



Agenda

January 10, 2013 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Executive Session from 1:45pm to 3:15pm Regular Agenda will begin at 3:30pm

Palm Beach County

Commission on Ethics

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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. December 6, 2012
 - b. December 13, 2012
 - c. December 19, 2012
- V. Executive Sessions
 - a. C12-009
 - b. C12-015
 - c. C12-016
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 12-081
 - b. RQO 12-082
 - c. RQO 12-085
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Proposed Advisory Opinions
 - a. RQO 12-080
- IX. Annual Report
- X. Executive Director Comments
- XI. Commission Comments
- XII. Public Comments
- XIII. Adjournment

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

DECEMBER 6, 2012

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

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

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

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.

Commissioner Robin Fiore requested that cell phones be turned off.

III. – CONTINUED

Mr. Johnson said that an executive session would take place from 1:45 p.m. to 3:15 p.m., and that the COE would be back in session at approximately 3:30 p.m.

IV. APPROVAL OF MINUTES FROM NOVEMBER 1, 2012

Commissioner Patricia Archer said that page 6, the last sentence of the paragraph that began, Mr. Johnson said that, contained a possible typographical error.

Commissioner Fiore clarified that it should read: would allow it, period; and that the words, do so, should be eliminated.

Mr. Johnson noted that the correction was on page 5 of the minutes, and page 6 of the agenda.

Commissioner Fiore said that:

- The second to last paragraph on page 15 of the minutes, page 16 of the agenda, should be a question that read: Commissioner Fiore asked whether the situation should be analyzed.
- The last sentence in the first paragraph on page 17 of the minutes, page 18 of the agenda, contained the extra word, to. It should read: and that would be a matter of fact.

MOTION to approve the November 1, 2012, minutes as amended. Motion by Patricia Archer, seconded by Daniel Galo, and carried 3-0. Manuel Farach and Ronald Harbison absent.

RECESS

At 1:37 p.m., the vice chair declared the meeting recessed for an executive session.

RECONVENE

At 3:34 p.m., the meeting reconvened with Commissioners Archer, Fiore, and Harbison present.

V. EXECUTIVE SESSIONS

Commissioner Fiore requested that Commissioner Harbison read the three public reports. Commissioner Harbison stated that they would be read in numerical order.

V.c. C12-011

Commissioner Harbison read the public report finding no probable cause and final order of dismissal as follows:

Complainant, Judith Just, filed the above-referenced complaint on September 17, 2012, alleging a possible ethics violation involving Respondent, Wes Blackman, Chairman of the Lake Worth Historical Resources Preservation Board.

The Complaint alleges that Chairman Blackman failed to register as a lobbyist prior to lobbying City of Lake Worth staff on a matter that was to be presented to the Lake Worth Historical Resources Preservation Board (HRPB), as required by the Palm Beach County Lobbyist Registration Ordinance.

Pursuant to Chapter 2, Article V, Division 8, §2-258(a) of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the Palm Beach County Lobbyist Registration Ordinance. A person who is employed and receives compensation on behalf of a principal must register on the "Central Lobbyist Registration Site" maintained by Palm Beach County, prior to lobbying.

On November 1, 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 December 6, 2012. At that time, the Commission conducted a hearing. The Commission reviewed and considered the Memoranda of Inquiry, Investigation and No Probable Cause, recommendation of staff, as well as oral statements of the Respondent and the Advocate. At the conclusion of the hearing, the Commission on Ethics found no probable cause exists, and the complaint was dismissed.

V.c. – CONTINUED

Therefore, it is:

Ordered and adjudged that the complaint against Respondent, Wes Blackman, is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on December 6, 2012. Signed by Robin Fiore, Vice Chair.

V.a. C12-013

Commissioner Harbison read the public report and finding of probable cause as follows:

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

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

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

(This space intentionally left blank.)

V.a. – CONTINUED

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

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

Based upon the filing of a sworn complaint, and pursuant to COE Rule of Procedure 4.1.3, a preliminary inquiry was commenced. Although it was determined that the initial complaint was not legally sufficient, after obtaining sworn statements from material witnesses and documentary evidence sufficient to warrant a legally sufficient finding, a Memorandum of Legal Sufficiency was entered on November 15, 2012, and complaint was filed on November 19, 2012, by Alan Johnson, Executive Director of the COE, and an investigation commenced pursuant to Article V, Division 8, Section 2-260(d). Information obtained during the inquiry was adopted into the investigation and presented to the Commission on Ethics on December 6, 2012, with a recommendation that probable cause exists that a Code of Ethics violation occurred. At that time, the Commission conducted a probable cause hearing. The Commission reviewed and considered the inquiry and investigative reports, documentary submissions, recommendation of staff, as well as oral statements of the Respondent and Advocate. At the conclusion of the hearing, the Commission on Ethics determined that probable cause exists in this matter.

Accordingly, we find that there are reasonably trustworthy facts and circumstances for the Commission on Ethics to believe that the Respondent violated the Palm Beach County Code of Ethics as follows:

V.a. – CONTINUED

Count 1, Article XIII, section 2-443(b) (Corrupt Misuse of Official Position)

Count 2, Article XIII, section 2-443(b) (Corrupt Misuse of Official Position)

Therefore, it is:

Ordered and adjudged that probable cause exists, and the complaint against Respondent, Marlene Ross, is hereby set for final hearing to be determined within 10 days.

Done and ordered by the Palm Beach County Commission on Ethics in public session on December 6, 2012. Signed: Robin Fiore, Vice Chair.

V.b. C12-014

Commissioner Harbison read the public report finding no probable cause and final order of dismissal as follows:

Complainant, Alan S. Johnson, filed the above-referenced complaint on November 1, 2012, alleging a possible lobbyist registration ordinance violation involving Respondent, Mike Nelson.

The complaint alleges that Mike Nelson failed to register as a lobbyist prior to lobbying Village of Wellington staff on a matter that was to be presented to the Village Planning, Zoning and Adjustment Board (PZAB) and, or Village Council, as required by the Palm Beach County Lobbyist Registration Ordinance.

Pursuant to Chapter 2, Article V, Division 8, §2-258(a) of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the Palm Beach County Lobbyist Registration Ordinance. A person who is employed and receives compensation on behalf of a principal must register on the "Central Lobbyist Registration Site" maintained by Palm Beach County, prior to lobbying.

V.b. – CONTINUED

On November 1, 2012, the complaint was determined by staff to be legally sufficient. The Memorandum of No Probable Cause and Memoranda of Inquiry and Investigation, adopted by reference, were presented to the Commission on Ethics on December 6, 2012. At that time, the Commission conducted a hearing. The Commission reviewed and considered the Memoranda of Inquiry, Investigation and No Probable Cause, recommendation of staff, as well as oral statements of the Respondent and the Advocate. At the conclusion of the hearing, the Commission on Ethics found no probable cause exists and the complaint was dismissed.

Therefore, it is:

Ordered and adjudged that the complaint against Respondent, Mike Nelson, is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on December 6, 2012. Signed: Robin Fiore, Vice Chair.

(CLERK'S NOTE: The clerk added the language as printed in the three public reports.)

Commissioner Fiore stated that:

- The COE had previously apologized to Mr. Nelson, but it wanted to publicly apologize to him today.
- Mr. Nelson had registered as a lobbyist, but due to an intricate process, his registration had been kicked out of the system. He has now completed the registration.
- The complaint had been found legally sufficient based on materials that were provided to the COE at the time.

Commissioner Fiore requested that a roll call be taken.

(CLERK'S NOTE: A roll call was taken with Commissioners Archer, Fiore, and Harbison present.)

V.b. – CONTINUED

Mr. Johnson requested that the agenda be reordered to present item VI.b. at this time, and to address item X earlier than scheduled.

Commissioner Fiore said that item VI.b. would be presented before item VI.a., and that item X. would be presented somewhere between items VI. and VII.

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VI.a. Page 8

VI.b. Request for Advisory Opinion (RQO) 12-075

Megan Rogers, Esq., COE staff counsel, said that:

- A Town of Palm Beach (Town) attorney asked whether an elected official, who served as a private company's board chairman, was prohibited from voting on changes to a zoning variance, which were unrelated to the elected official's outside employer.
- The zoning variance was opposed by an entity owned, in part, by a fellow board member of the elected official's outside employer.
- Staff had submitted that:
 - Elected officials were prohibited from using their official position, participating or voting on an issue that would give a special benefit to themselves, their outside employer, or anyone who was known to the elected officials to work for their outside employer. The special benefit would be considered a benefit not shared with similarly situated members of the general public.
 - Based on the facts presented, the elected official was prohibited from voting on the matter.

Commissioner Fiore said that Town counsel, John Randolph, could speak.

Mr. Randolph commented that he was not challenging the COE's opinion. He said that he was concerned about the opinion's potential, far-reaching implications relating to the County's Code of Ethics (Code). He provided a similar hypothetical situation and asked whether RQO 12-075's opinion would apply.

VI.b. – CONTINUED

Commissioner Fiore stated the COE attempted to provide opinions that were not based on hypotheticals.

Mr. Randolph said that in the opinion, the COE had used the words, if it is to the benefit of an employee of the council member. Commissioner Fiore responded that the benefit had to be unique or special.

Mr. Randolph said that the Code, as written, was problematic since a council member could not vote on a subject having anything to do with himself or herself, or having anything to do with a council member's fellow employee.

Commissioner Fiore said that the COE members took each advisory opinion on a case-by-case basis, and they tried to determine whether an identifiable special benefit existed.

VI.a RQO 12-073

MOTION to approve the consent agenda. Motion by Patricia Archer, seconded by Ronald Harbison, and carried 3-0. Manuel Farach and Daniel Galo absent.

VII. ITEMS PULLED FROM CONSENT AGENDA – None

Mr. Johnson requested that item X. be presented at this time.

X. EXECUTIVE DIRECTOR COMMENTS

X.a.

DISCUSSED: Legacy Magazine Award.

Mr. Johnson announced that COE Investigator James Poag had received an award in addition to soon receiving his doctoral letters.

Mr. Poag said that he had been nominated and had received a South Florida's Black Leaders of Today and Tomorrow award for 2012 on November 9, 2012, from Legacy Magazine.

X. – CONTINUED

X.b.

DISCUSSED: Commission on Ethics (COE) Executive Director's Resignation, and Congratulations.

Mr. Johnson announced that he had tendered his resignation. He said that starting January 14, 2013, he would begin working for the State Attorney's Office (SAO) as a chief assistant State attorney.

Commissioners Fiore and Harbison congratulated Mr. Johnson on his new (SAO) position. They added that his work in establishing the COE was extraordinary.

X.c.

DISCUSSED: COE Executive Director Recruitment and Selection Process, and Staff Commendation.

Mr. Johnson said that County staff could answer questions today, but a public hearing about filling the COE executive director position was scheduled for Thursday, December 13, 2012.

Commissioner Fiore said that the COE's ordinance language which read: The executive director must be selected by a competitive process, was vague since two people under consideration could be competitive.

