



# Agenda

February 7, 2013  
Governmental Center,  
301 North Olive Avenue, 6<sup>th</sup> Floor  
Commissioners Chambers

## Meeting will begin at 1:30 pm Executive Session from 3:00pm to 4:30pm Regular Agenda will resume at 4:45pm

### 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

#### Interim Executive Director

Megan C. Rogers

#### Intake Manager

Gina A. Levesque

#### Interim Staff Counsel

Mark E. Bannon

#### Senior Investigator

Mark E. Bannon

#### Investigator

James A. Poag

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from January 10, 2013
- V. Presentation of award to Alan S. Johnson
- VI. Executive Director Applicant Update and Procedure Discussion
- VII. Processed Advisory Opinions (Consent Agenda)
  - a. RQO 13-001
- VIII. Items Pulled from Consent Agenda
  - a.
- IX. Proposed Advisory Opinions
  - a. RQO 12-083
- X. Independent Boards Authorized and Created by State Law whose Members are Appointed by the Board of County Commissioners
  - a. RQO 12-077
- XI. Executive Sessions
  - a. C13-003
  - b. C12-015
  - c. C12-016
- XII. Interim Executive Director Comments
- XIII. Commission Comments
- XIV. Public Comments
- XV. Adjournment

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

**JANUARY 10, 2013**

**THURSDAY  
1: 38 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 – Arrived Later  
Patricia L. Archer  
Daniel T. Galo, Esq.  
Ronald E. Harbison, CPA

**STAFF:**

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

**ADMINISTRATIVE STAFF:**

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.

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

**IV. APPROVAL OF MINUTES**

**a. December 6, 2012**

**MOTION to approve the December 6, 2012, minutes. Motion by Patricia Archer seconded by Ronald Harbison, and carried 4-0. Robin Fiore absent.**

**b. December 13, 2012**

**MOTION to approve the December 13, 2012, minutes. Motion by Daniel Galo seconded by Patricia Archer, and carried 4-0. Robin Fiore absent.**

**c. December 19, 2012**

**MOTION to approve the December 19, 2012, minutes. Motion by Ronald Harbison seconded by Daniel Galo, and carried 4-0. Robin Fiore absent.**

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

**XII. PUBLIC COMMENTS**

**XII.a.**

**DISCUSSED:** Congratulations.

Gail Howden said that she was proud of Mr. Johnson as the first COE executive director, and that he would certainly serve as a role model to the incoming executive director. She congratulated Mr. Johnson and thanked him for his service with the COE.

Commissioner Farach said that the COE came into creation through the tireless work of public citizens. He added that although the COE would miss Mr. Johnson, he would continue performing the public's work in a different capacity.

**RECESS**

**At 1:43 p.m., the chair declared the meeting recessed for an executive session.**

**RECONVENE**

**At 5:42 p.m., the meeting reconvened with Commissioners Archer, Farach, Fiore, Galo, and Harbison present.**

**V. EXECUTIVE SESSIONS**

**V.a. C12-009**

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

Complainant, Martha Webster, filed a complaint on September 4, 2012, alleging a possible ethics violation involving Respondent, Frederick Pinto, Village of Royal Palm Beach Councilman.

The complaint alleges Respondent misused his official position by participating and voting on two issues before the village council that specially financially benefited Palm Beach County Commissioner Jess Santamaria, Respondent's outside employer. Respondent is employed by the Palm Beach County Board of County Commissioners as an administrative assistant to Commissioner Santamaria.

Pursuant to Chapter 2, Article V, Division 8, Section 2-258(a) of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. An official may not use his official position in a manner in which he knows or should know with the exercise of reasonable care will result in a special financial benefit to him, not shared with similarly situated members of the general public or otherwise corruptly secure a special privilege, benefit, or exemption for himself or others.

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

The Commission on Ethics reviewed the complaint and memorandum of inquiry and requested that staff review and reconsider its finding and the matter was tabled. Upon further review, Alan S. Johnson, Executive Director, made the following legal sufficiency findings:

## V.a. – CONTINUED

1. Allegations that Respondent violated Art. XIII, Section 2-443(a)(4), Misuse of public office or employment/outside employer conflict, are legally insufficient insofar as the Code of Ethics definition of outside employer specifically excludes another governmental entity.
2. Allegations that Respondent violated Art. XIII, Section 2-443(b), Corrupt misuse of official position, were determined to be legally sufficient on October 17, 2012.
3. Allegations that Respondent violated Art. XIII, Section 2-443(a)(1), Misuse of public office or employment/personal benefit, and Section 2-443 (c), Disclosure of Voting Conflicts, were determined to be legally sufficient on October 17, 2012.

