the Festival 5 days per week for 12 weeks, on an average of 10 hours per day for the Festival, as well as similarly serving during the summer and early fall for other ESP programming. In addition, your businesses provided ESP with equine ambulance services during these events. For these services, you receive advertising at ESP events at no charge. The value of the services you provided to ESP exceeded \$10,000 for the 24 months preceding the December 2011 meeting making ESP a “customer or client” of your outside business.

V. – CONTINUED

Because of the closely knit relationship between ESP and WEP - that ESP is a wholly owned subsidiary of WEP, and that Mr. Bellissimo ran and publically advertised both companies in such a manner as to make them effectively interchangeable in terms of identity and purpose - WEP also meets the definition of your “customer or client” creating a conflict of interest. The Palm Beach County Code of Ethics prohibits you from voting or participating in a matter that would result in a special financial benefit for you, your outside business or a “customer or client” of your outside business.

Prior to and during the Committee meeting on December 14, 2011, you had been advised by Village of Wellington Attorney Jeffrey Kurtz that you had a potential conflict of interest: You received a copy of the State Conflict of Interest Form 8B as well as a copy of the relevant sections of the Palm Beach County Code of Ethics on December 13, 2011. At the start of the meeting, Mr. Kurtz advised all members that if anyone had a conflict of interest in the Project, they were required to abstain and not participate in the discussion prior to the vote. Notwithstanding your conflict of interest, you did not at that time abstain. You presided over the public hearing during the presentation by Mr. Bellissimo, his agents, and members of the public. After the close of testimony, you were advised of the conflict, and after being advised that a vote was required, then stepped down and did not further participate or vote. You knew or should have known that WEP, and by extension ESP, would receive a special financial benefit and never have participated in the meeting. Subsequently, you have failed to file a State Conflict of Interest Form 8B with the Palm Beach County Commission on Ethics as required under the Palm Beach County Code of Ethics.

Your actions constituted two violations of the Palm Beach County Code of Ethics.

The Commission on Ethics is of the strong belief that all public employees and officials are responsible for making sure their actions fully comply with the law and are beyond reproach. As a public official, you are an agent of the people and hold your position for the benefit of the public. The people’s confidence in their government is eroded when they perceive that official actions may be based upon private goals rather than the public welfare.

V. – CONTINUED

Violations of the Palm Beach County Code of Ethics contribute to the erosion of public confidence and confirm the opinion of those who believe the worst about public officials.

You are hereby admonished and urged to 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.

Sincerely, Manuel Farach, Chairman, Palm Beach County Commission on Ethics.

(CLERK'S NOTE: The clerk added the language as printed in the letter of reprimand.)

(CLERK'S NOTE: The following verbiage read by Commissioner Fiore was not contained in the letter of reprimand.)

Therefore, it is:

Ordered and Adjudged that this matter is concluded upon acceptance of the Letter of Reprimand and payment of the aforementioned \$1,000 fine.

Done and Ordered by the Palm Beach Commission on Ethics in public session on this 12th day of September 2012.

RECESS

At 2:17 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 5:47 p.m., the meeting reconvened. At the chair's request for a roll call, Commissioners Pat Archer, Robin Fiore, Daniel Galo, and Ronald Harbison were present.

Commissioner Fiore said that the agenda was being revised to read other orders later in the meeting.

Mr. Johnson suggested taking up the consent agenda, and he would review the proposed advisory opinion letters for possible postponement to the October meeting.

Commissioner Fiore said that item IX.e. contained public comment and would be presented after the consent agenda.

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

VI. Pages 22-25

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VII.a. Request for Opinion (RQO) 12-060

MOTION to approve the consent agenda. Motion by Ronald Harbison, seconded by Pat Archer, and carried 5-0.

VIII. ITEMS PULLED FROM CONSENT AGENDA – None

IX. PROPOSED ADVISORY OPINIONS

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

IX.e. RQO 12-063

Staff Counsel, Megan Rogers, Esq., said that:

- A Town of Palm Beach (Town) attorney had asked whether an employee of a corporation that owned property within a study-area district could serve on an advisory board that was created to review potential development proposals for that district; and if so, whether the employee could participate and vote on recommendations submitted to the Town.
- Fifteen property owners could be affected by changes in the Town's study-area legend. The changes could significantly impact property values; however, it was unknown whether the advisory board was recommending them.

IX.e. – CONTINUED

- Staff had evaluated how many people could gain from the advisory board's decision. Based on the State's Code of Ethics (Code), the COE had previously opined that more than 100 people lessened the likelihood of a violation occurrence.
- In reviewing whether a person's gain was remote and speculative, staff had recommended that under the County's Code, a conflict would exist if contingencies resulted in a potential, immediate benefit.
- A potential, financial benefit could result from the advisory board's vote on a recommended property change. Since publishing RQO 12-063, additional information narrowing the issue was submitted by an advisory board member.
- Staff's recommendation was to follow a best-practices track that said a possible, potential contingency could be seen that stemmed directly from the advisory board member's vote; therefore, he should resign and not participate.
- No property owners were appointed to the advisory board.

Commissioner Archer commented that an advisory board member's recommendation may or may not be accepted and voted on. She expressed her concern that the COE would be denying a class of people its right to participate in discussions leading to a final decision.

Ms. Rogers said that:

- A recent Supreme Court opinion considered that a vote was the public's right, and that it was not protected by free-speech requirements.
- The County Code's language led staff to opine that participation was similar to a vote.
- A member of the Town council or the advisory board could resign at any time and contribute to discussions regarding the issue.

Commissioner Archer commented that persuading people to serve on approximately 20 municipal advisory boards would be difficult since they would be prevented from upholding their own rights.

IX.e. – CONTINUED

Ms. Rogers stated that RQO 12-063 differed from previous precedent on similar situations since staff also considered the State COE's recent opinion regarding the remote and speculative nature of advisory board votes.

(CLERK'S NOTE: Commissioner Farach allowed comment by Michael Pucillo, Town council member and chair of the Royal Poinciana Way Study Committee RPWSC.)

Mr. Pucillo said that the facts surrounding the issue were somewhat different than those previously considered by the COE. He explained how the RPWSC was formed, and that the citizen members represented a cross section of the community. He stated that the property owner's proposal was not the best approach or in the Town's best interest.

Mr. Pucillo said that after analyzing the Town's code, he suggested a Planned Urban Development (PUD) concept.

Commissioner Fiore requested that Mr. Pucillo focus on the extent to which someone should serve on this type of committee when an opportunity existed to benefit his or her employer or customer.

Mr. Pucillo said that it was important to explain that the corporation's employee did not seek an RPWSC appointment, and that it was highly speculative that the corporation would benefit from the property transaction.

Commissioner Fiore stated that a problem could exist if people served on countywide advisory boards to protect their interests.

Mr. Johnson said that a Town council waiver could not be passed for the RPWSC appointee; however, he could serve as a participatory, non-voting member.

Ms. Rogers clarified that by County Code, a board created by a local municipal governing body for advisory purposes was defined as an advisory board.

Mr. Johnson stated that the issue began as an unfiled complaint, and that staff's goal was to prevent complaints by bringing them before the COE as advisory opinions.

IX.e. – CONTINUED

MOTION to approve proposed advisory opinion letter RQO 12-063. Motion by Daniel Galo, seconded by Robin Fiore, and carried 4-1. Pat Archer opposed.