Leilani Yan, Human Resources (HR) Department Recruitment and Selection Manager explained that:

- A national recruitment had been performed for the initial COE executive director position.
 - Six of 48 candidates had been invited to participate in the interview process under a formal selection committee, panel, and review.
 - Candidates were interviewed and given written exercises on the same day.
 - Candidates provided information for the panelists' consideration, and interview questions were pooled.

X.c. – CONTINUED

- Background checks were completed approximately three weeks prior to the interviews.
- The panel had requested that the candidates produce two reference letters.

Assistant County Administrator Brad Merriman stated that:

- The recruitment process would require some lead time to develop a scope and position description. He suggested that the COE members establish a timeframe to accomplish that task.
- He would review and discuss with the County Attorney's Office (CAO) whether a protocol existed regarding how the recruitment process should be conducted.
 - A general framework would be some level of advertisement, applicant screenings, and background checks.
 - The COE was not compelled to perform a national search.

Commissioner Archer requested that staff bring back a time table on December 13, 2012, for developing a scope and position description because she wanted to have some recommended candidates within four to five weeks.

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

Mr. Merriman said that a framework could be implemented for discussion at the December 13, 2012, COE meeting.

Mr. Johnson stated that Ms. Rogers and COE Senior Investigator Mark Bannon had offered to be interim or acting COE executive director. He added that no Sunshine Law violation existed if COE members wanted to individually speak with staff.

Mr. Merriman said that:

- The CAO would review the COE's ordinance to determine whether it addressed the process for appointing an acting executive director.

X.c. – CONTINUED

- Staff’s framework would depend on the extent of the recruitment search.
- Developing and finalizing the criteria would take several weeks.

Commissioner Fiore said that staff should bring back options on the short-term process of appointing an acting executive director, and a timeline regarding the definitive executive director selection process. She said that candidates should be recruited from within the county.

Mr. Merriman commented that once candidates were selected, a public interview process should commence.

Commissioner Harbison said that HR and other County staff should be commended for their efficiency during the initial recruitment and selection process. He added that it would be problematic to recruit out-of-state candidates for the interview process.

Mr. Merriman commented that the COE could confine the scope of advertisement for an executive director to within the county.

Mr. Harbison said that if staff needed input or had questions, the COE members could be contacted.

(CLERK’S NOTE: Item X. was continued on page 20.)

VIII. PROCESSED ADVISORY OPINIONS

VIII.a. RQO 12-072

Ms. Rogers stated that:

- A county commissioner asked whether the Code prohibited her from soliciting contributions from personal and governmental entities for her weekend radio show. She also asked whether it was appropriate to use her County commissioner email to publicize her radio program.
- Staff had submitted that:
 - Elected officials were prohibited from using their official positions to give themselves a special financial benefit not shared with similarly situated members of the public.

VIII.a. – CONTINUED

- Elected officials were prohibited from soliciting anything of value for their personal benefit in their official capacities. This applied to the officials and anyone soliciting on their behalf.
- Elected officials were not prohibited from soliciting donations or advertisers for radio programs in their private capacities so long as the officials did not solicit or accept donations in excess of \$100 from vendors, lobbyists, principals, or employers of lobbyists who vended, leased, or lobbied the governmental entities.

MOTION to approve proposed advisory opinion letter RQO 12-072. Motion by Patricia Archer, and seconded by Ronald Harbison.

Commissioner Fiore stated that she and Mr. Johnson had discussed RQO 12-072. She said that in following the Code's language, she had no basis for objecting to staff's recommendation. She added that once individuals became public officials, it was difficult to disambiguate themselves.

Commissioner Archer said that current public officials were severely limited in their actions.

UPON CALL FOR A VOTE, the motion carried 4-0. Manuel Farach absent.

VIII.b. RQO 12-074

Ms. Rogers stated that:

- A City of Lake Worth (city) employee asked whether she could accept tickets from a personal friend who had received them from a relative that worked as a vendor, bidder, or proposer for the city.
- Staff had submitted that:
 - The Code's gift prohibition applied to gifts given by a personal friend who was not a vendor where the gift was originally provided by the vendor with the intent to benefit the public employee.

VIII.b. – CONTINUED

- Factors to consider included the nature of the relationship between the vendor and the third party; the control retained by the donor or vendor over the gift; the nature of the relationship between the third party and the public employee or official; and the nexus between the gift donor and the public employee's department, official duties, and responsibilities.
- No employees or public officials could accept indirect gifts or benefits that were intended to influence their public positions, or in the manner in which they performed their public duties.
- The specific facts and circumstances surrounding a particular gift would determine whether the gift was considered an indirect, prohibited gift that was provided with the intent to benefit a public employee.
- Based on the unique facts and circumstances, the employee was not prohibited from accepting a ticket from her friend to attend an upcoming concert.

MOTION to approve proposed opinion letter RQO 12-074. Motion by Ronald Harbison, seconded by Patricia Archer, and carried 4-0. Manuel Farach absent.

VIII.c. RQO 12-076

Ms. Rogers said that:

- A county employee asked whether the Code prohibited him from contracting with the County.
- Staff had submitted that:
 - Public employees were prohibited from using their official positions to give or to influence others to give themselves or their outside businesses a special financial benefit. The Code also prohibited public employees or their outside businesses from contracting with the governments that they served.

VIII.c. – CONTINUED

- An exemption existed for contracts entered into under a sealed competitive bidding process where a public employee's outside business was the lowest bidder, and provided that the employee had not participated in the bid specifications for determining the lowest bidder, had not used his or her position in any way to influence the award, and had disclosed the nature of his or her interest in the business submitting the bid.
- The exemption contained five sections under the Code's contractual relationship prohibition. The referenced contractual relationship exemption was the only one that would apply to this particular employee.
- The fact that the county employee's outside business bid would not be selected unless it was the lowest bid essentially took discretion away from those who decided the winning bid.
- The county employee must file a copy of his disclosure with the Supervisor of Elections and the COE.
- The opinion was not placed under consent since the COE members had infrequently dealt with contractual relationships.

MOTION to approve proposed advisory opinion letter RQO 12-076. Motion by Daniel Galo, seconded by Patricia Archer, and carried 4-0. Manuel Farach absent.

VIII.d. RQO 12-078

Mr. Johnson stated that:

- A Palm Beach County Airport and Aviation Advisory Board (AAAB) member asked whether his employer, Morgan Stanley Wealth Management, could contract with the County. Since the AAAB was purely an advisory board, an exception existed under the Code's section 2-443(d).
 - The AAAB member would need to announce that he worked for someone who was contracting or entering into a contract with the County.

VIII.d. – CONTINUED

- If an advisory board member provided contract regulation, oversight, and management, or made policy-setting recommendations, the board member needed to transparently go before the governing body to discuss a waiver for remaining on the board.

MOTION to approve proposed advisory opinion letter RQO 12-078. Motion by Ronald Harbison, seconded by Patricia Archer, and carried 4-0. Manuel Farach absent.

VIII.e. RQO 12-079

Ms. Rogers stated that:

- A county commissioner asked whether he was prohibited from accepting tickets valued in excess of \$100. The tickets were provided by the County pursuant to a sponsorship agreement with a nonprofit organization.
- Staff had submitted that:
 - A County commissioner was not prohibited from accepting tickets provided to the County pursuant to a contract between the event's nonprofit sponsor and the County where the event's nonprofit sponsor did not sell, lease, or lobby the County.
 - County commissioners were identified by State law as reporting individuals. They were required to adhere to all standards and requirements imposed under State law regarding the reporting of gifts.
- If the nonprofit organization had received a municipal or other county grant, a prohibition on giving the tickets would depend on the nature of the grant.
- A vendor was defined as someone who provided goods or services to the County. In a grant-type organization, the County was granting a certain dollar amount to the nonprofit, which would provide goods or services to the public.

VIII.e. – CONTINUED

MOTION to approve proposed advisory opinion letter RQO 12-079. Motion by Patricia Archer, seconded by Daniel Galo, and carried 4-0. Manuel Farach absent.

IX. MEMORANDA OF UNDERSTANDING

(CLERK'S NOTE: Items IX.a., IX.b., and IX.c. were discussed in tandem and voted on separately.)

IX.a. Lake Worth Community Redevelopment Agency (CRA)

IX.b. Delray Beach CRA

IX.c. Delray Beach Housing Authority

Mr. Johnson stated that:

- Since November 2012, staff had been in negotiations and had agreed to memoranda of understanding (MOU) with the cities of Lake Worth and Delray Beach CRAs, and the Delray Beach Housing Authority.
- The Lake Worth CRA MOU was a renewal.
- A MOU would be effective for three years. A 90-day cancellation could occur by either party.
- The COE had a previous one-year contract with the Boca Raton Airport Authority (BRAA).
 - It was discovered that the COE's jurisdiction would only apply to the BRAA itself and not to its employees.
 - Staff believed that the jurisdictional issue was inappropriate. If the COE was going to provide services to an independent taxing authority (ITA), the entire ITA should be included.
- The ITAs were separate from the County or municipalities they may serve in terms of their duties, responsibilities, and oversight.

IX.a. – IX.c. – CONTINUED

- While ITAs may be funded by municipalities, they had independent staff and did not share the same retirement plans. They also were independent legal entities that could sue and be sued.
- If ITAs wanted to come under the COE's jurisdiction, it would be on a voluntary contract basis.
- The ITAs would be charged for the COE's services on a per-project basis.
- Every ITA that came under the COE would receive free ethics training.
- If an ITA board member was appointed by the County or a municipality, he or she would fall under the COE's jurisdiction, but only regarding Code provisions that excluded the gift law.
- With MOUs, all ITA employees would be under the COE's jurisdiction for the entire Code.
- Staff had been periodically sending letters to all ITAs about coming under the COE's jurisdiction.

Commissioner Fiore said that it was problematic to charge on a per-item basis since it discouraged people from requesting advisory opinions. She suggested that staff develop an alternate financing mechanism.

Mr. Johnson stated that:

- Two payment options existed: a per-event and an hourly charge.
- Staff had discussed the average number of hours that would go into an advisory opinion or an inquiry through legal sufficiency.
 - The pay scale was then reviewed for investigators, staff counsel, and the executive director.
 - An average was then calculated and applied to the event.
- He had consulted with the County regarding ordinary and customary matrixes, and he possibly had reached out to Miami-Dade County.
- Staff would re-review the two-tiered billing structure.

IX.a. – IX.c. – CONTINUED

Ms. Rogers said that the two-tiered billing structure was common for MOUs.

Commissioner Fiore commented that when providing consulting services, she usually recommended retainers, or flat plus per-event billing. She added that utilizing only per-event pricing effectively changed the demand for services.

Mr. Johnson said that staff had requested feedback regarding the suggested billing structure, but entities were uninterested in up-front retainers due to budgetary constraints.

Commissioner Fiore commented that staff should review and decide whether ethics should be sold like a widget or another kind of service.

Commissioner Archer said that she was unsure whether ethics was considered a business. Commissioner Fiore replied that ethics was considered a business similar to ministers who received payment for marrying couples.

Commissioner Harbison said that he would caution that a pricing structure could indirectly become a scope limitation.

Mr. Johnson clarified that the scope would not be limited since staff billed after services were provided. He pointed out that the billing structure did not impede or stymie full and complete investigations and advisory opinions.