The Memorandum of Probable Cause and Memoranda of Inquiry and Investigation, adopted by reference, were presented to the Commission on Ethics on January 10, 2013, with a recommendation that no probable cause exists to believe there was a Code of Ethics violation; and the facts and circumstances warrant a dismissal with a letter of instruction to the Respondent. At that time, the Commission conducted a hearing. The Commission reviewed and considered the Memoranda of Inquiry, Investigation and Probable Cause, recommendation of staff, as well as oral statements of the Respondent and advocate. The Commission also reviewed Article V, Section 2-260.3 of the Commission on Ethics Ordinance. At the conclusion of the hearing, the Commission on Ethics determined that there was no probable cause to believe that a violation of Art. XIII, Section 2-443 (a), *Misuse of public office or employment*, (b), *Corrupt misuse of official position*, and (c), *Disclosure of voting conflicts*, had occurred; however, a letter of instruction would be appropriate under the circumstances presented. Based on the facts and circumstances surrounding the alleged violations, the Commission finds that the public interest would not be served by proceeding further.

**V.a. – CONTINUED**

Therefore, it is:

Ordered and adjudged that no probable cause exists, and the complaint (C12-009) against Respondent, Frederick Pinto, is hereby dismissed, and a letter of instruction is to be issued in this case.

Done and ordered by the Palm Beach County Commission on Ethics in public session on January 10, 2013. Signed: Manuel Farach, Chair.

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

Commissioner Fiore read the following letter of instruction:

Martha Webster (Complainant) filed the above-captioned complaint against Frederick Pinto, Village of Royal Palm Beach Councilman (Respondent) alleging violations of the Palm Beach County Code of Ethics, Article XIII, Sections 2-443(a)(Misuse of public office) and Section 2-443(b)(Corrupt misuse of official position) and Section 2-443(c)(Disclosure of voting conflicts). The complaint alleges, in part, that Respondent, while a Town councilman, misused his official position by participating and voting on land use applications before the Village of Royal Palm Beach (the Village) Council, thereby benefiting his at-will supervisor, a Palm Beach County commissioner.

- **Facts and Analysis**

Respondent is an elected councilman for the Village. As an elected municipal official in Palm Beach County, Respondent is subject to the Palm Beach County Code of Ethics.

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## V.a. – CONTINUED

Respondent is also employed by the Palm Beach County Board of County Commissioners, as an administrative assistant to a County commissioner. His employment status is at-will. As an at-will employee, Respondent is not subject to merit service. Therefore, his employment may be terminated at any time and without cause. Merit rules of conduct, disciplinary guidelines, adverse actions, and employee recourse only apply to permanent status employees. In short, Respondent's County position is dependent upon his ongoing relationship with the commissioner.

There is no documentary or testimonial evidence that Respondent actively participated in obtaining a benefit for his County supervisor or his business holdings prior to the matter coming before the Village Council. The record reflects, on two separate occasions, Respondent participated and voted on land use applications benefitting the business interests of his County supervisor. Both involved land use applications for prospective tenants of a shopping plaza owned in part by the commissioner. As a sitting municipal official, when he initially considered becoming a County administrative assistant, Respondent had asked one of the Village's Attorneys whether a conflict of interest would prevent his accepting that position. According to the attorney for the Village, she informed him only that there was no inherent conflict regarding his position; however, she did not opine as to conflicts regarding any specific issues that may come before his council. Respondent did not ask the COE for an advisory opinion on this matter.

Potentially, giving a financial benefit to his at-will supervisor may also inure to Respondent's own financial interest in maintaining his employment as administrative assistant. Under the facts and circumstances discovered during a COE inquiry and investigation, there is no evidence that Respondent's actions involved a quid pro quo, or that Respondent otherwise actively participated in steering or otherwise facilitating a financial benefit to the commissioner or his business interests to obtain the good will of his supervisor. However, there is an appearance of impropriety when Respondent's official acts as Village councilman may benefit the supervisor of his outside government employer. This is especially true when the government employment is at-will and reliant on the good will of his supervisor.

V.a. – CONTINUED

- **Holding**

**Section 2-443 Prohibited Conduct**, states in relevant part:

**(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)

(1) Himself or herself;

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

**(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.

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**V.a. – CONTINUED**

**(c) Disclosure of Voting Conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, Section 112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the County Commission on Ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

**Section 2-442. Definitions,** states in part as follows:

**Outside Employer or Business** includes:

**(1)** Any entity, other than the County, the State, or any other federal regional, local, or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold, or produced. For purposes of this definition, “compensation” does not include reimbursement for necessary expenses, including traveling expenses.

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**V.a. – CONTINUED**

**Section 2-260.3. Dismissal of Complaints**, states as follows:

Notwithstanding any other provisions of this division, the Commission on Ethics may, at its discretion: (a) dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, or (b) dismiss any complaint at any stage of disposition and issue a letter of instruction to the Respondent when it appears that the alleged violation was inadvertent, unintentional, or insubstantial. In the event the Commission on Ethics dismisses a complaint as provided in this subsection, the Commission on Ethics shall issue a public report stating with particularity its reasons for the dismissal. The Commission on Ethics may, at the request of the State attorney or any other law enforcement agency, stay an ongoing proceeding. The Commission on Ethics shall not interfere with any ongoing criminal investigation of the State attorney or the U.S. attorney for the Southern District of Florida.