(CLERK'S NOTE: Item IX.a. was presented at this time.)`

IX.a. RQO 12-058

Mr. Johnson stated that:

- A member of a city's historical preservation advisory board asked whether she could participate and vote in a matter to which she objected involving proposed construction located in a vacant lot adjacent to her home.
- If she was required to abstain from voting, the member asked whether she may attend and participate as an individual homeowner.
- The member resided within the historical district and owned a contributing historical property.
- The construction project required the quasi-judicial preservation board's approval of a certificate of construction appropriateness.
- Staff had submitted that:
 - An economic benefit or loss existed that was not so remote and speculative in nature as to remove the special financial benefit.
 - Under the County's Code, not only could someone not vote, he or she could not participate.
 - A Supreme Court decision had determined that individuals spoke on behalf of constituents when serving on boards or in official positions; therefore, personal, free speech no longer existed.
- The issues contained a nuance that prevented the item from being placed on the Consent Agenda.

IX.a. – CONTINUED

Commissioner Farach said that he agreed with the Supreme Court's decision, and with staff's decision not to place the item on the Consent Agenda.

MOTION to approve the proposed advisory opinion letter RQO 12-058. Motion by Ronald Harbison, and seconded by Pat Archer.

Commissioner Archer commented that the member's spouse could voice his personal opinion.

UPON CALL FOR A VOTE, the motion carried 5-0.

IX.b. RQO 12-059

Mr. Johnson stated that:

- The issues involved the same board and same individuals as RQO 12-058.
- The member asked whether she could hire out as a personal consultant to the persons submitting plans for board review.
- Staff recommended that:
 - She could not solicit that she was on the board. If she had a customer or client, she could not participate or vote on an individual issue.
 - Hiring herself out as a consultant and knowing that a future conflict may exist was not violative of the County's Code but possibly of State law if it was recurring.
- Staff agreed with the City of Lake Worth's attorney that no conflict existed since the board member/consultant would be absent during board discussions and would not be voting on the matter.

MOTION to approve proposed advisory opinion letter RQO 12-059. Motion by Daniel Galo, seconded by Robin Fiore, and carried 5-0.

MOTION TO POSTPONE

Ms. Rogers and Mr. Johnson suggested that items IX.c. and IX.f. be postponed until the next meeting.

MOTION to postpone items IX.c and IX.f. until the next meeting. Motion by Robin Fiore, seconded by Daniel Galo, and carried 5-0.

IX.c. RQO 12-061 – Not Discussed

IX.d. RQO 12-062 (attached requested submission)

Ms. Rogers stated that:

- A City of Boca Raton (Boca Raton) attorney asked whether the County's Code prohibited employees and officials from soliciting sponsorships from persons or entities who did not sell, lease, or lobby Boca Raton where the sponsorship may personally benefit a Boca Raton official or employee.
- The attorney had also asked that if such action was prohibited, whether Boca Raton could solicit non-vendor sponsorships, provided that it adopt a resolution at a public meeting declaring that a Very Important Person (VIP) reception attended by Boca Raton officials and employees served a public purpose.
- Staff submitted that:
 - The County's Code did not prohibit officials and employees from soliciting or accepting gifts from non-vendor local businesses provided the gifts were not solicited or accepted as a quid pro quo or in exchange for an official action taken or a legal duty performed.
 - Gifts provided by nonvendors and nonlobbyists to State-reporting individuals must be reported pursuant to all standards and requirements imposed under State law regarding gift reporting.
 - Pursuant to the County's Code, other officials and employees who may be local reporting officials were required to report gifts over \$100 unless one of several exceptions applied.
- The situation involved a nonvendor providing Boca Raton with two separate gifts: \$12,000 cash, and a VIP tent.

IX.d. – CONTINUED

- The VIP tent was solicited by Boca Raton’s event organizer to benefit those attending. The nonvendor would retain total control of the tent.
- As currently written, the County’s Code stated that a nonvendor can give an elected official anything.
- Boca Raton’s attorney had referenced a previous City of West Palm Beach advisory opinion, which contained a different factual scenario regarding the tent issue.
 - Boca Raton believed that the solicited distributors of donated beer or food were classified as donors.
 - Staff clarified in RQO 12-062 that city-solicited donations from the public or businesses, did not create a vendor relationship.

Commissioner Fiore stated that complaints could still be made regarding what occurred in the VIP tent, and that the COE would need to review those facts and circumstances.

MOTION to approve proposed opinion letter RQO 12-062. Motion by Daniel Galo, seconded by Pat Archer, and carried 5-0.

IX.e. Pages 15-18

IX.f. **RQO 12-064 – Not Discussed**

Mr. Johnson requested that the public orders be read. He said that letters of instruction were similar to advisory opinion letters, and that reading them was unnecessary since they would be published online.

(CLERK’S NOTE: Commissioner Harbison left the meeting, and item VI. was presented at this time.)

VI. EXECUTIVE SESSIONS

VI.a. C12-006

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

Complainant, Michael H. Nelson, filed the above-referenced Complaint on July 24, 2012, alleging a possible ethics violation involving Respondent, John J. Greene, Councilman for the Village of Wellington. The Complaint alleges Respondent fraudulently obtained a parking decal from Palm Beach Polo and Country Club (Polo) and after affixing the access decal did, on multiple occasions, visit a resident in Polo numerous times who had partially financed Respondent's bid for elected office and had land-use issues scheduled to come before the Village Council in the future. Further, Complainant alleges that the access decal has significant value and was obtained in violation of the Palm Beach County Code of Ethics (the Code) gift law sections.

On August 16, 2012, after reviewing the Complaint, supporting affidavit, and memorandum of inquiry, as well as RQO 12-045, an advisory opinion previously requested by the Respondent, the Complaint was determined by staff to be Legally Insufficient, and presented to the Commission on Ethics on September 12, 2012, with a recommendation of dismissal as Legally Insufficient.

The Commission on Ethics reviewed the Complaint, RQO 12-045, and memorandum of inquiry and determined that there is no allegation by Complainant, or information known or uncovered by staff inquiry to indicate that Respondent acted in his official position in violation of the Code of Ethics. Therefore, the Commission has determined that the actions taken by the Respondent, John J. Greene, do not constitute a violation of the Code of Ethics, and dismissed the Complaint on September 12, 2012, due to No Legal Sufficiency.

Therefore, it is:

Ordered and Adjudged that the Complaint against Respondent, John J. Greene, is hereby Dismissed.

VI.a. – CONTINUED

Done and Ordered by the Palm Beach County Commission on Ethics in public session on September 12, 2012. Manuel Farach, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the public report and final order of dismissal.)

VI.b. C12-004

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

Complainant, Derrick McCray, filed the above-referenced Complaint on May 31, 2012, alleging a possible ethics violation involving Respondent Addie Greene, Mangonia Park Councilwoman. The Complaint alleges that Councilwoman Greene misused her position and authority, in part, by using her official position to obtain waivers of municipal water utility late fees.

Pursuant to chapter 2, article V, division 8, section 2-258(a) of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. An official may not use her official position in a manner which she knows or should know with the exercise of reasonable care will result in a special financial benefit to her, not shared with similarly situated members of the general public.

On July 20, 2012, the Complaint was determined by staff to be Legally Sufficient. The Memorandum of Probable Cause and Memoranda of Inquiry and Investigation, adopted by reference, were presented to the Commission on Ethics on September 12, 2012. At that time, the Commission conducted a hearing. The Commission reviewed and considered the Memoranda of Inquiry, Investigation and Probable Cause, recommendation of staff, oral statements of the Respondent and Advocate. The Commission also reviewed article V, section 2-260.3 of the Commission on Ethics ordinance. At the conclusion of the hearing, the Commission on Ethics dismissed the case with a Letter of Instruction because the alleged violation was inadvertent, unintentional, or insubstantial.

VI.b. – CONTINUED

Therefore, it is:

Ordered and Adjudged that the Complaint against Respondent, Addie Greene, is hereby Dismissed, and a Letter of Instruction is to be issued in this case.