MOTION to approve the Lake Worth Community Redevelopment Agency Memorandum of Understanding. Motion by Patricia Archer, seconded by Daniel Galo, and carried 4-0. Manuel Farach absent.

MOTION to approve the Delray Beach Community Redevelopment Agency Memorandum of Understanding. Motion by Patricia Archer, seconded by Daniel Galo, and carried 4-0. Manuel Farach absent.

MOTION to approve the Delray Beach Housing Authority Memorandum of Understanding. Motion by Patricia Archer, seconded by Daniel Galo, and carried 4-0. Manuel Farach absent.

(This space intentionally left blank.)

X. – CONTINUED

X.d.

DISCUSSED: New Ethics Cards.

Mr. Johnson announced that new ethics cards would be distributed countywide. He said that the new cards did not have Office of Inspector General (OIG) information on them.

X.e.

DISCUSSED: Council on Governmental Ethics Laws (COGEL) Conference.

Ms. Rogers stated that:

- During December 2-8, 2012, she had attended the COGEL conference in Columbus, Ohio.
- She had met with representatives from state, local, national, and international ethics organizations, and had attended course work in advisory opinions, outreach, complaint processes, and how to effectively use social and new media.
- The OIG and the COE possessed an independence unlike few countrywide organizations. Most ethics officers were appointed by the entities that they oversaw.
- Local, state, and federal agencies had not developed as many advisory opinions in such a short timeframe as the COE.

XI. COMMISSIONER COMMENTS

XI.a.

DISCUSSED: Feedback, Expression of Thanks, and Commendation.

Commissioner Archer commented that receiving feedback about other COEs was important. She added that staff was doing an excellent job to educate and improve the image of politics.

XI.a. – CONTINUED

Commissioner Harbison said that he agreed with Commissioner Archer. He stated that hopefully the COE’s work would inspire similar ordinances elsewhere. He added that lacking COE independence or having an 18-month backlog was equal to having no ethics infrastructure.

XII. PUBLIC COMMENTS

XII.a.

DISCUSSED: Commendation.

Richard Radcliffe, League of Cities Executive Director, stated that the bar was set so high that it would be impossible to replace Mr. Johnson. He said that Mr. Johnson had worked diligently to change the perception of the COE.

Mr. Harbison stated that Mr. Johnson was the COE’s unanimous first choice, and that the distance between the first and second choice was vast.

XIII. ADJOURNMENT

At 5:06 p.m., the vice chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

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

**WORKSHOP
DECEMBER 13, 2012**

**THURSDAY
3:10 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

STAFF:

Leonard Berger, Assistant County Attorney
Wayne Condry, County Human Resources (HR) Director
Alan S. Johnson, Esq., COE Executive Director
Gina A. Levesque, COE Executive Assistant
Brad Merriman, Assistant County Administrator
Leilani Yan, County HR Recruitment and Selection Manager

ADMINISTRATIVE STAFF:

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

III. INTRODUCTORY REMARKS

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

III. – CONTINUED

Commissioner Manuel Farach said that communication devices should be turned off or silenced, and that comment cards should be given to Gina Levesque, COE executive assistant.

IV. WORKSHOP – SELECTION PROCESS FOR EXECUTIVE DIRECTOR

Commissioner Farach said that the COE had voluntarily agreed that each member would not receive communications from potential applicants or from anyone advocating on behalf of an applicant.

MOTION to approve that COE members not speak to an individual applicant or to anyone advocating on behalf of an applicant. Motion by Ronald Harbison.

Commissioner Robin Fiore said that communication was permitted for recruitment purposes, such as referring potential applicants to a particular Web site; however, substantive conversations, such as describing the position to someone, were not permitted.

MOTION SECONDED by Robin Fiore.

Commissioner Farach said that the COE had agreed not to make public statements regarding potential applicants outside of COE meetings. He added that the COE members should not take positions regarding potential applicants.

Commissioner Fiore said that before conducting interviews, COE members should remain open-minded and not form opinions based on documents, such as curricula vitae and various reports.

Commissioner Daniel Galo said that he envisioned possibly discussing the application review process with someone other than an applicant.

Commissioner Ronald Harbison responded that it probably would not preclude any due diligence from Commissioner Galo regarding his application reviews.

Commissioner Galo said that he supported not disclosing applicant preferences outside of COE meetings, but he was unable to ensure that he would not discuss his thought processes about an applicant's review or investigation.

IV. – CONTINUED

Commissioner Patricia Archer said that the crux of the issue dealt with not discussing specifics about an individual candidate or a candidate's qualifications.

Commissioner Farach said that the third agreed-upon matter was that written communications or endorsements would be sent to the COE as a whole or to central staff.

Assistant County Administrator Brad Merriman stated that Leilani Yan, County Human Resources (HR) Recruitment and Selection Manager, would be the COE's point person.

Commissioner Farach summarized the motion to be no private lobbying, no public statements advocating a candidate, and communications would be to the COE as a whole as opposed to individual COE members.

Commissioner Galo said that he thought the requirement was no public statements about any aspect of a candidate, not just advocating.

Commissioner Farach clarified that the motion would include no public statements either in favor of, or opposed to, a candidate.

SUBSTITUTE MOTION to approve no private lobbying for a candidate, no public statements favoring or opposing a candidate, and that communications would be to the COE as a whole as opposed to individual COE members. Motion by Ronald Harbison, seconded by Daniel Galo, and carried 5-0.

Mr. Merriman stated that:

- The main decision point for the COE members would be re-reviewing the job description and the proposed advertisement to ensure that the descriptions and the qualifications were arranged before the job was announced.
 - The job advertisement would include the salary range, which was entered into the County's pay scale system.
 - The scope of the job advertisement was unlimited. The scope for the initial hire was very broad and included publications, journals, and newspapers outside the county.

IV. – CONTINUED

- Upon advertisement for the initial hire, applications and resumes were accumulated by HR and sent to the COE members.
 - The COE members reviewed and individually ranked the applications.
 - During a public COE meeting, the ranked applications were described, and ultimately an interview group was determined.
 - A public interview process was conducted, and a candidate was selected.

Ms. Yan said that the advertisement ran for approximately two-and-a-half weeks and had netted 48 applicants. She added that the COE public meeting to shorten the list of candidates had occurred approximately three weeks after the application period's closing date.

Commissioner Fiore said that during the initial hire, some candidates were interviewed who did not meet the qualifications, and she did not want that to reoccur.

Commissioner Harbison said that he favored how the initial selection process was handled. Commissioner Galo said that the initial process appeared to be reasonable.

Mr. Merriman commented that during the County's selection process, some staff-level vetting was done to eliminate candidates that did not meet minimum qualifications.

Commissioner Farach said that he supported using the same selection process that was used for the initial hire.

Commissioner Archer said that she wanted staff to perform an initial culling of applications, and then place all candidates' applications in two groups: those that met, and had not met, the qualifications.

IV. – CONTINUED

Mr. Merriman said that:

- College degrees and certifications were considered “hard and fast” qualifications, but staff had suggested some latitude for length of service.
- Staff would work with the COE members if they desired a minimum threshold of qualifications for education, credentials, and experience.
- Nationwide, there was a limited number of individuals who performed the duties of a COE ED.
- Staff had built two levels of qualifications into the ranking process, minimum requirements and preferences, but it was the COE’s decision whether to utilize them.

Commissioner Galo commented that the COE should expect that candidates met its objective criteria of “hard and fast” qualification requirements. He said that the COE’s preferences would not change the fact that a candidate did not qualify for the job. He added that the best qualified candidate should be matched with the personalities of staff and the COE members.

Commissioner Archer said that:

- The COE should consider someone who met most of the requirements and possessed factors that compensated for the lacking requirements.
- With the COE’s consensus, staff could divide the applications into three categories:
 - those that absolutely met the requirements;
 - those that had potential to meet them or were exceptionally close; and,
 - those that absolutely did not meet them.

Commissioner Harbison clarified that staff had initially separated candidates into two categories.

IV. – CONTINUED

Commissioner Fiore stated that two categories could be implemented; however, she would only read applications from qualified candidates.

Commissioner Galo expressed concern about dividing candidates into two categories since the candidates either met or had not met the requirements.

MOTION to consider only applicants who meet the minimum requirements as defined in today's meeting. Motion by Daniel Galo.

Mr. Merriman said that the minimum qualifications were listed under the paragraph heading, Successful candidates will possess, contained on page 2 of the February 8, 2010, job advertisement. He added that preferential qualifications were listed under the heading, Preferred qualifications.

Commissioner Fiore said that if the COE decided to require the listed minimum qualifications, the referenced paragraph should be rewritten.

Commissioner Farach suggested that the paragraph on page 2 should state, Successful candidates must possess, to reflect Commissioner Galo's concern, and for consistency throughout the document.

MOTION SECONDED by Robin Fiore.

Mr. Merriman said that salary grade E08 started at \$110,000, and that the salary range was very broad.

Commissioner Fiore commented that changes in salary increases or in the economy had occurred during the last three years. She expressed concern that the job advertisement reflected the same salary range that was posted three years ago for the initial hire.

Mr. Merriman said that:

- Executive-level positions had 10 pay grades, each containing an assigned salary range. The range was based on many factors, including the level of responsibility and the South Florida market.
- When a vacancy occurred, staff attempted to hire near the base range since they believed that was what the market would reflect.

IV. – CONTINUED

- The COE had flexibility to hire at 10 percent above the minimum executive-level pay range. Above 10 percent would require the county administrator's approval.
- Human resources staff could conduct a salary survey for the COE and other EDs employed by other Florida counties.

Commissioner Fiore expressed concern that the current COE ED salary did not reflect that of an attorney.

Mr. Merriman said that the COE could postpone attaching a salary range to the document today. He suggested that the COE individually review the collective body of work for the advertisement and bring back a final draft.

Commissioner Archer suggested that the COE could briefly meet sometime next week.

Assistant County Attorney Leonard Berger said that the COE ordinance did not address the salary range issue. He added that the COE could set the range within reason, but budgeting decisions were ultimately made by the Board of County Commissioners.

Mr. Merriman clarified that the COE would have a 10 percent leeway from the minimum of whatever salary range was established.

Commissioner Archer said that she favored a latitude of up to 20 percent of the minimum salary range.

MOTION to direct HR staff to research an appropriate salary range, and to advise whether an adjustment was needed. Motion by Robin Fiore.

MOTION DIED FOR LACK OF A SECOND.

Mr. Merriman said that staff could perform the salary survey within a few days.

Mr. Johnson said that public notice requirements did not provide a specific timeframe for advertisement so the COE members could publicly meet within four to five days, or next week.

IV. – CONTINUED

Mr. Merriman said that:

- The COE could describe a salary range in the advertisement, but it was typically not done by HR staff since the description could give candidates some false hope.
- All County positions had a broad salary range since it was expected that individuals would be brought in near the bottom range, then progress through the ranks.

Commissioner Harbison requested that COE staff receive appropriate pay increases that fit within the COE's budget.