Respondent did participate and vote on two issues involving land use applications submitted by prospective tenants of the shopping center. These applications benefited the shopping center, a business interest of the Respondent's County government supervisor. Respondent's public job as an at-will employee is contingent on the relationship between himself and the commissioner and may be terminated without cause at any time. The fact that the language of the Code excludes this relationship as a violation of the Code by definition does not change the appearance of impropriety when a subordinate employee uses his or her official position to benefit their government supervisor.

The Commission is mindful that the facts and circumstances indicate Respondent was not personally involved in promoting or facilitating the transactions that benefited the commissioner, nor did he attempt to influence Village staff in their recommendation to Council. The Commission is also mindful of the fact that Respondent did ask a Village attorney whether taking the County position would require him to resign his position as council member. However, he did not inquire as to conflicts of interest inherent in matters pertaining to his County government supervisor's personal business holdings in the Village, nor did he request an advisory opinion from this Commission.

**V.a. – CONTINUED**

In light of the facts and circumstances known to the Commission on Ethics, the complaint was dismissed by order of the Commission with this letter of instruction. The COE believes that the alleged violation was inadvertent and unintentional and has determined that the public interest would not be served by proceeding further. However, Respondent is now advised that the filing of ethics complaint C12-009, along with this letter of instruction, is to serve as notice that actions taken by Respondent in participating and voting on issues benefiting his at-will supervisor, to the extent that the benefit is not available to members of the general public, creates an appearance that the vote is to engender good will or otherwise enhance his position with that government supervisor. Respondent is instructed to be more careful to ensure that he avoids such potential conflicts in the future when presented with issues specially benefitting him or his government supervisor's outside business interests and to conform his activities to this letter of instruction and to the requirements of Section 2-443(a), (b), and (c).

This letter of instruction is issued by the Palm Beach County Commission on Ethics in public session on January 10, 2013. Signed: Manuel Farach, Chair.

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

Commissioner Archer suggested that the documentation for executive summaries have a case number on the bottom of each page, along with the meeting date where the case was discussed so that the commissioners would know which documentation was the most current.

Gina Levesque, COE Executive Assistant said that she would implement Commissioner Archer's suggestion.

**V.b. C12-015** – Not discussed

**V.c. C12-016** – Not discussed

**VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)**

**VI.a. Request for Opinion (RQO) 12-081**

(CLERK'S NOTE: See below for continuation of item VI.a.)

**VI.b. RQO 12-082**

**VI.c. RQO 12-085**

**MOTION to approve the consent agenda. Motion by Patricia Archer, seconded by Daniel Galo, and carried 5-0.**

**VI.a. – CONTINUED**

**PUBLIC COMMENT:** John Greene.

Mr. Johnson said that Village of Wellington (Village) Councilman John Greene should follow the suggestions in his advisory opinion. He said that if Councilman Greene did solicit from vendors, lobbyists, principals, and employers of lobbyists of the Village, he was required to maintain a log and a log had to be maintained by others involved in the soliciting.

Commissioner Farach thanked Councilman Greene for requesting the COE's advice. He said that Mr. Greene's effort showed that the Councilman tried to engender public trust in the government.

**VII. ITEMS PULLED FROM CONSENT AGENDA – None**

**VIII. PROPOSED ADVISORY OPINIONS**

**VIII.a. RQO 12-080**

Staff Counsel Megan Rogers said that:

- A municipal employee asked whether she was prohibited under the Code of Ethics (Code) to consider and award a bid submitted by her brother-in-law.

## VIII.a. – CONTINUED

- Staff submitted that:
  - Municipal employees were 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 was not among the persons and entities specified in the Misuse of Office, sections (1) through (7).
  - The issue of an appearance of impropriety was clearly present in such an arrangement.
  - Staff recommended that the employee's brother-in-law submit a proposal to another member of her staff or another department supervisor to review specifications and issue an award.
- Previous advisory opinion, RQO 11-037 was similar in circumstances and dealt with a sibling relationship between a Town of Palm Beach (Town) building official and his brother.
  - The opinion was based on whether the Town officials' approval of his brother's work would create a prohibited conflict of interest.
  - The COE concluded that no prohibited conflict of interest existed under the Code's definition when a Town official completed his required duties and did not act or fail to act in a manner resulting in a special financial benefit to his brother, not shared by similarly situated members of the general public.
  - The COE had advised that the Town create a wall between the siblings regarding existing approvals.
- Staff recommended that RQO 11-037's opinion be followed in RQO 12-080.

## VIII.a. – CONTINUED

Commissioner Archer expressed concern about another member of the employee's staff or another department supervisor could review specifications. She said that it could be problematic when another staff member was the employee's subordinate.

Ms. Rogers said that the recommendation could be edited and reviewed further.

Commissioner Fiore commented that it was odd that a step-sibling who may not even be in one's life would be considered under the Code, yet an in-law was not included in the Code.