Done and Ordered by the Palm Beach County Commission on Ethics in public session on September 12, 2012. Manuel Farach, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the public report and final order of dismissal.)

VI.c. C12-007

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

Complainant, Alan S. Johnson, Executive Director of the Commission on Ethics, filed the above referenced Complaint on August 16, 2012, alleging a possible ethics violation involving Respondent, Rafael Abadia, Chairman of the Palm Beach County CARE Council. The Complaint alleges that Chairman Abadia misused his position and authority by participating and voting on an issue regarding the allocation of grant funds to a specific Peer Mentoring program for which he intended to apply for employment, as well as participating in the health care provider bid selection process which resulted in a portion of these funds being allocated to his subsequent employer.

Pursuant to chapter 2, article V, division 8, section 2-258(a) of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. An official may not use his official position in a manner which he knows or should know with the exercise of reasonable care will result in a special financial benefit to him, not shared with similarly situated members of the general public.

VI.c. – CONTINUED

On August 16, 2012, the Complaint was determined by staff to be Legally Sufficient. The Memorandum of Probable Cause and Memorandum of Inquiry, adopted by reference, were presented to the Commission on Ethics on September 12, 2012, with a recommendation that although there is No Probable Cause to believe there was a code of ethics violation, the facts and circumstances warrant a Dismissal with a Letter of Instruction to the Respondent. At that time, the Commission conducted a hearing. The Commission reviewed and considered the Memorandum of Inquiry and Probable Cause, recommendation of staff, as well as oral statements of the Respondent and Advocate. The Commission also reviewed article V, section 2-260.3 of the Commission on Ethics Ordinance. At the conclusion of the hearing, the Commission on Ethics determined that there was No Probable Cause to believe that a violation had occurred; however, a Letter of Instruction would be appropriate under the circumstances presented.

Based on the facts and circumstances surrounding the alleged violation, the Commission finds that the alleged violation was inadvertent and unintentional, and that the public interest would not be served by proceeding further.

Therefore, it is:

Ordered and Adjudged that No Probable Cause exists, and the Complaint against Respondent, Rafael Abadia, is hereby Dismissed, and a Letter of Instruction is to be issued in this case.

Done and Ordered by the Palm Beach County Commission on Ethics in public session on September 12, 2012. Manuel Farach, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the public report and final order of dismissal.)

X. EXECUTIVE DIRECTOR COMMENTS

X.a.

DISCUSSED: Thanks and Appreciation.

Mr. Johnson thanked everyone for participating in the long meeting and for the COE's wise decisions.

XI. COMMISSION COMMENTS

XI.a.

DISCUSSED: COE Meeting An Interesting Experience.

Commissioner Archer commented that the meeting was an interesting experience, and that she looked forward to many more.

XII. PUBLIC COMMENTS – None

XIII. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Daniel Galo, seconded by Pat Archer, and carried 4-0. Ronald Harbison absent.

At 7:10 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

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

OCTOBER 4, 2012

**WEDNESDAY
1:33 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Manuel Farach, Esq., Chair
Robin N. Fiore, Ph.D., Vice Chair
Patricia L. Archer
Daniel T. Galo, Esq.
Ronald E. Harbison, CPA – Absent

STAFF:

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

ADMINISTRATIVE STAFF:

Minutes Clerk Dominique Marseille, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

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

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

Mr. Johnson stated that the minutes from the September 12, 2012, COE meeting would be available for approval at the November 2012, meeting.

RECESS

At 1:35 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 3:37 p.m., the meeting reconvened with Commissioners Archer, Galo, Farach, and Fiore present.

IV. EXECUTIVE SESSION

IV. EXECUTIVE SESSION – CONTINUED

IV.a. C12-008

Commissioner Fiore read the following public report and final order of dismissal:

Complainant, Lisa Dowd, filed a Complaint on August 25, 2012, alleging a possible ethics violation involving Respondents, Al Berg, Lula Butler, and Douglas Smith, City of Delray Beach employees.

The complaint alleges respondents corruptly misused their official positions by improperly processing a City code enforcement complaint against Complainant, based upon an unspecified relationship with the Complainant's neighbor.

On September 28, 2012, after reviewing the Complaint, supporting affidavit and memorandum of inquiry, the complaint was determined by staff to be legally insufficient, and presented to the Commission on Ethics on October 4, 2012, with a recommendation of dismissal as legally insufficient.

IV. – CONTINUED

IV.a. – CONTINUED

The Commission on Ethics reviewed the complaint and memorandum of inquiry, along with a letter submitted by complainant dated October 1, 2012, and determined that there is no personal knowledge to support the allegation by Complainant, or information known or uncovered by staff inquiry to indicate that respondents acted in their official position in violation of the Code of Ethics.

Therefore, the Commission has determined that the allegations made by Complainant are not based upon personal knowledge and that the official actions taken by the respondents, Al Berg, Lula Butler, and Douglas Smith, do not constitute a violation of the Code of Ethics and dismissed the complaint on October 4, 2012, due to no legal sufficiency.

Therefore it is:

Ordered and Adjudged that the complaint against respondents Al Berg, Lula Butler, and Douglas Smith, is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on October 4, 2012. Signed: Manuel Farach, chair.

(CLERK'S NOTE: The clerk added the correct language as printed in the public report and final order of dismissal.)

IV.b. C12-009 – Not discussed

IV.c. C12-010

Commissioner Fiore read the following public report and final order of dismissal:

Complainant, William McCray, filed a complaint on September 5, 2012, alleging a possible ethics violation involving Respondent, Edward Mitchell, West Palm Beach City Administrator.

IV. – CONTINUED

IV.c. – CONTINUED

The Complaint alleges Respondent corruptly misused his official position by sending an unsworn complaint to Complainant's employer, Palm Beach County Sheriff's Office (PBSO), using official city letter head and his official title.

On September 25, 2012, after reviewing the Complaint supporting affidavit and memorandum of inquiry the complaint was determined by staff to be legally insufficient, and presented to the Commission on Ethics on October 4, 2012, with the recommendation of dismissal as legal insufficient.

The Commission on Ethics reviewed the Complaint and memorandum of inquiry and determined that there is no allegation by Complainant or information known or uncovered by staff inquiry to indicate that respondent acted in his official position in violation of the Code of Ethics.

Therefore, the commission has determined that the actions taken by the respondent Edward Mitchell do not constitute a violation of the Code of Ethics and dismiss the complaint on October 4, 2012, due to no legal sufficiency.

Therefore, it is:

Ordered and Adjudged that the Complaint against Respondent, Edward Mitchell, is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on October 4, 2012. Signed: Manuel Farach, chair.

(CLERK'S NOTE: The clerk added the correct language as printed in the public report and final order of dismissal.)

V. PROPOSED ADVISORY OPINIONS

V.a. Request for Opinion (RQO) 12-061

Staff Counsel, Megan Rogers, Esq., said that:

- A County employee asked whether County Water Utilities Department (WUD) staff could receive training from a nonprofit organization, the Florida Water and Pollution Control Operator's Association (FWPCOA), when two WUD superintendents served on the FWPCOA board of directors.
- The FWPCOA was one of several organizations that provided State-required training to WUD staff.
- Staff had submitted that:
 - Since, WUD supervisors served as board members of a nonprofit organization, they were prohibited from using their official employment to benefit that organization.
 - The WUD superintendents could resign from the board and continue to organize FWPCOA training for staff, or they could continue to serve on the FWPCOA board and not oversee or approve training in their government capacity.

MOTION to approve proposed advisory opinion letter RQO 12-061. Motion by Robin Fiore, seconded by Patricia Archer, and carried 4-0. Ronald Harbison absent.