Mr. Johnson said that:

- The minimum qualifications that a successful candidate would possess were created in 2010 when no one knew what the ED's position would entail.
- It was originally believed that the position would involve more investigatory and conspiracy-oriented duties. In reality, the position involved advisory, legislative, and quasi-judicial situations, and training public officials, vendors, and lobbyists of their obligations under a specific set of laws.
- The language contained in the February 8, 2010, job advertisement paragraph under the heading that began, Successful candidates will possess, should be changed to reflect the actual job duties.

Mr. Berger commented that the preferred qualifications in the original job advertisement were almost identical to the Inspector General (IG) since the language was taken from the IG's ordinance.

Mr. Merriman suggested that Ms. Yan and Mr. Johnson could formulate a draft job advertisement for review at the next COE meeting.

Commissioner Fiore stated that Mr. Johnson's job description depicted a higher level of qualifications, but the COE was seeking minimum qualifications.

Commissioner Harbison said that he wanted to base the job description on what the COE now knew the job functions to be.

IV. – CONTINUED

Mr. Merriman clarified that the ED job description contained the day-to-day responsibilities, duties, and functions; the job advertisement described the qualifications necessary to perform the job description.

Commissioner Fiore said that she wanted the qualifications expressed more as competencies and not longevity.

Commissioner Farach said that by consensus, the COE would meet on December 19, 2012, at 5:00 p.m. to discuss the salary survey, and the redrafting of the job advertisement and the job description.

MOTION WITHDRAWN.

Mr. Merriman requested that the COE review the scope of the job advertisement and bring back staff direction at the December 19, 2012, meeting.

Commissioner Archer said that she wanted to discuss whether the ED should be an attorney in good standing with the Florida Bar.

Commissioner Fiore said that she wanted to hire a qualified ED from the county, and that some internal employees were also qualified for the position.

Commissioner Harbison stated that:

- Advisory letters were essentially opinion letters similar to those written by attorneys or tax accountants. They tended to be highly technical, legalistic, and bore significant professional liability.
- Nationwide, 50 of the 57 COE EDs were attorneys.
- The COE's small staff may necessitate that the ED also perform investigatory or staff counsel work for timely production of advisory opinions.

Commissioner Fiore said that the ED should be an attorney since Mr. Johnson was essentially rendering legal opinions when he discussed or explained the Code in relation to advisory opinions. She added that the person in charge of the COE's daily work should have legal proficiency and be a trained attorney.

IV. – CONTINUED

Commissioners Archer and Galo said that they agreed that the ED should be an attorney.

Commissioner Farach said that he would allow public comment regarding the ED's eligibility and qualifications.

Tina White said that she disagreed that only an attorney could effectively provide guidance in carrying out the COE's mission. She stated that having a COE established Code made it unnecessary for the ED to bring an attorney to a public setting. She added that the COE was limiting its applicant pool by allowing only attorneys who were Florida Bar members. She asked that the COE schedule a publicly noticed workshop specifically for community input.

Lia T. Gaines, local president of the National Association for the Advancement of Colored People, asked that the COE receive and file a December 12, 2012, letter to the COE. She recommended that the COE amend its bylaws to broaden the applicant pool by removing the requirement that the ED be a Florida Bar member. She said that if a Florida Bar attorney was required, that the COE consider someone with legal ethics expertise.

Lynne Hubbard said that she supported the two previous speakers' comments, and that a national search was unnecessary.

Richard Radcliffe, League of Cities ED, said that until the COE retained more legal staff, it necessitated requiring that the ED also be an attorney. He added that there was sufficient local talent from which to choose a candidate.

Mr. Johnson said that the COE's by-laws, article V., section 1 stated the following: The ED shall be a member of the Florida Bar.

Commissioner Farach said that there was a request to change that requirement, and that the COE members had previously expressed their opinions. He added that the next issue was determining whether the scope of the job advertisement would be local, statewide, regional, or national.

Mr. Harbison said that he was unsure whether the advertisement should be limited to only Palm Beach County, but it could be limited to Florida.

Commissioner Fiore said that she preferred searching in Palm Beach County; however, she did not object to a statewide search.

IV. – CONTINUED

Commissioner Archer said that she had no objection to a statewide search; however, she believed that the COE was more interested in someone familiar with the South Florida area. She stated that a South Florida search would involve approximately four or five counties, which could be combined with Palm Beach County.

Mr. Merriman said that relocation expenses were provided within the County's rules.

Commissioner Galo stated that the search should be as broad as possible, then define selection criteria based on the applications received. He suggested a statewide search of candidates, which may include the cost of relocation.

Mr. Merriman said that a statewide search would involve utilizing the County's Web site and possibly the Florida Bar Journal or another appropriate publication.

MOTION to receive and file the letter submitted by Ms. Gaines. Motion by Robin Fiore, seconded by Patricia Archer, and carried 5-0.

Mr. Merriman said that:

- The COE could assign Ms. Yan to draft a job description and advertisement with Mr. Johnson.
- Ms. Yan and Mr. Condry could then draft a proposed scope and timeline based on the County's normal process for a statewide search.
- The position would normally be advertised for two-to-four weeks with a closing date, and it could be placed sometime in January 2013.

Mr. Harbison said that he preferred to limit an acting ED's timeframe. He suggested a shorter advertising period and an extension if necessary.

Mr. Merriman said that staff would present the most compressed timeline, which could be extended.

Ms. Yan commented that in addition to applying online, candidates could scan paper applications into the Web site.

IV. – CONTINUED

Mr. Johnson said that:

- Two interim ED recommendations were a supervisor of investigations who was also an attorney, and the COE's staff counsel.
- Both staff members had mentioned possibly applying for the permanent position, but they could serve as co-acting interim EDs.
 - Dual interim EDs would not give one person an advantage over the other and would keep harmony in the office.
 - Both individuals had the skillsets to sign advisory opinions, and process memorandums of understanding and legal sufficiency memorandums.
- If the COE wanted him to recommend one interim ED, he requested one week to decide.

Commissioner Farach expressed concern that two interim EDs would call into question which one would make a final decision and how the two duties would be separated.

Mr. Johnson said that:

- The better position transition would be Megan Rogers in terms of her advisory opinion presentations.
- Although Ms. Rogers lacked investigative experience and had not reviewed legal sufficiency, both processes were discussed with staff.
- Most of staff's work was not handling complaints, but was self-initiated due to anonymous tips.
- He and staff had personally been to the City of Riviera Beach to offer outreach and training.
- Since a pay differential would exist between the two qualified recommendations, he suggested that the pay be split, and that Ms. Rogers be selected as acting ED.

IV. – CONTINUED

- Mark Bannon performed the investigative work and could handle the legal sufficiency memos, and reviewing of probable cause memorandums. He had previously handled advisory opinions before staff counsel was hired.
- Ms. Rogers handled more outreach meetings, and handled most of the advisory opinions, which he edited.

Mr. Merriman said that:

- Someone appointed as a County acting director would either receive a 10-percent increase or a minimum of the pay grade.
- Generally, it was not HR's policy to appoint two acting EDs.
- A pay increase would only go to whoever was selected as acting ED. Pay increase considerations could potentially be made for someone taking on the acting ED's previous work load or responsibilities.

Commissioner Archer said that she wanted to wait until the December 19, 2012, meeting to make a final decision on an acting ED.

Commissioner Fiore suggested that the two referenced parties express their thoughts on how they wanted to proceed before the next meeting.

Commissioners Galo and Archer said that they supported giving Mr. Johnson an extra week.

Commissioner Harbison said that choosing an acting ED could be done at the January 2013, meeting or at any other time before January 11, 2013.

Commissioner Fiore stated that she wanted to make any decisions by next week.

Mr. Johnson said that he would present a plan at the December 19, 2012, meeting.

Commissioner Fiore said that she had total confidence in Ms. Rogers and Mr. Bannon.

V. PUBLIC COMMENTS – None

VI. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Patricia Archer, seconded by Robin Fiore, and carried 5-0.

At 5:17 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**

**WORKSHOP
DECEMBER 19, 2012**

**WEDNESDAY
5:03 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

STAFF:

Leonard Berger, Assistant County Attorney
Wayne Condry, Director of Human Resources
Alan S. Johnson, Esq., COE Executive Director
Gina A. Levesque, COE Executive Assistant
Brad Merriman, Assistant County Administrator
Leilani Yan, Human Resources Department Recruitment and Selection
Manager

ADMINISTRATIVE STAFF:

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

III. INTRODUCTORY REMARKS

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

III. – CONTINUED

Commissioner Farach stated that anyone wishing to speak should submit a public comment card and that electronic devices should be either turned off or put on mute or vibrate.

IV. **WORKSHOP – Selection Process for Executive Director**

Mr. Johnson stated that:

- He had collaborated with the Human Resources (HR) department staff to create a job description advertisement for the Executive Director position.
- The County Finance Department was tasked with doing a survey of other executive director pay scales for ethics commissions.
- Although Senior Investigator Mark Bannon had asked to be withdrawn from consideration for the acting executive director position, he said that he may apply for the permanent position.
- He recommended Megan Rogers, Esq. for the acting position of executive director and she was available; however, she would not submit an application for the permanent position.
- If Ms. Rogers was selected as acting executive director, she would resume her role as staff counsel once a permanent replacement was chosen.

MOTION to appoint Megan Rogers as acting executive director to the Commission on Ethics (COE) for Palm Beach County. Motion by Patricia Archer and seconded by Robin Fiore.

In response to Commissioner Galo's inquiry on the protocol for selecting an interim or acting director, Director of the County Human Resources Department Wayne Condry said that no standard protocol existed. He said that customarily someone within the work group who understood the day-to-day activities of the environment assumed the job responsibility, and that the COE was not obligated to choose someone within the office.

Regarding Commissioner Farach's questions on legal issues with the interim process, Assistant County Attorney Leonard Berger said that no legal issues existed.

IV. – CONTINUED

Commissioner Galo said that Ms. Rogers would be a great selection for the acting position, but that no thought was given toward the process possibly taking six months to a year to fill the permanent position. He said that if Ms. Rogers were chosen, the office would be short-staffed through her current position becoming temporarily vacant. He added that other individuals such as retiring prosecutors or judges would fit well into the acting director role due to their professional experience.

Commissioner Farach requested that Mr. Johnson and County staff separate the process into parts to address questions and concerns.

Responding to Commissioner Farach's question on what the anticipated timeline for hiring a new executive director would be, Mr. Johnson said that by calculating the length of time it took for him to receive his current position, he estimated that it would take five weeks to two months.

Commissioner Harbison said that he had a better sense of the qualifications needed for the position versus the previous selection process. He said that he was optimistic that the COE would endure the process efficiently and that it was his belief that the interim role would last no more than three months.

Human Resources Department Recruitment and Selection Manager Leilani Yan said that a timeframe of anywhere from five to eight weeks would be accurate, and that she had prepared a basic timeline of the process. She said that in the previous selection process, the application period closed February 26, 2010, and on March 18, 2010, the COE selected a short list of candidates to be invited for interview.

Commissioner Harbison suggested accelerating the selection process by having more frequent COE meetings.

Commissioner Farach said that Commissioner Galo's concerns of selecting someone outside of the present COE staff needed to be answered. He said that staff would be down 20 percent if an existing staff member were selected for the acting position, affecting the operation of the office.