Ms. Rogers said that:

- It was difficult to determine which type of benefit was contributed by a spouse to a sister which was a covered entity under the Code.
- Staff would not review someone's personal finances when making an advisory opinion recommendation.
- Staff's recommended that an in-law was not covered under the Code; however, the employee ran the risk of a conflict. The situation should be handled differently.
- If the spouse of the employee's sibling was a part owner in the business, the scenario would fall under the Code, but based on the facts presented, no business relationship between the sibling and his/her spouse existed outside of being married.
- Staff had performed a search of shareholders for the in-laws' business and the employee's sibling was not listed.

Commissioner Farach said that a previous concern had been raised about the Code's ordinance being insufficient regarding domestic partners. He questioned why the Code did not include the spouse of an individual that was covered under the Code, since that spouse would be strongly suspected to share financial benefits with the person that the Code covered.

## VIII.a. – CONTINUED

Mr. Johnson responded to Commissioner Farach's comment by saying that domestic partners were covered under the Code.

At Commissioner Fiore's suggestion, Ms. Rogers stated that sealed bids could be a potential mechanism to use. She agreed that if a complaint was filed claiming a Misuse of Official Position, a Misuse of Office, or a Corrupt Intent, the COE would conduct further investigations.

Commissioner Galo commented that someone could be considered an in-law through different ways; and Ms. Rogers informed the commission that the proposed opinion was essentially advising that the employee be wary of the situation.

**MOTION to approve proposed advisory opinion letter RQO 12-080. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 4-1. Daniel Galo opposed.**

## IX. ANNUAL REPORT

Mr. Johnson, while giving a power point presentation, said that:

- For fiscal year (FY) 2011-2012, the COE had expended 88 percent of its budget and had savings of \$70,000.
- Due to the COE's fiscal prudence in year's past, a reserve was being carried forward; however, it was slowly being spent.
- An ad valorem issue would exist in FY 2014 and 2015. The COE's current ad valorem funds were \$476,000, and it had remained the same since its inception.
- In the following fiscal year, the COE would have to address the reserve issue with the Board of County Commissioners.
- Visits to the COE's website increased to approximately 400,000 visitors a year.

## IX. – CONTINUED

- A log of hotline calls to the COE for the year 2012 revealed 560 overall calls; 102 calls were referred to another agency; and, 23 calls resulted in an inquiry or an investigation.
- There were 85 advisory opinions for the year 2012 and 249 opinions overall since June 2010.
- Staff had instituted a process to determine whether an advisory opinion received by email or through a phone call could be answered through an already existing advisory opinion.
  - If an issue was simple, staff would not provide individual advice over the phone, but advise the individual to reference previous advisory opinions.
  - Previous advisory opinions may be emailed to the requester.
  - The email to a requester would include a statement that if the individual still had questions he/she could contact the COE; however, a written letter was required for the COE to provide answers.
  - There were 58 referrals made to existing opinions, in addition to the 85 total advisory opinions for the year.
- Since the COE had filed advisory opinions on its Web site, people were able to find responses to act accordingly to their concerns.
- Staff had performed 40 in-person trainings, 50 Digital Video Disks (DVD) had been sent out, and numerous outreach presentations were given to community groups.
- In June 2013, there would be a live retraining of officials and employees.
- In 2012, the COE processed 16 sworn complaints and 33 inquiries based on unsworn or anonymous complaints.
  - Five sworn complaints were dismissed for lack of legal sufficiency;

## IX. – CONTINUED

- Seven sworn complaints were found to be legally sufficient; and,
- As of January 1, 2013, four additional cases were pending legal sufficiency and probable cause determinations.
- The COE had received complaints regarding:
  - misuse of office;
  - gift law;
  - voting conflicts; and,
  - lobbyist registration.
- The COE and its staff should be congratulated for the long hours that each member worked.

Commissioner Fiore congratulated the COE staff for its work and Commissioner Farach said that Mr. Johnson's annual report was well done and that it got the COE's message across in a presentable format.

## X. EXECUTIVE DIRECTOR COMMENTS

### X.a.

**DISCUSSED:** COE Staff.

Mr. Johnson said that it had been a pleasure to work with the COE staff and that he was resigning to serve as one of the newly elected State Attorney Dave Aronberg's chief assistants.

**XI. COMMISSION COMMENTS**

**XI.a.**

**DISCUSSED:** Appreciation.

Commissioner Fiore said that she could not have served on the COE without Mr. Johnson's support. She said that the COE had been a great learning experience, and she thanked staff for its support. She added that Mr. Johnson had been a great leader and lawyer, an example to others, and an all-around great human being.

Commissioner Harbison said that he had grown to rely on Mr. Johnson and that he would be missed. He said that Mr. Johnson had created a culture not only with his legal interpretations, but as a leader in the COE office. He added that Mr. Johnson's professionalism was demonstrated in staff's admiration of him.

Commissioner Archer said that she was impressed with all of the COE members and with Mr. Johnson for his unbiased point of view. She said that Mr. Johnson would be missed and that she wished him well.

Commissioner Galo said that he was impressed with Mr. Johnson's accomplishments, and that he wished Mr. Johnson the best of luck.