V.b. RQO 12-064

Mr. Johnson said that:

- Board of County Commissioner (BCC) Paulette Burdick had a personal policy not to accept gifts. She had asked whether she could accept and send gifts to either a charitable organization, or a County governmental department.

V. – CONTINUED

V.b. – CONTINUED

- Staff recommended that:
 - Transferring a gift to another entity did not alter the fact that a gift had been received.
 - If the gift was from a vendor, lobbyist, or a principal of a lobbyist, who lobbied, sold, or leased to the County, and the value exceeded \$100 annually in the aggregate, she would be prohibited from accepting that gift even if the acceptance was to transfer it to a charity.
 - The Commission on Ethics (board) had determined previously that a gift from any source that was given to a BCC member on behalf of the County and used solely for a public purpose was a specific exemption and not considered a gift under the County's Code of Ethics.
 - She could pass anything to a charitable organization as long as there was no quid pro quo, which would be a misuse of office but not violative of the gift law.
 - If she passed a gift to a charitable organization, she needed to maintain and submit transparency according to the code's provisions in section 2-444(h). It should be noted that section 2-444(h) only referred to solicitation of gifts and not to acceptance.
 - No gift could be solicited or accepted as a quid pro quo for official actions, special consideration, or an exchange for the past, present, or future performance of an official act or legal duty.

Commissioner Fiore commented that the process of giving gifts to charities should not be under the purview of a particular commissioner, but, rather, voted on or distributed according to a proposed or existing policy. She added that an individual commissioner's charity choice was not the right procedure if the gift was intended for a public purpose.

V. – CONTINUED

V.b. – CONTINUED

Mr. Johnson said that:

- The public-purpose intention only applied to gifts that were transferred or donated to the County itself.
- The Ethics Ordinance Drafting Committee added an exception that an individual could solicit gifts for charitable organizations as long as it was transparent, logged, and not accepted from someone with a pending bid proposal.
- Gifts presented to Commissioner Burdick as personal gifts and not to the County itself could be used by a County department.
- A distinction existed how a gift could be presented to a commissioner. Staff saw no functional difference in the permitted actions of an elected official actively soliciting vendors and lobbyists for a charity, versus an official receiving a gift and giving it away to charity but keeping a transaction log as if it was a solicitation.
- Any gift given to an elected official through solicitation or gratuitously had to be logged transparently and submitted to the COE for online publication.

MOTION to approve the proposed advisory opinion letter RQO 12-064. Motion by Patricia Archer, seconded by Daniel Galo, and carried 4-0. Ronald Harbison absent.

V.c. RQO 12-065

Ms. Rogers stated that:

- Village of Wellington (Wellington) Councilman John Greene asked whether he was permitted to accept a gift from a long-time personal friend and Wellington resident, Neil Hirsch.

V. – CONTINUED

V.c. – CONTINUED

- At the time Mr. Greene requested an opinion, Mr. Hirsch was serving on a civic organization board that may or may not have been considered the employer of a lobbyist. The board did not need to reach that determination since Mr. Hirsch resigned prior to giving Councilman Greene the gift of a stay at his home.
- The board advised Councilman Greene that he was not prohibited from accepting the gift so long as Mr. Hirsch was not a principal or an employer of a lobbyist.
- Councilman Greene moved into Mr. Hirsch's guest house on June 9, 2012, and moved out August 15, 2012. He had prepared his State gift reporting form reflecting a \$44 per night rate for staying at Mr. Hirsch's home.
- Mr. Hirsch had two matters that came before the Wellington council during Councilman Greene's stay. The matters dealt with the equestrian preserve project, and Mr. Hirsch's Black Watch Farms home, where a portion of his property was the subject of ongoing litigation over a potential Wellington council reconsideration of a previously approved site plan and development permit.
- Mr. Greene asked Wellington's attorney, Jeffrey Kurtz, for clarification whether an ongoing conflict of interest existed based on the past gift that he had received from Mr. Hirsch.
- Staff recommended that:
 - Unless an official used his or her office to corruptly secure a special benefit for another, no prohibition existed against voting or participating in matters involving a personal friend where no financial, fiduciary, or familial relationship was between the parties as prohibited in section 2-443(a), sections 1-7.

V. – CONTINUED

V.c. – CONTINUED

- During Councilman Greene’s temporary stay at Mr. Hirsch’s home, whether or not the elected official and resident may have been considered members of the same household, the elected official did not vote or participate on any matter involving that resident.
- No issue existed involving residents, so no conflict of interest under the financial misuse section of the Code existed.

MOTION to approve proposed advisory opinion letter RQO 12-065. Motion by Patricia Archer, seconded by Robin Fiore, and carried 4-0. Ronald Harbison absent.

V.d. RQO 12-067

Ms. Rogers said that:

- The issue dealt with lobbyist expenditure reports which were due on November 1, 2012.
- A registered lobbyist requested clarification whether calculation and disclosure of expenses in his/her annual lobbyist expenditure report related to personal travel to and from meetings where lobbying occurred should be done.
- Staff submitted that:
 - Personal travel by a lobbyist to and from a meeting with County and municipal officials or employees were not reportable expenditures requiring disclosure on the expenditure report provided that the lobbyist was not offering travel to an employee, official, or others for lobbying purposes.
 - The lobbyist registration ordinance said that specific exclusions from the definition of expenditure and reporting requirements were a lobbyist or principal’s salary, office overhead expenses, and personal expenses for lodging, meals, and travel.

V. – CONTINUED

V.d. – CONTINUED

- A lobbyist's personal travel from one place to another, no matter how it was accomplished, without performing lobbying activities or providing services to an official or employer, would not be considered an expenditure for reporting requirement purposes.

MOTION to approve proposed advisory opinion letter RQO 12-067. Motion by Robin Fiore, seconded by Daniel Galo, and carried 4-0. Ronald Harbison absent.

V.e. RQO 12-068

Mr. Johnson stated that since additional issues could arise regarding RQO 12-068, staff added subsection C, disclosure of voting conflicts, to the analysis. He said that potential code violations could include misuse, corrupt misuse, or a voting conflict.

Ms. Rogers said that:

- An elected official asked whether she was prohibited from participating in a homeowner's association effort to clean up a lake adjacent to her residential development.
- Town of Mangonia Park (town) Commissioner Addie Greene owned a lakeside property located within the Tiffany Lake Homeowner's Association.
- Based on the property appraiser's records, the lake was owned by businesses located on its opposite side.
- The lake had fallen into disrepair. Before the matter came to Commissioner Greene's attention, the lake's owners attempted to transfer ownership to the town. It was declined.
- Although business owners cleaned up their portion of the property.
- Commissioner Greene was solicited to assist other residents in cleaning up the particular property, and she inquired how she could appropriately assist with the cleanup.

V. – CONTINUED

V.e. – CONTINUED

- Staff submitted that:
 - Due to Commissioner Greene’s property being one of 36 lakeside homes, she was prohibited from using her official position directly or indirectly to give herself a special financial benefit.
 - Commissioner Greene was not prohibited from personally taking action and/or assisting her neighbors and other community members in her personal capacity in a manner consistent with that of other members of the public.
 - Commissioner Greene could go to the town’s code enforcement similar to other town residents to complain that maintaining standards that were set by the town were not kept. She could not go in her official capacity and send a code enforcement officer over to find the property owners.
 - The situation would be a special financial benefit to Commissioner Greene. If she used her official position to clean up the lake for her own benefit, it would be helping to increase her property values.
 - She was prohibited from voting or participating in any matter that came before the city council dealing with the lake property cleanup.
- Commissioner Greene began to form a committee of citizens to go forward in the cleanup of the lake, and indicated that speaking with code enforcement would be one of the mechanisms that the committee would pursue.
- Commissioner Greene could vote within the committee as long as she did not do it using her official capacity as a Commissioner.
- The committee that Commissioner Greene would represent could be categorized as a civic organization.