Mr. Johnson said that he had discussed the workload that staff would incur in the case of the entire process taking approximately four months. He said that he was fortunate that the COE senior investigator was an attorney, and that the COE would not notice an effect in the work product.

IV. – CONTINUED

Commissioner Galo said that:

- Issues needed to be addressed before a decision was made.
- He was still concerned about being 20 percent short on staff.
- The person likely to be picked for the acting position would not meet the requirements expected of an executive director.

Commissioner Fiore said that:

- It would be disruptive to have an acting director come from the outside and then a new permanent executive director.
- She preferred not to have a stipulation on what either Mr. Bannon or Ms. Rogers would decide to do with respect to the position as it was advertised.
- It was entirely up to Mr. Bannon and Ms. Rogers as to whether they would respond to an advertisement for the position.
- She would like the part about Mr. Bannon's and Ms. Rogers' decisions on the position stricken from what the motion regarded.

Commissioner Galo said that he did not believe that the motion included Commissioner Fiore's concerns.

Commissioner Fiore said that she would like either Mr. Bannon or Ms. Rogers to feel free to apply or not to apply if they chose to do so.

Commissioner Farach said that the instruction from Mr. Johnson was that anyone was free to apply if he or she chose to do so.

COMMISSIONER ARCHER CALLED THE QUESTION AND IT WAS SECONDED BY COMMISSIONER FIORE.

(CLERK'S NOTE: A vote was not taken on the question.)

IV. – CONTINUED

Commissioner Farach said that the motion as he recalled was to appoint Ms. Rogers as acting executive director of the COE. Mr. Johnson pointed out that the active position would go into effect on January 14, 2013.

Mr. Merriman asked that the commission include in the motion that the acting position would become effective upon the conclusion of Mr. Johnson's employment. He said that normal County policy in terms of promotional pay increases for interims would be either a ten percent increase or a minimum of the starting grade of the new position depending on which option was applicable.

AMENDED MOTION to appoint Megan Rogers as the interim executive director of the COE effective on Mr. Johnson's vacating of the position for his new employment, and with an increase of salary pursuant to Palm Beach County HR rules and requirements. Motion by Patricia Archer.

(CLERK'S NOTE: The motion was seconded later in the meeting.)

Commissioner Farach asked whether it would be appropriate to change the salary for the position to a ten percent increase or to pay at the starting salary of the fulltime position. Mr. Johnson said that the salary was determined by whichever amount was greater.

Commissioner Harbison suggested that Mr. Bannon assume the staff counsel position since staff already had two investigators.

MOTION SECONDED by Robin Fiore and upon call for a vote, the amended motion carried 5-0.

Commissioner Farach said that another issue to be addressed was the actual search parameters for the permanent position. He said that the COE had received a proposed job announcement and the salaries of comparable positions throughout the country.

Mr. Merriman said that:

- Staff had been tasked with retooling the proposed position announcement that Ms. Yan and Mr. Johnson had completed.
- Ms. Yan had developed a timeline that included a proposed scope of the advertisement.

IV. – CONTINUED

- A salary survey provided to the COE showed how the salary would comport with the current structure and County policy.

Ms. Yan said that:

- The job announcement was based on an updated position description that was completed by Mr. Johnson with all of the formal duties, tasks, and functions of the job.
- The initial job description information had the position's title, location, hours, and some basic requirements and notifications to applicants.
- The position was considered an "at-will" position.
- The salary range was based on what was appropriate for Mr. Johnson's current pay grade and a maximum on that grade of just over \$201,000 existed.
- Staff did not want to advertise the full range of the position since persons being solicited wouldn't necessarily start at the top of the range, but would rather work through the range during the course of their tenure.
- Mr. Johnson had recommended that the salary range maximum be at \$130,000.
- The salary range was used to let applicants know in general where they could expect to start, but that everything was still subject to negotiation.

Commissioner Harbison said that after calculating the average and the median of the numbers provided for the proposed salary, the average was \$129,821; therefore, the top of the salary range would be in the average.

Commissioner Fiore said that she was not happy with the top of the salary range, and that for an attorney with specialized experience, the minimum of \$110,000 was low. She said that she would like the range to be closer to \$150,000.

In response to Commissioner Galo's question on whether the COE had the discretion to pick any number for a salary when spending the County's money, Commissioner Farach said that as long as the COE was in budget and within the County's guidelines for hires, there may be no discretion.

IV. – CONTINUED

Mr. Merriman said that:

- The position was currently budgeted at a certain level, and if there were a deviation above that budget, it would ultimately require the funding approval of the Board of County Commissioners (BCC).
- When the County created the position pursuant to the ordinance, other ethics commissions and directors were reviewed.
- The County tried to determine where the position with its prospective responsibilities would fit not only within the market, but within the County's organizational structure.
- The situation on the budget would be a factor of when the advertisement for the position ran and an applicant pool came back with applicants that the COE was interested in.
- If the COE found the one person who fit the job, perhaps it could hire the person at the low end of the range or even in the midpoint.
- The position was budgeted for what Mr. Johnson was making since the County budgeted based on actual salaries.
- Commissioner Harbison's analysis was similar to a type of analysis that was done with salary surveys.
- Miami-Dade County as an employer for almost every job across the board paid substantially higher than Palm Beach County.
- Miami-Dade County salary numbers may skew the comparable numbers and serve as an outlier.

Commissioner Harbison said that:

- The position's salary should be competitive if the commission wanted someone that would be good for the position.
- Paying too much for the position would mean taking more money from the budget, and the COE was operating within a fixed budgetary structure.

IV. – CONTINUED

- He was concerned about staff in terms of their pay grades and keeping up morale in the office.
- Asking for a larger budget to hire for the position from the BCC meant that staff would not be able to get any raises.

In response to Commissioner Farach's question as to whether the COE was under budget Mr. Johnson said that:

- The COE was operating with a reserve.
- The COE's salary structure was above what the budget would allow and that the County allowed the COE to carry its reserve to pay for the director position.
- The COE took on a position that did not exist when it first began, but it was able to avoid going for ad valorem increases.
- In the next year or two the COE would have to request that the BCC increase the budget since the reserve would slowly be used.

Commissioner Harbison said that if the position's salary were \$132,000, \$131,000, or \$130,000, he was concerned for the staff. He said that if there were a great executive director but an unhappy staff, the situation would not be for the betterment of the commission.

Ms. Yan stated that:

- The HR department was trying to put the job announcement in the context where a potential applicant could see what they would be involved in on a day-to-day basis.
- The job description had the various types of ordinances that were being implemented, the types of duties that were being performed, the type of supervision, and the scope of management that was required.
- The profile for an ideal candidate was above and beyond the minimum requirements for education and experience.

IV. – CONTINUED

- The minimum requirements were taken from the class specification or the job description.
- Mr. Johnson had recommended that the COE accept five years of related experience in any combination from several of the different fields listed in the profile.
- The actual job description was advertised for several years of experience in the past.

Mr. Johnson said that the change in the amount of experience required for the job was done to broaden the applicant pool.

Commissioner Fiore said that she was the one who complained about the seven-year experience requirement, since once a person had five years of experience there was a record to look at. She said that whether it was five or two years of experience would matter, but if the experience was five or seven years, it really did not matter.

Ms. Yan said there was always room to adjust the preferred qualifications and that HR looked for persons who had participated in business, government, and community-based organizations, prior legal work, and some certifications relevant to the position.

Commissioner Fiore said that she was confused by the preferred qualifications listings since they were already covered in the job description. She said that the COE would prefer to hire a lawyer with the various kinds of experience listed.

Ms. Yan said that the preferences would help HR put together the three stacks of categories previously discussed with the commission:

- persons who were not qualified;
- persons who were minimally qualified or met the minimum requirements; and,
- persons who were more highly qualified.

IV. – CONTINUED

She added that:

- All of the categories would be sorted or organized into a more highly qualified group if applicants possessed the preferred qualifications.
- The categories were a way to rank applicants and sort them into meaningful groups for the COE's review.
- Commissioner Harbison was correct in reading that a law degree was required and that someone could also be a Certified Personal Accountant or any other applicable position along with possessing a law degree.
- In the minimum requirements for the job description, the last sentence stated that a person had to have current membership in good standing in the Florida Bar Association; however, under the minimum requirements section in the beginning sentence as well, it indicated that an individual needed a Bachelor's and Juris Doctorate degree from accredited institutions.

Commissioner Galo suggested that the sentence in the minimum requirements section that said a person needed current membership in good standing with the Florida Bar Association might fit better in the first sentence after the words, accredited institutions.

Ms. Yan said that the job application would be available online to be completed or through printing it from online.

Commissioner Galo said that on the job description it stated that a person could apply by application or resume.

Ms. Yan stated that:

- Questions were available on the application that invited people to describe specific types of related experience and credentials relevant to the position.
- If someone did not send in a resume for the position but had submitted documents for the position, HR contacted that same individual to complete the application and turn in a resume.

IV. – CONTINUED

- She had drafted a timeline and HR would like to finalize the job posting by the end of the year using December 28, 2012, as the target date for the job announcement.

Commissioner Farach said that he believed it was the intent of the COE to finalize the job announcement at the current meeting so that HR could start the process.

Ms. Yan said that:

- The HR department had a tentative job announcement period, where the job could be posted to actively start soliciting applications from January 7, 2013, through January 18, 2013, which was a two-week period.
- In the past the job announcement period was longer, but it was cut shorter for the upcoming period since there had been discussion toward more of a statewide recruitment process.
- Two weeks was adequate to sample the Florida population as well as other people who wanted to come back to Florida, or who had an interest in working in Florida.
- The HR department looked at January 7, 2013, through January 18, 2013, as being the period in which employment applications would be accepted.
- The job posting date would be the date that the position would be opened which was January 7, 2013.

Commissioner Galo said that in the previous meeting HR was considering filing advertising in the Florida Bar. He said that the publication was done on the first and the fifteenth of each month, so if the COE used HR's proposed timeline, the job description would only be printed on the fifteenth of January.

Mr. Condry said that historically a great return was nonexistent when advertising during the holidays; however, the job announcement could be posted earlier.

IV. – CONTINUED

Commissioner Farach suggested that the best way to ensure that a properly timed announcement went into the Florida Bar News was to have HR check the advertising deadline for January 2013 so that the job could be posted in two issues.

Commissioner Galo said that staff should ensure that the one-time advertisement provided ample time for a potential applicant to submit an application. He added that publishing the job on the fifteenth of January 2013 provided the candidate with only three days to read it and respond.

Ms. Yan said that HR had worked with an advertising contractor to determine cycle dates and to post the job announcement in E-mail blasts, newsletters, and other alternative methods.

Mr. Merriman stated that an extra week could be added to the process so that the cycle would close on January 25, 2013. He said that staff would check if it was too late to post in the January 1, 2013, publication.

Ms. Yan said that:

- No inquiries were received yet for Mr. Johnson's position.
- Milestones in the recruitment process would relate to the criteria screening.
- The HR staff would review applications in real time to determine who was minimally qualified, not qualified, and highly qualified.
- She would assess and screen incoming applications over the period that the job would be advertised.
- Once all of the applications were in, HR would provide them to the COE along with resumes and documents.
- The documentation would enable the COE to rank applicants in a top-ten list, and then shorten the list to decide who would be invited for interviews.
- Interviews would be done in person.