Commissioner Farach said that Mr. Johnson had been the "heart and soul" of the COE from the start, and that he had created a great culture of ethics. He added that Mr. Johnson meant a lot to the COE and to the people of Palm Beach County.

**XII. PUBLIC COMMENTS – Page 2**

**XIII. ADJOURNMENT**

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

**At 6:44 p.m., the chair declared the meeting adjourned.**

APPROVED:

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Chair/Vice Chair

## **VI Processed Advisory Opinions**

### **RQO 13-001 Joseph Chaison**

A Boca Raton advisory board member asked whether his outside employment as a coastal engineer with a firm that performs engineering work for the Florida Inland Navigation District (FIND) creates a conflict with his service on the City of Boca Raton Marine Advisory Board (MAB).

Staff submits the following for COE review: Advisory board members are prohibited from participating or voting on an issue that would give a special financial benefit to themselves, their outside employer or a customer or client of their outside employer, not shared with similarly situated members of the general public. While each issue coming before the City of Boca Raton Marine Advisory Board (MAB) will need to be examined individually for any conflict issues, the Code of Ethics (the Code) does not prohibit the member from serving on the MAB.

In cases where a recommendation from MAB to the City Council may result in a special financial benefit to the advisory board member's outside employer or a customer or client of his outside employer, he must publicly disclose the nature of the conflict, file the required state disclosure form, refrain from voting and not participate in, or otherwise influence the process.



# 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 31, 2013

Joseph B. Chaison, P.E.  
326 Manchester Street  
Boca Raton, FL 33487

Re: RQO 13-001  
Conflict of Interest, Outside Employment

Dear Mr. Chaison,

Your request for an 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 dated January 9, 2013 whether your outside employment as a coastal engineer with a firm that performs engineering work for the Florida Inland Navigation District (FIND) creates a conflict with your service on the City of Boca Raton Marine Advisory Board (MAB).

IN SUM, advisory board members are prohibited from participating or voting on an issue that would give a special financial benefit to themselves, their outside employer or a customer or client of their outside employer, not shared with similarly situated members of the general public. While each issue coming before the City of Boca Raton Marine Advisory Board (MAB) will need to be examined individually for any conflict issues, the Code of Ethics (the Code) does not prohibit you from serving on the MAB.

In cases where a recommendation from MAB to the City Council may result in a special financial benefit to your outside employer or a customer or client of your outside employer, you must publicly disclose the nature of the conflict, file the required state disclosure form, refrain from voting and not participate in, or otherwise influence the process.

THE FACTS as we understand them are as follows:

You are an appointed member of the City of Boca Raton Marine Advisory Board (MAB). The MAB is an advisory board that makes recommendations to the City of Boca Raton (the City) concerning various issues related to waterways within the City, specifically the Intracoastal Waterway, certain canals, and the Boca Inlet. The MAB is strictly an advisory board, and has no quasi-judicial powers or decision making authority. Pursuant to city ordinance, MAB has a requirement that certain membership seats be filled by persons with specific qualifications. You were appointed to MAB to fill the required professional engineer position on this board.<sup>1</sup>

<sup>1</sup> See RQO 11-079 (advisory board members, regardless of any professional licensure requirements associated with their appointment, may not use their appointed office to give themselves, their outside business or a customer or client of their outside business a special financial benefit.)

You recently accepted employment with Taylor Engineering (Taylor). While Taylor is not a vendor of the City, it provides engineering services for the Florida Inland Navigation District (FIND). FIND is an independent special taxing district with jurisdiction in twelve (12) Florida coastal counties, including Palm Beach County. The principal function of FIND is to construct, operate and maintain the Waterway.<sup>2</sup>

Taylor is the exclusive "District Engineer" for all FIND projects in this region, including projects that might lie on the portion of the Waterway located within the City. FIND has not appeared before the MAB, but because of the type of work FIND oversees you believe that the MAB could be asked to offer a recommendation to the City Council on an issue that may result a special financial benefit to FIND.

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

An advisory board is defined by §2-442 as any advisory or quasi-judicial board created by the board of county commissioners, by a local municipal governing bodies, or by the mayors who serve as chief executive officers or by mayors who are not members of local municipal governing bodies. The MAB is an advisory board, and as a member of MAB appointed by the City Council, you are an advisory board member subject to the jurisdiction of the Commission on Ethics (COE).

Section-2-443(a) prohibits officials and employees from using their official position to give themselves, their outside business, or a customer or client of their outside business a special financial benefit, not shared with similarly situated members of the general public. FIND is a governmental entity. While §2-442 exempts governmental entities from the definition of outside employer or business, governmental entities are not exempt from the definition of customer or client.<sup>3</sup> A "customer" or "client" is defined under the Code as *any person or entity* to which an employee or official's outside business has supplied goods or services in excess of \$10,000 over the previous 24 months.<sup>4</sup> Based on the information you provided, FIND is a customer or client of your outside employer, Taylor Engineering.

Further, §2-443(c), *Disclosure of voting conflicts*, prohibits you as an advisory board member from voting on any matter before MAB that would result in a "special financial benefit" to either your outside employer or to any customer or client of your outside employer.