V. – CONTINUED

V.e. – CONTINUED

- If Commissioner Greene were to represent the committee in front of the town board in her official capacity, she would be in violation of a misuse of office.

Commissioner Archer expressed concern about the proposed advisory opinion letter not being clear on what Commissioner Greene was unable to do.

Ms. Rogers said that she could edit the proposed advisory letter to clarify what type of committee on which Commissioner Greene was able to serve.

At Commissioner Fiore's suggestion to remove all but the footnotes, Ms. Rogers said that the accompanying footnote could be replaced with the words, See also with footnote 4.

Ms. Rogers stated that:

- Certain rights were lost and kept as an elected official.
- One of the rights that were not lost was one's property rights as a homeowner or resident of a town.
- Commissioner Greene walked a thin line in preventing or obtaining a code violation concerning the matter.

Mr. Johnson said that a person's use of his/her office versus his/her personal capacity should be separated. He said that Commissioner Greene could not speak about the lake issue in front of the council she served or as a private citizen in front of that council.

Commissioner Farach inquired how Commissioner Greene, the official, could separate herself from Addie Greene, the individual, when going to code enforcement, since the code enforcement officer technically worked for Commissioner Greene.

Commissioner Fiore commented that Commissioner Greene could go to code enforcement by following the normal procedures, and not receive a priority for her request.

V. – CONTINUED

V.e. – CONTINUED

Ms. Rogers stated that the proposed letter’s language was updated to include a nonprofit or civic organization, and the suggested prohibitions by Commissioner Archer.

MOTION to approve proposed advisory opinion letter RQO 12-061 as amended to include the changes as discussed. Motion by Daniel Galo, and seconded by Patricia Archer.

Commissioner Farach requested that the words, may violate, be changed to, will violate, in the last sentence of the paragraph that began, Under the facts.

Commissioner Galo said that the board would be saying that “something” in the future, would be a violation, when the future had not yet occurred; however, he would amend the motion.

AMENDED MOTION to change the words “may violate,” to “will violate.” The maker and seconder agreed and the motion carried 4-0. Ronald Harbison absent.

VI. REVISIONS TO RULES OF PROCEDURE

VI.a. Section 2.9 – Publication of Advisory Opinions

Mr. Johnson stated that:

- Although the item was previously before the board, a decision had not been reached.
- No practical application existed in Palm Beach County regarding the particular code; therefore, staff had reviewed sources in May and June 2012.
- In section 2-260.9, a general statement was promulgated establishing jurisdiction to interpret the Code through advisory opinions and specific procedures.

VI. – CONTINUED

VI.a. – CONTINUED

- A review of section 2.9 revealed a redaction protocol that was inconsistent with the County's current process and use.
- Staff requested that:
 - A review of the protocol and an amendment to the rules be made.
 - The 2.9 publication of advisory opinions be amended to include the first line that currently existed, and that each advisory opinion issued by the board be numbered, dated, and published.

MOTION to approve staff's proposed changes to the Rules of Procedure for rule 2.9. Motion by Robin Fiore, seconded by Patricia Archer, and carried 4-0. Ronald Harbison absent.

VI.b. Section 4.2 – Dismissals: No Legal Sufficiency

Mr. Johnson requested that the item be tabled until November 2012 so that he could review staff's recommendation on legal sufficiency.

Commissioner Fiore said that if the board found a complaint to be legally insufficient, it did not mean that it could not be submitted but that it did not meet Code requirements. She suggested that the board not be dismissive of the complaints that turned out to be legally insufficient.

Mr. Johnson requested that the item be withdrawn until further notice.

By the board's consensus, the item was withdrawn until the November 2012 meeting.

VI.c. Section 4.6.1 – Referral to Other Authorities

Mr. Johnson said that:

- Item VI.c. was a recommendation to revise the rules and procedures.
- The referral to other authorities and the Code's technical language did not sufficiently provide the board with a process.

VI. – CONTINUED

VI.c. – CONTINUED

- Concern existed that if the board referred a complaint to a prosecutorial body such as the State Attorney's Office, while in session it may inadvertently be compromising investigation into a matter.
- Proposed section 4.6.1. regarded a referral to other authorities for prosecution. Currently, section 2-260(h) of the Code was used, which said that the board could refer complaints to the state attorney, any appropriate official, or agency that had the authority to initiate prosecution.
- Staff recommended that the language be changed to, The Commission on Ethics or the executive director on behalf of the commission, shall refer a matter to the state attorney or any other appropriate official or agency having authority to initiate prosecution when deemed appropriate.
- He could notify the board about a complaint being referred to the authorities provided that no communication existed between the board members.
- Staff could report and communicate with each commissioner individually.

Commissioner Archer said that without making a referral public, it would be important that the commissioners be notified when a referral was made by the executive director.

Commissioner Fiore said that she supported having the chair and the executive director consult on referrals with board involvement to ensure proper staff supervision.

Commissioner Galo said that the board's concern should not be toward the intake process since a referral was just calling a police officer or his or her equivalent to state that law enforcement needed to investigate.

Mr. Johnson said that:

- The concern was not only about the intake process, but about what would happen if a referral was set for a final hearing.

VI. – CONTINUED

VI.c. – CONTINUED

- It would not be harmful to institute a notification process for planning purposes.
- The chair's referral notification should not be public record.
- Notifying the other commissioners would be communicating between the commissioners, which was not allowed.
- It would be better to state: The executive director shall notify the commissioners of any matter referred to authorities.

Commissioner Farach said that the board's transparency meant that everything was done publicly except for executive session matter, which became public record once a finding was made that a violation did or did not occur. He said that the referral process could be open to the public so that the board could be judged on whether they handled matters correctly or incorrectly.

Mr. Johnson said that:

- Anything discussed in executive session became public record once it was completed.
- The referral process would involve him sending a letter to an appropriate authority, which would eventually become public record.
- As far as the board's proceedings, unless there was a request to stay by the prosecuting arm, the referral would go to final hearing or through the process of discovery.
- Public disclosure would happen as soon as the prosecution for the referral was declined or filed.

Commissioner Farach proposed that a referral be given an individual complaint number.

VI. – CONTINUED

VI.c. – CONTINUED

Mr. Johnson said that no provision existed in the current ordinance to allow for that process. He said that he would research the rules, and if allowed, the proposed process would be attached to a referral provision in the Code.

Commissioner Farach said that the complete decision-making should be open for public inspection.

Commissioner Galo commented that if the board's COE executive director saw a criminal act, as a citizen, he had an obligation to report it.

Commissioner Fiore clarified that if the executive director believed that a criminal act may have taken place, he should contact the chair for oversight purposes.

Commissioner Farach said that the board's responsibility was to ensure that a referral was done properly.

Mr. Johnson requested tabling the item to allow staff time to determine whether there was any other vehicle that could be used, since he thought that executive sessions would work for the process. He said that if he used an executive session for referrals, the sessions would have a fictitious numbers that would be attached to the file; however, a public part of the file would not exist until the referral was either returned or it became public record. He said that he wanted to adhere to a 119 exception to a public record requirement.

MOTION to table VI.c. Motion by Robin Fiore, seconded by Patricia Archer, and carried 4-0. Ronald Harbison absent.

VII. EXECUTIVE DIRECTOR COMMENTS

(CLERK'S NOTE: Mr. Johnson requested that the board allow Ms. Rogers to speak.)

VII. – CONTINUED

VII.a.

DISCUSSED: Social Media.