IV. – CONTINUED

- During the meeting when the COE composed a short list, HR asked that the COE members keep their calendars open for interview dates.
- The HR department would manage contacting candidates throughout the process, securing a facility, and ensuring staffing and materials.

Commissioner Farach said that in checking the Florida Bar website, material received by December 19, 2012, would be posted in the January 1, 2013, issue. He added that if HR respectfully requested material submission, the Florida Bar may give a one-day reprieve.

Ms. Yan said that:

- The HR staff would work with the COE to develop questions, exercises, and job simulations for the candidates on the interview day.
- The previous interview process was about 45 minutes and included a written exercise.
 - The COE reviewed the written materials, discussed candidates' performances between interviews, and took notes.
 - The previously held interview process was a public meeting, which included the press, individuals from the Inspector General Implementation Committee, citizens, and residents.
 - The interviews were conducted at the HR department located in the Airport Centre.
 - After the interviews, HR would announce the selected candidate with a news release.
 - Previous candidates were provided with advanced information about the COE and its members.
 - The candidates' permission was sought to run background checks prior to the interviews.

IV. – CONTINUED

- At least two letters of reference were requested prior to interview day for circulation to each COE member.
- The interviews could be held during the week of February 14, 2013, or February 21, 2013.

Commissioner Fiore said that the interview process could not occur during the week of February 14, 2013, since it was the holiday weekend before President's Day.

Responding to Commissioner Harbison, Ms. Yan said that HR had inquired about convictions, and that the applicant was required to sign a release giving HR authority to obtain information.

Commissioner Fiore said that a question should be put on the application regarding judgments to possible ethics violations in relation to community, state, or other types of ethics commissions.

Commissioner Harbison suggested adding to the application whether the applicant had ever been sanctioned by the Florida Bar.

Commissioner Farach said that:

- An appropriate question would be whether any disciplinary matters were pending against the applicant.
- Some circumstances were explainable since a Bar grievance could be easily filed against an attorney.
- The question of whether a grievance had been filed against the applicant was something to establish.

Commissioner Harbison said that it would be easy to prejudice someone's application, and that he was unsure whether a candidate should be penalized for having a grievance filed against him or her, since the grievance's resolution was what mattered.

Commissioner Farach stated that the same question on grievances was asked of judicial applicants.

IV. – CONTINUED

Commissioner Galo said that he was more interested in whether applicants had any disciplinary actions imposed upon them.

Commissioner Farach said that if no disciplinary actions were imposed but 36 people had filed grievances against an applicant, that instance would be something that the citizens of the county would probably want to know.

Commissioner Galo said that some candidates could be in a position where many people disliked them. He said that as long as a filed grievance did not result in discipline, the grievance should not be considered a reason for disqualification.

Commissioner Fiore said that the COE should know the details of situations.

Commissioner Farach said that the grievance question should read, “Have any Bar grievances ever been filed against you? If so please describe the grievances and their disposition.”

Commissioner Fiore said that the question should be dispositional and ask, “Have you had any State or local ethics violations?”

Mr. Johnson said that if the COE wanted to know whether probable cause was found, the COE could ask the question, “Have there been any ethics or disciplinary actions instituted against you?”

Commissioner Galo suggested that the question read, “Has anyone filed an ethics complaint against you? If so explain or describe the disposition.”

Commissioner Fiore stated that two kinds of ethics could be addressed: professional Bar issues, and whether someone worked for a city possessing an ethics ordinance.

Assistant County Attorney Leonard Berger said that staff could draft broad language referencing ethics, since some candidates could be out of state where different disciplinary panels existed. He said that the applicants could be asked to explain whether an administrative body governed their professional ethics.

Commissioner Farach stated that the ethics issue was acceptable as long as staff drafted questions covering the COE’s concerns.

IV. – CONTINUED

Mr. Merriman said that:

- The COE could leave the interview date open.
- A date could be narrowed down at the next meeting, but it depended on how long the applicant screenings took.
- Staff's goal was late February 2013.
- Dates were flexible and could be extended if there were not enough applicants or some were traveling from out of the area.

Commissioner Farach said that if applicants were interviewed toward the middle or late February, possibly a decision could be reached around that time.

Mr. Berger said that the individual hired would be considered a BCC employee.

Mr. Merriman said that a start date would be determined by the new hire's previous job variables, and how much advanced notice his or her previous employer would need.

Ms. Yan said that the new hire's start date could be at the beginning or the end of March 2013.

Mr. Merriman said that the management style that a candidate possessed could be built into the selection process.

Commissioner Harbison said that he would like to receive staff's feedback about the hiring process.

Mr. Merriman said that:

- Staff would be attending the interview process as the public.
- The interview and selection processes' goals were to identify job elements that were important to the COE and to use selection tools, such as interview questions or exercises, to extract information.
- The selection process could include the candidates meeting the COE staff, although it was not normally done.

IV. – CONTINUED

Commissioner Farach stated that the COE needed to approve the job announcement, determine the appropriate starting salary for the job announcement, and decide a way to go about the proposed timeline.

Commissioner Galo said that he questioned whether all of the job announcement's information was necessary, since the announcement was too long and people would not read it.

Commissioner Farach said that he believed Commissioner Galo was questioning whether any legal or HR reasons required that all of the information listed in the job announcement needed to be present.

Commissioner Galo said that his understanding was that HR was seeking COE direction on what information to prioritize in the job announcement.

Mr. Condry said that the information placed in the job announcement would be to ensure that applicants knew what responsibilities were being sought for the position. He said that the announcement should also allow the applicant to understand the kinds of standards that he or she would be required to meet.

Mr. Merriman stated that:

- Legally the only critical elements in the job announcement were the minimum entrance requirements.
- The job announcement should include what the job was like, salary, and the minimum requirements. Everything else in the job announcement would be considered extra and was used to attract candidates.
- Ms. Yan and Mr. Johnson could edit the job announcement to include the critical elements, a good job description synopsis, and the salary.

Commissioner Fiore suggested that the job announcement include a separate section regarding the COE.

Mr. Merriman said that staff could include a COE fact sheet.

Commissioner Archer suggested breaking up the announcement into a more concise state so that it was not too long.

IV. – CONTINUED

Commissioner Harbison said that whoever applied for the executive director position needed to be aware of what the position was and know that the position was high profile and important to the community.

Mr. Merriman said that:

- Staff had viewed ad formats used by other entities.
- Ads that staff formulated from other ad formats required a substantial amount of editing.
- The job advertisement would go onto the County website and would serve as the official advertisement.

Commissioner Fiore said that the preferred qualification section should be eliminated since minimum requirements were included in the announcement.

Commissioner Galo stated that the minimum requirements section needed to be more specific in reference to it stating that a candidate needed experience in a combination of fields, since the COE was looking for an attorney with at least five years minimum experience.

Commissioner Farach said that the COE could determine the minimum requirements since the job did not require someone with five years of Florida Bar experience.

Commissioner Archer said that under preferred qualifications, the sentence that read, “Related advanced degrees may substitute for education and or experience,” could mean that there would be applicants with relatively little experience.

Commissioner Galo said that:

- The individual should have at least five years of experience, since there were different stages that lawyers developed.
- The COE was looking for someone with closer to 12 to 15 years of experience rather than five years.

IV. – CONTINUED

- Someone who just graduated from law school, passed the Florida Bar, and had 17 years as a Federal Bureau of Investigation agent may or may not be the person that the COE was looking for.

Commissioners Galo and Fiore expressed their agreement that a candidate must be a current Florida Bar member in good standing with a minimum of five years of experience as an attorney.

Mr. Condry said that although the January 1, 2013, deadline date had been reached, staff would still submit the announcement into the “Florida Bar Journal.” He said that a week could be added to the selection process to ensure a full two-week period.

Responding to Commissioner Fiore’s question on whether the advertisement would be in the “Florida Bar Journal” or in sections of the “Florida Bar News” that were particularly relevant to the position, Commissioner Farach said that the “Florida Bar News” was published twice a month, and the “Florida Bar Journal” once a month, with E-mail messages sent once a week.

Ms. Yan said that staff would reduce the job announcement’s content to make it substantive and concise for a realistic job preview.

Commissioner Farach inquired as to what salary range should be used for the position. He said that the position currently stated an annual salary range of \$110,000 to \$130,000 and that the current executive director’s salary was within that range.

Commissioner Harbison said that the current salary range was satisfactory, but he said that he was concerned about the COE’s budget. He said that the executive director would receive significant salary while staff would probably not be receiving any raises.

Commissioner Archer said that the current salary range was fine and that if additional changes were needed or a candidate that went beyond the range was found, the COE could readdress the subject.

Commissioner Galo said that he concurred.

Commissioner Fiore said that she had no objection to the salary range.

IV. – CONTINUED

Commissioner Farach said that Mr. Condry and Ms. Yan would discuss today's details with Mr. Johnson who would forward the information to the COE. He added that Ms. Rogers would submit any information to the COE after January 11, 2013, when she moved into the acting executive director position.

Commissioner Fiore said that the "Other" section of the job announcement stated that the applicant should have a valid Florida driver's license. She inquired whether a Florida Bar requirement should also be included in the "Other" section.

Commissioner Farach said that the Florida Bar membership could be checked online.

Ms. Yan said that no harm existed in placing the Florida Bar requirement in the "Other" section of the announcement.

Commissioner Farach requested that staff include language in the referenced section that a candidate should have a current Florida Bar license.

Commissioner Farach said that including the language on whether the COE would accept someone with an out-of-state law license, but who would take the Florida Bar examination soon, depended on if the individual was the best candidate. He said that everything would be done transparently and publicly. He added that he would prefer that salary requirements be indicated in the application materials for candidates.

V. PUBLIC COMMENTS

V.a.

DISCUSSED: Mark Bannon's Investigation.

William McCray said that he had filed a complaint against a public official that was investigated by Mark Bannon, COE senior investigator and Florida Bar member. He said that Mr. Bannon took the complaint that he filed against the public official and turned it into an attack on his character, credibility, and integrity. He added that Mr. Bannon should not be considered for the executive director position.

V. – CONTINUED

V.b.

DISCUSSED: Ethics in Palm Beach County.

David Baker said that he was a member of the Palm Beach County Ethics Initiative and had been involved with the group since June 2006. He said that the COE had helped to successfully restore an ethical culture in the county through professionalism, organization, and dedication. He added that in the short time Alan Johnson, Esq. had been with the COE, he had helped to set a tone that the public believed and trusted in.

Commissioner Harbison thanked Mr. Baker for his compliments and said that he was proud of the COE's work thus far.

VI. ADJOURNMENT

MOTION to adjourn. Motion by Daniel Galo, seconded by Patricia Archer, and carried 5-0.

At 6:38 p.m., the chair declared the meeting adjourned.

VI Processed Advisory Opinions

RQO 12-081 John Greene

A Village Councilman asked whether he was prohibited by the Palm Beach County Code of Ethics (the Code) from accepting employment with the Palm Beach County Sheriff's Foundation, a 501(c)3 Non-Profit Charitable Organization (the Foundation).