Based on the above provisions and Taylor's exclusive contractual relationship with FIND, you are prohibited from voting as a MAB member on any matter that would result in a special financial benefit to FIND or Taylor. Under the Code, should such an issue be brought before MAB, you must publically announce the nature of your conflict, abstain from voting and not participate in the matter, and file the required voting conflict form (Form 9), submitting a copy to the MAB clerk and the Palm Beach County COE.<sup>5</sup>

IN SUMMARY, you are not prohibited from serving on the City of Boca Raton Marine Advisory Board (MAB) by the Palm Beach County Code of Ethics. However, because the Florida Inland Navigation District (FIND) is a customer or client of Taylor Engineering, you must abstain from voting and not participate on any matter that comes before the MAB that would result in a special financial benefit to

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<sup>2</sup> Florida Inland Navigation District website, [www.aicw.org/about.jsp](http://www.aicw.org/about.jsp).

<sup>3</sup> RQO 11-092 (governmental entities are not exempt from the definition of customer or client).

<sup>4</sup> §2-442

<sup>5</sup> §2-443(c)

your outside employer or its client, FIND. You must also publically declare and document this and any other conflict as provided in the PBC Code of Ethics and state law.

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

Please feel free to contact me at (561) 233-0736 should you have any further questions in this matter.

Sincerely,



Mark E. Bannon  
Interim Staff Counsel

MEB/gal

## **IX Proposed Advisory Opinions**

### **RQO 12-083 John Randolph**

A Town Attorney asked whether an elected official is prohibited from voting on changes to zoning regulations relating to a five acre area 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 financial benefit to their outside employer, not shared with similarly situated members of the general public. There is no bright line as to whether a contingent financial benefit creates a conflict. In evaluating conflict of interest under the Palm Beach County Code of Ethics, the Commission considers 1) the number of persons who stand to gain from a decision and 2) whether the gain or loss is remote and speculative. Based upon the facts and circumstances provided, including the limited class of persons or entities that stand to gain from the proposed ordinance and the incentives provided by the PUD designation, the potential financial benefit to the restaurant owner is not so remote and speculative as to eliminate a conflict of interest under the Palm Beach County Code of Ethics

February 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 12-083  
Voting Conflicts

Dear Mr. Randolph,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on February 7, 2013.

YOU ASKED in your submission dated December 28, 2012 whether an elected official is prohibited from voting on changes to zoning regulations relating to a five acre area where an employee who works for the official's outside employer is a part-owner of two restaurants within the plan area.

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

THE FACTS as we understand them are as follows:

You are the Town Attorney for the Town of Palm Beach (Town). The Town Council (Council) recently appointed an ad hoc committee to consider the future development of a five acre commercial area on Royal Poinciana Way (plan area). In total, based upon the study area legend prepared by Town staff and submitted to COE staff, there are 15 property owners who may be affected by changes in the study area.

The Royal Poinciana Way Study Committee (RPWSC) has since recommended zoning changes to the Town Council. As presently recommended, property owners in the plan area would be eligible to apply for certain incentives that follow from a PUD-5 designation. These incentives include an increase in density per acre. Absent an application for a PUD-5, the underlying zoning (C-TS) will remain in effect. Should a plan area property owner elect to seek a special exception under the PUD-5 they would be required to obtain approval from 1) landmark preservation board, 2) Town planning and zoning board and 3) the Town Council.

In his private capacity, one of the Town Council members, Councilman Wildrick, serves as Chairman of the Board for a publically traded company (PTC). A partial owner of two restaurants located within the plan area also serves as a member of the board of the PTC. Both Councilman Wildrick and the restaurant owner are compensated for their board positions.

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. 2-442. Definitions

**Outside employer or business** includes:

Any entity, other than the county, the state or any other federal, regional, local or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced.

## 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)

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 or their 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, not shared with similarly situated members of the general public, to a person or entity as described in subsection (a).

Councilman Wildrick serves as a director of PTC and receives compensation from PTC. As defined by §2-442, PTC is considered to be Councilman Wildrick's outside employer. Councilman Wildrick's fellow board member also receives compensation for his position as a member of the PTC board. The Code prohibits an official from voting on a matter which he or she knows or should know with the exercise of reasonable care will result in a financial benefit for someone who is known to the official to work for the official's outside employer.

Under state statute, to constitute a prohibited voting conflict, the *possibility* of a financial gain must be direct and immediate, rather than remote and speculative.<sup>1</sup> Where an official's gain or loss would require many steps and be subject to many contingencies, any gain or loss is remote and speculative and cannot be said to inure to one's special financial benefit.<sup>2</sup> Similarly, for a financial benefit to be "special", the benefit must inure uniquely to the voting member, rather than benefiting the Town as a whole. First, the restaurant owner is one of 15 property owners that would be subject to any changes approved by the Town Council. The number of persons or entities directly affected by potential changes is too small a class to be considered similarly situated to members of the general public.