Ms. Rogers said that:

- The board was live on Twitter and Facebook, and today's meeting had been tweeted live.
- People could either follow the COE meetings on Channel 20 or on Twitter feed from mobile phones or on desktop computers.
- People could find and choose to like the board at www.facebook.com/pbccoe and on its Twitter handle, PBCCOE.
- Both Facebook and Twitter links would be available on the board's website.
- For one week, the COE's Facebook page would feature a daily profile of the board's five commissioners for Facebook fans.
- Staff was developing an audience and building access to new community members that may not have seen the board's website or watched its meetings on Channel 20.

VII.b.

(CLERK'S NOTE: The following comments were made at the end of the meeting.)

DISCUSSED: Palm Cards.

Ms. Levesque said that she had created new palm cards, and that she had samples for the board to review.

Mr. Johnson said that the palm cards would be distributed to governmental entities, employees, officials, and to the public.

VII. – CONTINUED

VII.b. – CONTINUED

Commissioner Fiore suggested that the Twitter and Facebook pages be displayed on the palm cards and that the words, write us, on the cards should be changed to, email us.

Ms. Levesque said that she would add Commissioner Fiore's suggestions along with a correction on Commissioner Archer's name to the County Graphics Department for the cards production.

VIII. COMMISSION COMMENTS

VIII.a.

DISCUSSED: Palm Beach Post's (Post) Symposium on Ethics.

Commissioner Farach said that he and Commissioner Galo had attended a Post symposium that addressed the ethics initiative in the county. He said that attendants expressed a high level of interest. Palm Beach County League of Cities Executive Director Richard Radcliffe, Inspector General Sheryl Steckler, and Marty Rogol had attended the symposium, he informed his colleagues.

Commissioner Galo said that enforcing County ethics through supervision of transactions by municipalities was well received by those in attendance. He said that many people supported the board.

VIII.b.

DISCUSSED: National Ethics Day.

Commissioner Farach asked Mr. Johnson whether National Ethics Day would be held in the month of November.

Mr. Johnson said that National Ethics Day was held in March, and that staff had begun the planning process for the next event.

(CLERK'S NOTE: VII.B. was done at this time.)

IX. PUBLIC COMMENTS – None

X. ADJOURNMENT

MOTION to adjourn. Motion by Patricia Archer, seconded by Robin Fiore, and carried 4-0. Ronald Harbison absent.

At 5:35 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

Negotiated Settlement

In Re: J. Jerome Taylor

Case No.: C12-003

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, J. Jerome Taylor, believes it to be in his best interest to avoid the expense and time of litigation in this matter and desires to resolve the issues contained in the probable cause finding by the Commission. Accordingly, Respondent admits to the allegations contained in the complaint as to Counts 2 and 5, *Disclosure of Voting Conflicts*, and Count 4, *Corrupt misuse of official position*.
2. Pursuant to this Proposed Settlement Agreement, the Commission on Ethics agrees to dismiss Counts 1 and 3 of the complaint, *Misuse of Public Office* and impose a \$200 fine per violation as to counts 2 (*Disclosure of voting conflicts*) and 4 (*Corrupt misuse of official position*) and a fine of \$100 as to count five (total \$500) as prescribed under section 2-448(b) of the Palm Beach County Code of Ethics and to issue a Letter of Reprimand. In addition, Respondent shall pay restitution to the Riviera Beach Housing Authority in the amount of \$500.
3. Respondent understands and agrees to abide by the decision of the Commission regarding its finding, required pursuant to section 2-260.1(g) of the Commission on Ethics ordinance, as to whether this violation was intentional or unintentional.
4. This Proposed Settlement Agreement embodies the entire agreement of the parties respecting the subject matter herein. There are no promises, terms, conditions or obligations other than those contained in this Proposed Settlement Agreement.
5. This Proposed Settlement Agreement supersedes any and all previous communications, representations, and offers, either verbal or written, between the Advocate and Respondent. By signing this document, Respondent acknowledges that he is doing so freely, voluntarily and without duress; that he is competent to enter this agreement; that he has been given the opportunity to review this Proposed Settlement Agreement with an attorney; and that he has fully and completely read and understands the terms and conditions herein.
6. Advocate and Respondent agree that settlement of his action in the manner described above is just and in the best interest of the Respondent and the citizens of Palm Beach County.
7. Evidence of this offer of compromise and settlement is inadmissible to prove any of the allegations alleged.
8. Respondent understands and agrees that **NO OFFER IS FINAL UNTIL ACCEPTED BY THE COMMISSION ON ETHICS.**


T. Hardee Bass, Volunteer Advocate

10/29/12
Date


J. Jerome Taylor, Respondent

10/29/12
Date

VII Processed Advisory Opinion

RQO 12-069 Mark Burnam

A vendor of Palm Beach County and various municipalities asked whether a financial institution may continue to provide a complimentary lunch and financial action strategy plan to county and municipal employees, officials and advisory board members, where the plan is also available to any member of the public.

Staff submits the following for COE review: A vendor of the County or municipality is prohibited from offering gifts valued in excess of \$100 annually, in the aggregate, to county or municipal staff, officials, or advisory board members. However, the gift law provides an exception for publicly advertised offers for goods and services from a vendor under the same terms and conditions as made available to the general public. Here, where a financial institution contacts, solicits business and provides complimentary lunch and financial action strategy plans to any and all pre-retirement individuals working in both the private and public sectors, the vendor is not prohibited by the Code of Ethics from providing this same service to county or municipal employees, officials or advisory board members.



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

October 25, 2012

Mark Burnam, Vice President- Investments
Wells Fargo Advisory, LLC
200 East Las Olas Blvd., Suite 1820
Ft. Lauderdale, FL 33301

Re: RQO 12-069
Gift Law/Publicly Advertised Offer

Dear Mr. Burnam,

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

YOU ASKED in an email dated September 27, 2012 whether Wells Fargo Bank, a vendor to Palm Beach County and several municipalities, may continue to provide a complimentary lunch and financial action strategy plan to county and municipal employees, officials and advisory board members, which plan is also available to any member of the public. Staff received additional information on October 24, 2012.

IN SUM, Wells Fargo is prohibited from offering gifts valued in excess of \$100 annually, in the aggregate, to county or municipal staff, officials, or advisory board members whose governmental entity has a vendor relationship with the bank. However, the gift law provides an exception for publicly advertised offers for goods and services from a vendor under the same terms and conditions as made available to the general public. Here, Wells Fargo contacts, solicits business and provides complimentary lunch and financial action strategy plans to any and all pre-retirement individuals working in both the private and public sectors. Accordingly, Wells Fargo is not prohibited from providing this service to county or municipal employees, officials or advisory board members, nor is the plan a "gift" as defined by the Code of Ethics (the Code).

THE FACTS as we understand them are as follows:

You are a Vice President of Investments for Wells Fargo Advisors, LLC (Wells Fargo). You work with public and private sector employees around the state. Wells Fargo offers complimentary retirement planning to all members of the public who are "pre-retirees" and your organization is provided with a database of potential clients who meet this description. Upon contacting the "pre-retiree" individual, you will set up a meeting, usually over coffee or lunch that is at a cost of \$20 or less, and provide the potential client with a complimentary financial action strategy plan (financial plan). All potential clients are provided with this plan and it is theirs to keep whether or not they end up working with your firm. You advise that a prospective client asked you to provide a value on the complimentary plan in order to determine whether it would violate the \$100 vendor gift prohibition, and therefore, you have sought advice from the Commission.

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

Sec. 2-444. Gift law.

- (g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration...
- (1) Exceptions. The provisions of subsection (g) shall not apply to:
 - f. Publically advertised offers for goods or services from a vendor under the same terms and conditions as are offered or made available to the general public.