Staff submits the following for COE review: based upon the facts submitted, the councilman is not prohibited under the Code from accepting employment with a non-profit charitable organization. However, as an elected official he is prohibited from using his official position as a Village Councilman to give a special financial benefit, not shared with similarly situated entities in the community, to his outside employer. Lending his name *and* official title to the Foundation's fundraising effort would *per se* constitute using his elected office to specially financially benefit the Foundation. This applies to him, as well as anyone indirectly soliciting on his behalf. Therefore, his participation in fundraising for the Foundation would need to be in his personal name without title or connection to his official village position.

RQO 12-082 John Randolph

A Town Attorney asked whether an elected official is prohibited from voting on a "cure plan" proposed by Town staff and the Florida Department of Transportation where an employee who works for the official's outside employer is a part-owner of two restaurants within the plan area.

Staff submits the following for COE review: elected officials are prohibited from using their official position, participating or voting on an issue that would give a special financial benefit to themselves, their outside employer or anyone who is known to the official to work for that outside employer, not shared with similarly situated members of the general public. All existing and potential businesses are affected equally by plan. Accordingly, there is no prohibited special financial benefit based on the facts presented and the councilman is not prohibited from voting on this matter.

RQO 12-085 Jeffrey Hmara

A Village Councilman asked whether, as a member of a 501(c)(3) charitable organization, he may volunteer to serve on an ad hoc committee of that organization to review student applications and interview students for the purpose of awarding college scholarships. The committee will not be involved in fundraising activities.

Staff submits the following for COE review: provided that the official does not corruptly use his official position to offer or obtain a *quid pro quo* or otherwise specially financially benefit persons or entities listed in the misuse of office section of the Palm Beach County Code of Ethics, the Code does not prohibit him from volunteering for a non-fundraising ad hoc committee of a charitable organization in either his personal or official capacity.



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

December 26, 2012

Councilman John Greene
Village of Wellington
12300 W. Forest Hill Blvd
Wellington, FL 33414

Re: RQO 12-081
Charitable Solicitation/Outside Employment

Dear Councilman Greene,

Your request for an expedited advisory opinion pursuant to Commission on Ethics Rule of Procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

YOU ASKED, in your submission dated December 14, 2012 whether you are prohibited by the Palm Beach County Code of Ethics (the Code) from accepting employment with the Palm Beach County Sheriff's Foundation, a 501(c)3 Non-Profit Charitable Organization (the Foundation).

IN SUM, based upon the facts you have submitted, you are not prohibited under the Code from taking a position with a non-profit charitable organization. However, as an elected official you are prohibited from using your official position as a Village Councilman to give a special financial benefit, not shared with similarly situated entities in the community, to your outside employer. Lending your name *and* official title to the Foundation's fundraising effort would *per se* constitute using your elected office to specially financially benefit the Foundation. This applies to you, as well as anyone indirectly soliciting on your behalf. Therefore, your participation in fundraising for the Foundation would need to be in your personal name without title or connection to your official position.

Insofar as the gift law is concerned, you are not prohibited from soliciting donations in your non-official capacity. However, should the Foundation solicit or accept a donation in excess of \$100 from a vendor, lobbyist, or principal or employer of a lobbyist of the Village of Wellington, you must maintain a record of the solicitation and submit a log to the Palm Beach County Commission on Ethics within 30 days of the event, or if no event, within 30 days of the solicitation.

Lastly, the COE cannot speculate, regarding potential conflicts of interest, as to issues that may come before the Village Council in the future. Whether a conflict exists depends upon the facts and circumstances presented at that time.

THE FACTS as we understand them are as follows:

You are a councilman for the Village of Wellington (the Village). You have been offered a paid position as the Development Director for the Palm Beach County Sheriff's Foundation (Foundation). The Foundation is an independent 501(c)3 non-profit charitable organization developed to supplement the budget of the Sheriff's

Department (PBSO). Funds raised by the foundation increase the capacity of specialty divisions within PBSO, such as the Mounted (equestrian) Unit, Canine Unit and Community Relations Department. Your anticipated start date is January 1, 2013.

The Village contracts with PBSO for policing services and as Village Councilman you will be called upon to vote on that contract. You have advised that the Foundation is a separate legal entity that is not controlled by PBSO; no employee or official of PBSO serves as a board member or officer of the Foundation. The Foundation is prohibited from supporting or opposing candidates for office or lobbying. In your capacity as Development Director, you would be responsible for raising money and awareness in the private sector in order to better support public safety needs throughout Palm Beach County.

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:

Sec. 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:

- (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;

An "Outside Employer" is defined in §2-442 as any non-governmental entity of which an official or employee is a member, official, director, proprietor, partner or employee and from which he or she receives compensation for services rendered or goods sold or produced. As a compensated consultant for the Foundation, the Foundation is your outside employer as contemplated by the Code.

No employee or official may use their official position or title to obtain a special financial benefit for themselves or their outside employer.¹ A financial benefit is defined as anything of value.² In your position with the Foundation you will be responsible for raising money from private sector donors. The Code prohibits you from using your official title anywhere in these solicitations. To do so would constitute using your position to specially financially benefit your outside employer, resulting in a violation of the misuse of office section of the code.³

While PBSO contracts with the Village, the Foundation does not. Accordingly, the prohibitions contained in §2-443(d) *Contractual Relationships* do not apply based upon the facts presented.

Section 2-444(a) of the Palm Beach County Code of Ethics prohibits a member of a local governing body, "or any other person or business entity on his or her behalf" from knowingly soliciting or accepting, directly or indirectly, any gift with a value greater than \$100 in the aggregate for the calendar year, from a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the municipality.

¹ RQO 11-029 (an employee or elected official who serves as an officer or director of a charitable organization may not use their official title or elected office in soliciting donations; to do so would per se constitute using their employment or elected office to specially financially benefit that charity)

² §2-442 *Financial Benefit* includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value...

³ RQO 11-051 (where it is foreseeable that an employee or official will receive a salary or other form of financial benefit from a non-profit organization they may not use their official title to specially financially benefit that charity)

However, §2-444(h) creates an exception to this prohibition for charitable donations solicited on behalf of a 501(c)3 non-profit organization, recognized as such under the IRS regulations. The gift law, as revised, no longer prohibits elected officials, advisory board members and public employees from soliciting vendors, lobbyists, principals or employers of lobbyists who lobby their government when the solicitation is made on behalf of non-profit or charitable organizations, so long as a detailed log is maintained pursuant to 2-444(h). A *charitable solicitation log* can be found on our website at www.palmbeachcountyethics.com/Forms and should include the following information:

- 1) Name of the charitable organization for which you are soliciting; and
- 2) Name of the person and entity that was solicited; and
- 3) The event, if any, for which the funds were solicited; and
- 4) Amount of funds solicited and pledged.

You must file this form with the Commission on Ethics office within 30 days of the charitable event or within 30 days of the solicitation if not related to an event. You may not solicit any person or entity with a pending application before the Village.

THE RATIONALE for limiting solicitation or acceptance of charitable donations by public employees and officials from lobbyists and vendors of their public employer is grounded in the desire to avoid the appearance of indirectly obtaining a financial benefit for a favored charity by using the power of one's official position to secure the donation. As for charitable gifts involving lobbyists, principals or vendors, the charitable solicitation log serves to increase transparency and help to remove the appearance that donations are made to obtain good will, or otherwise influence official decisions or improperly obtain access to public employees or officials.

Furthermore, Section 2-444(e) states as follows:

No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:

- (1) An official public action taken or to be taken, or which could be taken;*
- (2) A legal duty performed or to be performed or which could be performed; or*
- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.*

Gifts may not be solicited or accepted because of the past, present or future performance of a legal duty or official action. You must take great care that solicitations accepted on behalf of the Foundation do not result in a *quid pro quo* for your "official action" as Village Councilman.

The COE will not speculate as to any future potential voting conflicts of interest with issues related to PBSO. Any questions regarding voting conflicts would need to be submitted with specific facts and circumstances relative to a potential conflict, and special care must be taken under the circumstances due to your employment by a Foundation which supports a vendor of the Village.

IN SUMMARY, based upon the facts and circumstances you submitted, the Code does not prohibit you from accepting employment with the Foundation. However, you may not use your elected office to give the Foundation a special financial benefit not available to other similarly situated entities. Therefore, you must take great care not use your official position or title, directly or indirectly, in any solicitation or acceptance of donations.

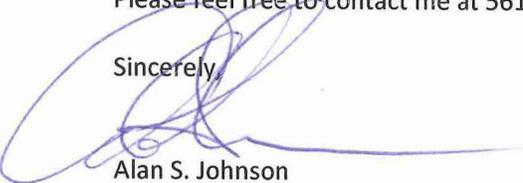
Any solicitation of donations from vendors, principals or lobbyists of the Village in excess of \$100 must be transparent. Therefore, you, or anyone soliciting in your name, must keep a detailed log of your contact with

those donors and submit a copy to the Palm Beach County Commission on Ethics. In any event, you may not solicit any gift on behalf of the Foundation in exchange for a special consideration or other "quid pro quo" in your official capacity as a Village councilman.

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



Palm Beach County Commission on Ethics

Commissioners

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

Executive Director

Alan S. Johnson

January 7, 2013

John C. Randolph, Esquire
Town of Palm Beach Town Attorney
Jones, Foster, Johnston & Stubbs, P.A.
505 South Flagler Drive, Suite 1100
West Palm Beach, FL 33401

Re: RQO 12-082
Voting Conflicts

Dear Mr. Randolph,

Your request for an expedited advisory opinion pursuant to Commission on Ethics Rule of Procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

YOU ASKED in your submission dated December 28th, 2012 whether an elected official is prohibited from voting on a "cure plan" proposed by the Florida Department of Transportation and Town of Palm Beach Staff where an employee who works for the official's outside employer is a part-owner of two restaurants within the plan area.

IN SUM, public officials are prohibited from using their official position, by participating or voting on an issue that would give a special financial benefit not shared with similarly situated members of the general public, to themselves, their outside employer or anyone who is known to the official to work for that outside employer. Based on the facts presented Councilman Wildrick is not prohibited from voting on this matter.

THE FACTS as we understand them are as follows:

You are the Town Attorney for the Town of Palm Beach (the Town). In November of 2012, the Town Council voted on whether to approve an application for a special exception and variance made by Del Frisco's restaurants (Del Frisco's). Prior to that vote, you asked whether an elected official, who serves as Chairman of the Board of a publically traded company (PTC) was prohibited from voting on the application because his fellow Board member is one of several owners of local restaurants in opposition to the Del Frisco's application.

This Commission opined that the public official was prohibited from voting on the matter, reasoning that the potential financial loss to the restaurant owner, should the competitor restaurant's application be approved, was not remote and speculative. Conversely, avoiding additional competition was a financial benefit to an existing restaurant standing in opposition to such approval.¹ Councilman Wildrick

¹ RQO 12-075

subsequently abstained from participating and voting on the application for special exception by Del Frisco's.