Second, if adopted, property owners would be eligible to apply for incentives allowed for by the PUD-5 change. While the special exception process requires additional approval of both the landmark board and the planning and zoning board the PUD-5 nonetheless creates a pathway for property owners to take advantage of predetermined incentives. Based upon the facts and circumstances provided, including the limited class of persons or entities that stand to gain from the proposed ordinance and the creation of incentives by the PUD-5 designation albeit subject to several contingencies, the potential financial benefit to a board member's employer is not so remote and speculative as to eliminate a conflict of interest under the Palm Beach County Code of Ethics. Accordingly, Councilman Wildrick is prohibited from voting on this matter.

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

<sup>1</sup> George v. City of Cocoa, Florida, 78 F.3d 494 (1996).

<sup>2</sup> CEO 05-15, CEO 91-61, CEO 12-19

outside employer. Based upon the facts and circumstances provided, including the limited class of persons or entities that stand to gain from the proposed ordinance and the incentives provided by the PUD designation, the potential financial benefit to the restaurant owner is not so remote and speculative as to eliminate a conflict of interest under the Palm Beach County Code of Ethics.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-233-0724 if I can be of any further assistance in this matter.

Sincerely,

Megan C. Rogers  
Interim Executive Director

MCR/gal

PROPOSED

## X. PBC Housing Finance Authority – Proposed Opinion

### Background:

The Palm Beach County Housing Finance Authority is a governmental entity chartered under Florida law to fund low cost housing. It is a totally self-supporting entity and receives no federal, state or local funding of any kind. The Authority makes available 30-year fixed rate mortgage loans at below conventional market rates to persons of moderate, middle and lower incomes for the purchase of newly constructed or existing homes. The Authority also issues tax exempt bonds for the development or acquisition and rehabilitation of multifamily rental housing complexes. Owners of such facilities are required to set aside a portion of the units for lower income persons and families.

By Florida Statute, Housing Finance Authorities are separate legal entities even though they are created by a county. The statute also requires the county commission to appoint its members and establishes the powers and authority of the HFA. Essentially, a county commission must determine that there is a need for this type of agency but the powers and duties of the Authority are regulated by state law.

As a legal entity created by state statute, the HFA not subject to the jurisdiction of the Code of Ethics. However, because its members must be appointed by the Board of County Commissioners, HFA members are subject to the code's regulations and prohibitions as "Officials."

Section 2-443(d) of the Code of Ethics prohibits an "Official" from entering into *any contract or other transaction for goods or services with the County*. This prohibition extends to all contracts or transactions between the County, and the official, directly or indirectly, *or the official or employee's outside employer or business*. While there are some exceptions and exemptions within the Code these provisions do not extend to "officials". Accordingly, members of the HFA and their outside employers are prohibited from contracting with any county board or department, but are not eligible for exceptions created for advisory board members and are not prohibited from contracting with the HFA.

After reviewing RQO 11-077 counsel for the HFA contacted COE staff. COE staff met with HFA general counsel Skip Miller and HFA executive director David Brandt. Currently, it has been difficult to find community volunteers who meet the requirements of the state appointment guidelines but whose financial institutions do not have contracts with Palm Beach County. Florida statutes prohibit contractual relationships between appointed members and the HFA, but, without a waiver process, HFA members who do not have oversight over PBC departments or employees, are subject to the contractual relationships prohibition.

### Staff Recommendation:

Staff is seeking COE guidance on this matter. Section 2-258 of the Commission on Ethics Ordinance states as follows:

The Commission on Ethics may be empowered to review, interpret, render advisory opinions, and enforce the county's code of ethics or similar ordinances, rules or regulations duly adopted by the county or other local or municipal government, or any commission, bureau, district or

other governmental entity located in the county, pursuant to agreements or memoranda of understanding between the commission of ethics and said governmental agency.

After consulting with Senior Assistant County Attorney Leonard Berger staff recommends one of two options:

- 1) The COE enter into an MOU with the HFA and for the purposes of interpretation treat the HFA as a municipality.
- 2) Prepare an advisory opinion on behalf of the HFA membership. This alternative would allow the COE to interpret the Code to extend to HFA members as advisory board members rather than officials, recognizing that the plain language of the Code creates the unintended consequence of limiting HFA member's board service based on contracts with Palm Beach County, but not contracts between members and the HFA.

February 7, 2013

Ray Popkin  
812 Barcelona Drive  
Boca Raton, FL 33432

Re: RQO 12-077  
Contractual Relationships

Dear Mr. Popkin,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on February 7, 2013.

YOU ASKED in your email dated November 20, 2012, whether you are prohibited from serving as an appointed member of the Palm Beach County Housing Finance Authority (HFA) because your outside employer may be one of several investment banks that contract with the HFA.

IN SUM, the HFA is a dependant special district, independent of county and municipal government. Therefore, HFA is not within the jurisdiction of the Commission on Ethics (COE). However to the extent that a member of the HFA is appointed by the BCC, the HFA board member is considered an "Official" as defined by the Code. Therefore, under the Palm Beach County Code of Ethics (the Code) you are subject to the contractual relationship prohibitions of section 2-443(d). This section prohibits an official from contracting with the governmental entity that appointed the board member to their current position.