Wells Fargo offers complimentary lunch and retirement planning to all members of the public who are "pre-retirees" regardless of whether their current employer does business with the bank. The financial plans you provide to state, county and municipal employees are available to employees of private sector companies as well as any individual member of the public interested in receiving such pre-retirement investment advice. Accordingly, this service is not considered a gift as defined by §2-444(g).¹ Similarly, the lunch, coffee or other refreshments, valued at approximately \$20, are provided as part of the package and are available to all potential investment clients. Even if the lunch/refreshments were considered as separate and apart from the value available to the general public, the estimated value of the lunch, coffee or other refreshment is significantly less than the \$100 limit provided by the code.

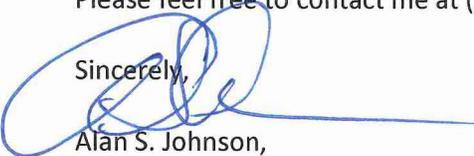
Notwithstanding the gift law exception, and in all instances, county and municipal employee, officials and advisory board members are prohibited from accepting a gift of any value as a *quid pro quo* or in exchange for the past, present or future performance of an official act or a legal duty.²

IN SUMMARY, you are not prohibited from providing complimentary lunch and pre-retirement investment plans to county and municipal employees and officials. The financial plans you provide are offered to private sector employees as well as the general public under the same terms and conditions as provided to public employees, officials and advisory board members whose public entity does business with Wells Fargo.

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

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

Sincerely,



Alan S. Johnson,
Executive Director

ASJ/gal/mcr

¹ RQO 12-010 (banking discounts provided to all government employees regardless of whether their public employer is a banking customer of BB&T are not "gifts" as provided by §2-444(g))

² §2-444 (e). Gift Law

IX Proposed Advisory Opinions

RQO 12-070 Eric Johnson

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.

Staff submits the following for COE review: 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 so as to remove any prohibited individual financial benefit and the employee may begin work on the project for the City.

November 2, 2012

Eric Johnson, Planner II & CRS Coordinator
City of Boynton Beach
Planning & Zoning Division
100 East Boynton Beach Boulevard
Boynton Beach, FL 33435

Re: RQO 12-070
Misuse of office

Dear Mr. Johnson,

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 November 1, 2012.

YOU ASKED in your submission dated October 11, 2012 whether as a certified urban planner for the City of Boynton Beach (the City) you may work in your professional capacity to develop a City transit project when you are the co-owner of a property within the development area.

IN SUM, 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. However, based upon the size of the class presented here, you are not prohibited from working on the City transit project in your official capacity as a City planner even though you own property in the affected area.

THE FACTS as we understand them are as follows:

You are certified urban planner for the City of Boynton Beach and a co-owner of a condominium. Recently, staff from the Treasure Coast Regional Planning Council (TCRPC) approached the City about developing a train station in the downtown area located within walking distance of your condominium. While the City and TCRPC are in the preliminary stages of discussing this project, the City is in favor of having a train station at the proposed location.

As a joint effort, the TCRPC has asked City staff to consider studying the proposed location, including the surrounding properties located within a ¼-mile (125 acre) and ½-mile radius (500 acre) of the subject site. Your condominium is located within the affected ½-mile radius. The City of Boynton Beach provided a map of the affected area to Commission staff. Over 500 parcels are within the affected area.

The TCRPC has asked the City to consider making amendments to the existing Comprehensive Plan and to create a new zoning district or overlay zone to accommodate the desired development pattern. This transient-oriented-development (TOD) overlay zone/zoning district would most likely result in increasing the maximum allowable residential densities and commercial intensities, as well as relaxing certain development standards (e.g., parking, setbacks, etc.) within the 125-acre and 500-acre areas. You believe that these changes may have a positive effect on the value of your condominium.

The City has asked you to participate in this project and serve in a position of influence. This planning effort is part of your job, but you are asking for an opinion because you are concerned about the Code of Ethics (the Code), particularly the misuse of office prohibitions. You have also asked for an opinion from the American Planning Association (APA). The APA opined that your participation would be acceptable and expected; however, at all public hearings, they encouraged you to disclose that you own property within the affected area.

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

§2-443(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;

Section 2-443(a) prohibits you from using your official position to give yourself a special financial benefit not shared with similarly situated members of the general public. The COE has previously opined that financial benefit, in the context of the Palm Beach County Code of Ethics, constitutes economic gain or loss.¹ For a financial benefit to be “special”, the benefit must inure uniquely to you, rather than benefiting the City or a specific group of people or neighborhood. There is no bright line in determining the number of individuals who would need to be similarly affected to transform a personal gain or loss into a gain or loss shared with similarly situated members of the general public. However, where a class is large, a prohibited financial gain would result only if there are circumstances unique to the employee which would enable him to gain more than the other members of the class. Where the class of persons benefiting is small, the likelihood of prohibited financial benefit is much greater.² The question then becomes, given the number of similarly situated members of the community, whether working on this project will result in a special financial benefit to you.

Under the facts you have submitted, you own a condominium in a building located in the proposed transportation development zone. That building is one of over 500 parcels in the proposed zone. Were you to own the entire building and not just one unit in one of over 500 properties located in the development area, the extent of your economic interest would still be less than .2 percent of the class. Under these circumstances, the economic benefit or loss affects a class large enough so as to remove any prohibited individual financial benefit.³

IN SUMMARY, based on the facts and circumstances provided, the financial benefit that may be created by developing the train station project is “shared with similarly situated members of the general public” and does not constitute a unique circumstance whereby your personal gain or loss exceeds significantly other members of the affected class.

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,

Alan S. Johnson,
Executive Director

ASJ/mcr/gal

¹ RQO 10-013 (For the purpose of ordinance construction, the commission finds that a financial benefit includes either a private gain or loss).

² CEO 77-129

³ State of Florida CEO Opinion 01-8, June 12, 2001

November 2, 2012

Mr. Craig Bachove
11125 Isle Brook Court
Wellington, FL 33414

Re: RQO 12-071
Voting conflicts

Dear Mr. Bachove,

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 November 1, 2012.

YOU ASKED in your submission dated October 26, 2012 whether you are prohibited from on voting on a matter coming before your board regarding a new development in one of the subdivisions within your property owners association.

IN SUM, 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 Code), 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. However, based upon the size of the class presented here, you are not prohibited from participating and voting in a quasi-judicial hearing even though you own property in the affected area.

THE FACTS as we understand them are as follows:

You are the Chairman of the Wellington Planning, Zoning and Adjustment Board (PZAB). Several months ago your board and the Village Council approved a site plan and development permit for a new development called the Blue Cypress Site (BCS) within the Palm Beach Polo Property Owners Association (POA). When this matter came before your board, in an abundance of caution, you abstained from voting and filed a state voting conflict form (8b) based upon your status as a resident of the POA.

This matter is scheduled to come before your board for hearing pursuant to rule 5.1.15 of Wellington's Land Development Regulations. A 5.1.15 hearing allows the PZAB to revisit a matter if there is evidence that there may have been fraud, deceit, or information purposefully left out of an application. If the PZAB determines there is no evidence to support such a finding the process will be concluded. If the PZAB determines there was a misrepresentation or deliberate error or omission, a rehearing of the site plan amendment will be scheduled.

According to the Village of Wellington (the Village) staff, the westernmost part of the BCS is owned by Chucker Holdings, Inc. Chucker Holdings alleges that it was not advised of the application for the site plan change and that the approved change materially alters its road frontage and adversely affects the potential future development of its property. Chucker Holdings, Inc. has retained counsel to represent its interest in the pending litigation, settlement discussions and 5.1.15 Hearing before the PZAB.