At its January 9, 2013 meeting, the Town Council will be considering a "cure plan" proposed by the Florida State Department of Transportation (DOT) and Town Staff in connection with bridge construction at Royal Poinciana Way. A "cure plan" is a resulting by-product of a "taking" or right of way expansion sought by DOT in road and bridge repair scenarios. In this instance, DOT is seeking to repair and expand access to the Flagler Memorial Bridge, adjacent to Royal Poinciana Way. One of the effects of the proposal will be to determine the number of parking spaces available for use in the Royal Poinciana Plaza (the Plaza) as well as Royal Poinciana Way.

Should Del Frisco's move forward with its plan to open a Palm Beach location, the restaurant will be located in the Plaza and the Town Council approved Del Friscos application for special exception. While the "cure plan" does not specify the number of public parking spaces available for each business, it will establish the total number of spaces available for the entire Plaza site and for public parking along Royal Poinciana Way. There are 71 businesses in the Plaza itself. Additionally, there are over 30 businesses adjacent to the Plaza located along Royal Poinciana Way. *No particular business or businesses would be significantly affected to a greater or lesser extent.* This plan would ultimately affect the number of public parking spaces available for use by all the businesses and shops along the Plaza and adjacent street.

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

Sec. 2-443. Prohibited conduct.

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

(1) Himself or herself;

(4) An outside employer or business of his or hers, or of his spouse or domestic partner, or someone who is *known to such official or employee to work for such outside employer or business.* (emphasis added)

§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.

Section 2-443(a) prohibits elected officials from using their official position to take or fail to take any action *if they know or should know with the exercise of reasonable care* that the action would result in a special financial benefit not shared with similarly situated members of the general public, for certain entities or persons including themselves, their outside business or employer, or someone who works for their outside business or employer. Section 2-443(c) *Disclosure of voting conflicts*, similarly requires an elected official to abstain and not participate in any matter coming before his or her board which would result in a special financial benefit to a person or entity as described in subsection (a).

As established in RQO 12-075, Councilman Wildrick is prohibited from taking official action or voting to give a special financial benefit to an employee of his outside employer. Under the Code, to constitute a

prohibited voting conflict, the *possibility* of a financial gain must be direct and immediate, rather than remote and speculative.² For a financial benefit to be “special”, the benefit must inure uniquely to the prohibited person or entity, rather than benefiting the Town, a class of residents or a particular neighborhood.³

Based on the facts presented here there is no prohibited special financial benefit. The “cure plan” is unrelated to the Del Frisco’s application and by its very nature does not benefit a particular business, shop, or restaurant. Rather, it is a plan of general application related to the available public parking spaces for over 100 businesses, shops and restaurants. The number of parking spaces, if any, ultimately reserved for Del Frisco’s as compared to other plaza shops or restaurants is not contemplated by the “cure plan” vote. Because all existing similarly situated businesses would be affected equally by plan, there is no prohibited special financial benefit.

IN SUMMARY, the Town Councilman may not use his official position, including participation and voting on an issue before the Town Council, to give a special financial benefit to a person who is known to him to work for his outside employer. However, where a general issue affects all members of an affected class of business entities equally, or, where a financial benefit to a particular business is remote and speculative, participation in the general matter may not be prohibited under the Code. Based upon the specific facts and circumstances provided, any financial benefit or loss is shared equally by all affected business entities in the area. Therefore, Councilman Wildrick is not prohibited by the Palm Beach County Code of Ethics from voting or participating in the DOT “cure plan.”

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,



Megan C. Rogers
Staff Counsel

MCR/gal

² George v. City of Cocoa, Florida, 78 F.3d 494 (1996), RQO 12-063

³ 12-070



Palm Beach County Commission on Ethics

Commissioners

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

Executive Director

Alan S. Johnson

January 2, 2013

Jeffrey Hmara, Councilman
Village of Royal Palm Beach
1050 Royal Palm Beach Boulevard
Royal Palm Beach, FL 33411

Re: RQO 12-085
Conflict of Interest/Non-Profit Organization

Dear Mr. Hmara,

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 your email submission dated December 28, 2012, whether, as a member of a 501(c)(3) charitable organization, you can volunteer to serve on an ad hoc committee of that organization to review student applications and interview students for the purpose of awarding college scholarships. The committee will not be involved in fundraising activities.

IN SUM, provided that you do not corruptly use your official position to offer or obtain a *quid pro quo* or otherwise specially financially benefit persons or entities listed in the misuse of office section of the Palm Beach County Code of Ethics, the Code does not prohibit you from volunteering for a non-fundraising ad hoc committee of a charitable organization in either your personal or official capacity.

THE FACTS as we understand them are as follows:

You are a member of a 501(c)(3) charitable organization called Caribbean Americans for Community Involvement (CAFCI). You are not a director or officer of CAFCI. Each year, CAFCI selects approximately 6 college bound high school seniors to receive scholarship funds. CAFCI selects an ad hoc committee to review student applications and interview each applicant as the basis for selecting the scholarship winners. You have been asked to serve on the ad hoc committee.

The main source of funding for these scholarships is usually local businesses, some of whom may be vendors of the Village of Royal Palm Beach (the Village). Your role, however, would be exclusively as a selection committee member and you would not be involved, directly or indirectly, in fundraising solicitations. You have a particular interest in this activity due in part to your having been an adjunct professor at Palm Beach Atlantic University for the past 6 years.

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

Section 2-443(a) prohibits a public official or employee from using their official position to give a financial benefit, not shared with similarly situated members of the general public, for certain persons or entities; including themselves, their spouse or domestic partner, close relatives or household members, their outside business or employer or customers or clients, debtors or creditors (other than banking institutions) and non-profit organizations if they are an officer or director.

Section 2-443(b) prohibits the use of one's official position to give a special benefit to any person or entity, if done corruptly, that is, with wrongful intent and inconsistently with the proper performance of one's public position.

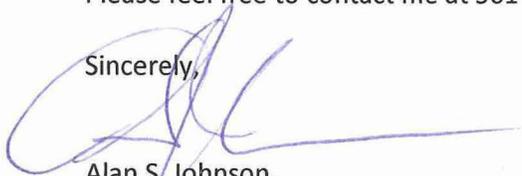
According to the facts you have submitted, you are not an officer or director of CAFCI. Additionally, you are volunteering for the ad hoc selection committee in your personal capacity and not as a Village Councilman. Therefore, you will not be acting in your capacity as a public official. Lastly, you are not participating in any scholarship fundraising by CAFCI. Should you decide to participate in CAFCI fundraising activities in the future, the gift law section of the Code regulates this type of activity.¹

IN SUMMARY, the Palm Beach County Code of Ethics does not prohibit or restrict you from volunteering your personal time to a charitable organization, in a non-fundraising capacity, to select high school candidates for college scholarships, provided that you do not use your official position to obtain a *quid pro quo* or to specially financially benefit a person or entity with whom you have a fiduciary, familial or financial relationship as described in section 2-443(a) of the Code.

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/gal

¹ Art. XIII, §2-444(h), RQO 11-029, RQO 11-112, RQO 11-115. As a member only of CAFCI and not an officer or director, you are not prohibited from participating in fundraising activities in either your official or personal capacity provided that a log is maintained and submitted, for gifts or solicitations in excess of \$100 made by or to a vendor, lobbyist, principal or employer of a lobbyist doing business with or lobbying the Village.

VIII Proposed Advisory Opinions

RQO 12-080 Kathleen Worley

A municipal employee asked whether she was prohibited by the Code of Ethics (the Code) from considering and awarding a bid submitted by her brother-in-law.

Staff submits the following for COE review: municipal employees are prohibited from using their office to give certain persons or entities a special financial benefit not shared with similarly situated members of the general public. An employee's brother-in-law is not among the persons and entities specified in §2-244(a)1-7. That being said, the issue of an appearance of impropriety is clearly present in such an arrangement.

Although matters of internal policy and procedure are not normally subject to COE jurisdiction, the COE recommends that should the employee's brother-in-law submit a proposal, another member of her staff or another department supervisor review the specifications and issue the award.

January 11, 2013

Ms. Kathleen Worley
Village of Tequesta
P.O. Box 3273
Tequesta, FL 33469

Re: RQO 12-080
Misuse of Office

Dear Ms. Worley,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on January 10, 2013.

YOU ASKED in your submission dated December 3, 2012 whether you were prohibited by the Code of Ethics (the Code) from considering and awarding a bid submitted by your brother-in-law.

IN SUM, as a municipal employee you are prohibited from using your office to give certain persons or entities a special financial benefit not shared with similarly situated members of the general public. An employee's brother-in-law is not among the persons and entities specified in §2-244(a)1-7. That being said, the issue of an appearance of impropriety is clearly present in such an arrangement.

Although matters of internal policy and procedure are not normally subject to COE jurisdiction, we recommend that should your brother-in-law submit a proposal, another member of your staff or another department supervisor review the specifications and issue the award.

THE FACTS as we understand them are as follows:

You are the Recreation Supervisor for the Village of Tequesta. The department plans to issue a Request for Proposal (RFP) to local bus companies to provide transportation for field trips related to the Village's summer camp program. Your sister's husband (your brother-in-law) owns and operates a bus company. Your sister does not work for her husband's company or own a portion of his business. At this point the Village has not released the RFP, nor have you spoken with your brother-in-law about the upcoming contract. In your position, you will determine the bid specifications and make the final award decision. The Village is not using a sealed, competitive bidding process for this particular contract. You will receive quotes from interested companies, assure that they are in compliance with associated transportation regulations and award the bid.

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:

Sec. 2-443. Prohibited conduct.

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

- (3) *A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;* (Emphasis added)

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

Section 2-443(a) prohibits you, as a public employee from using your official position, or influencing others to take or fail to take any action, that would result in a special financial benefit not shared with similarly situated members of the general public, for listed persons or entities.¹ The defined persons and entities encapsulated by §2-443(a) 1-7 does not include in-laws. However, it does include siblings. While selecting your brother-in-law over other applicants may not explicitly violate the code, it creates a distinct appearance of impropriety; especially should your sister receive an indirect financial benefit related to the contract.²

In addition, should this appearance give rise to a claim that you administered the bid and award process with wrongful intent, inconsistently with the proper performance of your public duties, you may subject yourself to an ethics complaint based upon §2-443(b) *corrupt misuse of official position*. In light of the discretion you have in setting the bid specifications and awarding the contract, it is our recommendation that another member of your staff or another department supervisor oversee the bid process and award.

IN SUMMARY, your brother-in-law is not prohibited from submitting a proposal to your municipal employer. While the Code prohibits you from using your official position to give yourself or your sister a special financial benefit, it does not prohibit you from overseeing the contract specifications or award between your municipality and your brother-in-law. However, this scenario creates an appearance of impropriety. For this reason, the Commission recommends that should your brother-in-law submit a proposal, another member of your staff or another department supervisor review the qualifications and issue the award.

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 Similarly situated means that everyone is affected by a decision in the same way.

² See also, RQO 11-037 (there is no prohibited conflict of interest *per se* under the code based solely on a sibling relationship between a Building Official and his brother who is part owner of a company in a related field, so long as the Building Official does not use his official position to give his brother a special financial benefit not shared by similarly situated residents; however, such a scenario creates an appearance of impropriety should the public official be called upon to review his brother's submissions)