As an independent entity, the HFA is not an advisory board as defined by the Code. Therefore, contract conflict waiver provisions applicable to advisory board members do not apply. Should you be appointed by the BCC to serve on the HFA, your outside employer would be prohibited from contracting with Palm Beach County.

THE FACTS as we understand them are as follows:

You are a resident of Palm Beach County and have been asked if you would be interested in serving on the Palm Beach County Housing Finance Authority Board (HFA). The HFA is a governmental entity chartered under Florida law to fund low cost housing. Its seven member board is appointed by the Board of County Commissioners (BCC). It is a totally self-supporting entity and receives no federal, state or local funding of any kind. The Authority makes available 30-year fixed rate mortgage loans at below conventional market rates to persons of moderate, middle and lower incomes for the purchase of newly constructed or existing homes.

You are semi-retired. During your career you were a co-founder of the National Association of Local Housing Finance Authorities, served as the director of the Broward Housing Finance Authority, and later worked for several banks structuring housing finance debt.

You last worked full time for Royal Bank of Canada (RBC). RBC is currently one of the investment bankers for the HFA. You retired from RBC in 2008, but are currently engaged by Regions Bank as an expert witness in litigation. More specifically, you are engaged as an expert witness in a case where a

subsidiary of Regions Bank, Morgan Keegan is a defendant. Since litigation began, Morgan Keegan was purchased by Raymond James. Raymond James is an investment banker to the HFA.

Finally, you own common stock in RBC and several other banks including Wells Fargo and Bank of America. These banks might be considered for various roles before the HFA such as lender, trustee or investment banker. You do not own more than 5 percent of the total assets or common stock of any of these corporations.

The HFA would hear and consider bond resolutions and contracts between RBC, Raymond James and HFA. You are interested in serving on the board but are concerned that your prior relationship with RBC and ongoing relationship with Regions Bank and Raymond James may pose a prohibited conflict of interest.

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

An "Official" is defined in §2-442 in part as a member appointed by the local county or municipal governing body to serve on any advisory, quasi-judicial or any other board of the county, state, or any other regional, local, municipal, or corporate entity.<sup>1</sup> As a legal entity authorized by state statute, the HFA is a unique entity, distinct and legally separate from the County, and not subject to the jurisdiction of the Code of Ethics. However, as a potential appointee of the BCC, if appointed, you are subject to the code's regulations and prohibitions as an "Official."

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. For the purposes of this definition an "ownership interest" requires ownership of at least five percent of the total assets or common stock owned by the official, employee or any combination of the official or employee's household members, spouse, child, step-child, brother, sister, parent or step-parent or other dependent.

Based upon these definitions, RBC is not your outside employer. You were previously employed by RBC and while you continue to receive benefits from your former employer, such as eligibility for a health care plan, you pay for these privileges. You do not receive compensation for services rendered or goods sold or produced. Similarly, your stock ownership in various investment banks such as Wells Fargo and RBC would not be considered an "Outside Business." In determining a conflict, the definition contained in §2-442 requires a threshold outside business ownership interest of an official and/or their spouse, relatives or dependents to be at least 5% of the total assets or common stock available. Based on the facts you have submitted neither of these entities qualifies as your outside business.

Currently, you are paid by Regions Bank for your services in ongoing litigation. At this time you are compensated by Regions and Regions alone for your work. Based upon the definition of outside employment, Regions, as the entity providing compensation for services, is your outside employer, not Raymond James.

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<sup>1</sup> RQO 11-060 (pension board established by state statute and a legal entity distinct from the City), RQO 11-107

Section 2-443(d) prohibits an official from entering into *any contract or other transaction for goods or services with the County*. This prohibition extends to all contracts or transactions between the County, and the official, directly or indirectly, *or the official or employee's outside employer or business*. The contractual relationships section of the code prohibits such relationships on the basis of your outside employment, regardless of your specific job title or duties for that employer. While there are some exceptions and exemptions within the Code that pertain to advisory board members, as a BCC appointee to an independent entity you are considered an "official" only, not an advisory board member.

As a County official you are prohibited from entering into contracts or transactions with Palm Beach County. This prohibition extends to all county boards or departments.<sup>2</sup> Regions Bank does not have an existing contract with the Board of County Commissioners. Accordingly you are not prohibited from accepting an appointment by the Board of County Commissioners to the HFA at this point in time.

Finally, as an independent entity, the HFA it is not within the jurisdiction of the Code. Therefore, neither you nor your outside employer is prohibited by the Code from entering into contracts or transactions with the HFA.

IN SUMMARY, under the facts and circumstances you have submitted, you are not prohibited from accepting an appointment to the HFA at this time.

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 should you have any further questions in this matter.

Sincerely,

Megan C. Rogers,  
Interim Executive Director

MCR/gal

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<sup>2</sup> CEO 91-26 (In determining an official's "agency" for purposes of the Code of Ethics, an advisory board to a governing body is part of the governmental entity).