Isle Brook is one of 40 Home Owner Associations (HOAs) within the Palm Beach Polo POA. Village staff estimates that there are 1450 owner occupied properties within the POA. You reside within the Isle Brook HOA. The Isle Brook community is not adjacent to the BCS site, nor would the site plan changes proposed by the site developers provide additional access or any other similar zoning benefits to your property or those property owners within your HOA. You are not an officer or director of your HOA or the POA.

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

§2-443(a) Misuse of public office or employment. An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:

- (1) Himself or herself;

§2-443(c) Disclosure of voting conflicts. County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. 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).

Section 2-443(a) prohibits you from using your official position to give yourself a special financial benefit not shared with similarly situated members of the general public. Similarly, §2-443(c) *Disclosure of voting conflicts* requires an advisory board member to abstain and not participate in any matter coming before his or her board which would result in a special financial benefit, not shared with similarly situated members of the general public, to themselves, a relative or a member of their household. The COE has previously opined that financial benefit, in the context of the Palm Beach County Code of Ethics, constitutes economic gain or loss.¹ For a financial benefit to be “special”, the benefit must inure uniquely to you, rather than benefiting the Village, a specific group of homeowners or a neighborhood.

There is no bright line in determining the number of individuals who would need to be similarly affected to transform a personal gain or loss into a gain or loss shared with similarly situated members of the general public. However, where a class is large, a prohibited financial gain would result only if there are circumstances unique to you which would enable your property to benefit more than the other property owners within the class. Where the class of persons benefiting is small, the likelihood of prohibited

¹ RQO 10-013 (For the purpose of ordinance construction, the commission finds that a financial benefit includes either a private gain or loss).

financial benefit is much greater.² The question then becomes, given the number of similarly situated members of the community, whether voting on this matter will result in a special financial benefit to you.

While your home is within the affected POA, you are one of approximately 1450 owners in the POA. As discussed above, even as one of 1450 owners, the Code would prohibit you from voting on this matter if facts and circumstances showed that the location, ownership, or size of your property in relation to the site plan would provide a unique benefit to you. However, your home is over a mile away from the proposed development site and your interest in the area, as a similarly situated member of the POA, is less than one-tenth of a percent. Under these circumstances, the economic benefit or loss affects a class large enough so as to remove any prohibited individual financial benefit. Therefore, you are not prohibited from voting on or participating in this matter.³

IN SUMMARY, based on the facts and circumstances you have provided, any financial benefit or loss attributable to you as an individual homeowner with the POA, is “shared with similarly situated members of the general public” and does not constitute a unique circumstance whereby your personal gain or loss exceeds significantly other members of the affected class.

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,

Alan S. Johnson
Executive Director

ASJ/mcr/gal

² CEO 77-129, RQO 12-058 (a historic preservation committee advisory board member was prohibited from voting and participating in a plan amendment where the property subject to amendment was 10.5 feet from her property line and where she and her spouse filed an objection to the project).

³ State of Florida CEO Opinion 01-8, June 12, 2001

ITEM X(a) – REVISIONS TO RULES OF PROCEDURE, SECTION 4.6.1 – REFERRAL TO OTHER AUTHORITIES

Article V, §2-260.2. Notification and referral to other authorities, states as follows:

As provided for by ordinance within its jurisdiction, the commission on ethics shall refer a matter to the state attorney or any other appropriate official or agency having authority to initiate prosecution when deemed appropriate. The state attorney or other appropriate agency may decline prosecution or enforcement of any matter referred under this division and refer the matter back to the commission on ethics. The commission on ethics shall notify the State of Florida Commission on Ethics, the state attorney, the U.S. Attorney for the Southern District of Florida, and other appropriate law enforcement agencies within ten (10) days of a finding of no probable cause or of a final order disposing of a complaint.

Currently, there is no corresponding Rule of Procedure describing the process of referral. A literal interpretation requiring referrals be made by the COE as a body may compromise a prospective investigation by Law Enforcement. A criminal investigation is exempt from public record precisely for that reason. A referral to Law Enforcement does not affect the COE complaint process unless and until a request is made by the State Attorney or U.S Attorney to stay the COE proceedings pursuant to Article V, §2-260 (h) and Rule of Procedure 4.6, at which time the COE case is stayed.

Recommendation of Staff.

Staff Recommends that referral to “the state attorney or any other appropriate official or agency having authority to initiate prosecution” be in the alternative, by the COE and/or Executive Director. Proposed rules are as follows:

4.6.1 Referral to other authorities for prosecution

The Commission on Ethics, or the Executive Director on behalf of the Commission, shall refer a matter to the state attorney or any other appropriate official or agency having authority to initiate prosecution when deemed appropriate.

4.6.2 Notice to Commission of referrals

The Commission on Ethics shall be notified of a referral made by the Executive Director pursuant to Rule 4.6.1.

4.6.2 Manner of Notice to Commission/Public records exemption

The COE Intake Manager shall generate a separate case number for any referral by the Executive Director to the state attorney or other appropriate official or agency having authority to initiate prosecution. The referral shall be scheduled for review in executive session at the next regularly scheduled meeting of the Commission. Unless disapproved by a majority of the Commission, the executive session shall remain unpublished and exempt from public records disclosure until such time as the prosecuting authority declines or completes its investigation and notifies the Commission that the matter is no longer exempt from disclosure pursuant to chapter 119, Florida Statutes.



Palm Beach County Commission on Ethics

Community Outreach

Megan Rogers

Staff Counsel

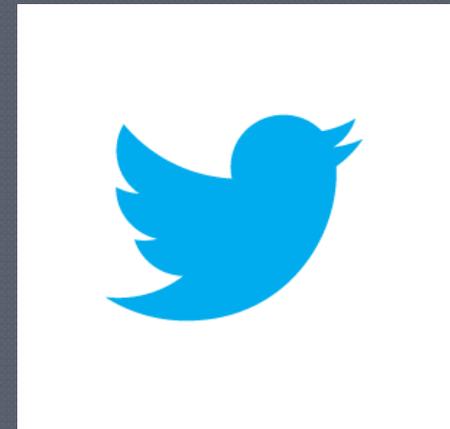
Social Media

○ Twitter

- @PBCCOE
 - Meeting updates
 - Live coverage of public sessions

○ Facebook

- Facebook.com/PBCCOE
 - Articles, events, and more
 - Meeting reminders
 - “Did you know” segment
 - Advertising venue



Ethics Awareness Day

◉ March 2012

- Tentative Dates: March 7th kick-off with official declaration of March 8th
- Speaker series in partnership with Channel 20
- School Board partnership

◉ Municipal and County Recognition

- Recognition for departments, municipal or county employees who have thoughtfully and actively participated in the COE process

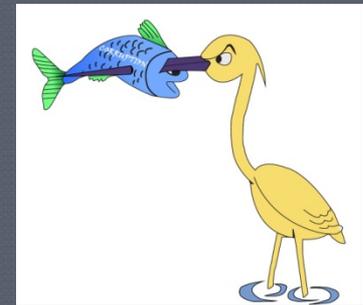
Community Partnerships

◉ Palm Beach County School Board

- Ethics in Action Program
 - Developing art, essay-writing and video production programs with PBCSB staff
- Ethics Bowl: January 26, 2013
 - National Competition: April 19-20, University of North Carolina, Chapel Hill

◉ Internship Programs

- University of Miami
- Palm Beach State College
- Palm Beach Atlantic University
- Florida Atlantic University Honors College



Training

- Training for Non-profit directors
- Specialty Trainings
 - Charitable solicitation, Lobbyist Registration Ordinance, Outside Employment, Gift law
 - Available at www.palmbeachcountyethics.com and www.youtube.com/user/PBCCOE.
- Events
 - Palm Beach County Planning Congress
 - Chamber of Commerce- 6 Pillars Initiative