

MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS

I. CALL TO ORDER: October 7, 2010, at 4:07 p.m., in the Commission Chambers, 6th Floor, Governmental Center, West Palm Beach, Florida.

II. ROLL CALL

MEMBERS:

Judge Edward Rodgers, Chair
Manuel Farach, Esq., Vice Chair
Dr. Robin Fiore
Ronald E. Harbison
Bruce Reinhart, Esq.

STAFF:

Alan S. Johnson, Esq., Commission on Ethics (COE) Executive Director
Gina A. Levesque, COE Administrative Assistant
Mark Bannon, COE Investigator
Sydone Thompson, Deputy Clerk

III. INTRODUCTORY REMARKS

Judge Edward Rodgers reminded everyone to turn off their cell phones, and he added that public comments would be accepted.

PUBLIC COMMENT: Andy Schaller.

Judge Rodgers stated that the COE was bound by rules other than the State of Florida (State) or the federal government, and could act only within the State's jurisdiction. He suggested that Mr. Schaller contact the State with any further inquiries.

Judge Rodgers introduced the new COE Investigator, Mark Bannon, and introduced a summary of Mr. Bannon's professional experience and academic achievements.

IV. APPROVAL OF MINUTES FROM SEPTEMBER 2, 2010

MOTION to approve the September 2, 2010, minutes. Motion by Ronald Harbison, seconded by Dr. Robin Fiore, and carried 5-0.

V. PROCESSED ADVISORY OPINIONS

Judge Rodgers suggested reordering the agenda since Mr. Schaller was in attendance at the meeting.

(CLERK'S NOTE: The agenda was taken out of sequence and item VII.b. was discussed at this time.)

VII.b. C (Complaint) 10-005

Alan S. Johnson, Esq., the COE's executive director stated that Mr. Schaller's complaint against Commissioner Santamaria consisted of 10 exhibits that were processed as 10 counts, and that each allegation was investigated individually. He said that:

- Count one alleged violations including Florida Statute s. 106.15(3) relating to election law violations. It was determined that Commissioner Santamaria's actions were within the purview of the State's elections commission.
 - Two emails were sent by administrative assistant Johnnie Easton and secretary Dennis Lipp. Both employees used County time, computers, email accounts, and facilities to execute County-related activities, and transmitted documents that included the Palm Beach County Glades area project funding report for fiscal year 2007-201. The report was a public record sent from a public office, and was not deemed a sufficient violation of s. 2-443(a) – misuse of office for financial gain.
 - It was believed that Mr. Easton and Mr. Lipp were not being paid by an election campaign while on County payroll. However, no investigation had taken place to that fact, and he was not comfortable with providing an answer to the COE without making further inquiries. Any violations of election laws would be prosecuted by the elections commission.
 - The allegations contained in count one would not support a violation of the Code of Ethics (Code). The opinion and recommendation was that the COE was without jurisdiction to investigate the matter, and that count one should be dismissed without legal sufficiency.

VII.b. – CONTINUED

**MOTION to approve accepting staff's recommendation on count one for C 10-005.
Motion by Ronald Harbison, seconded by Manuel Farach, and carried 5-0.**

Mr. Johnson stated the following:

- Count two of the complainant alleged that on July 27, 2010, Commissioner Santamaria was hosting an open public forum. There was an altercation involving a fire truck owned by Mr. Schaller with political advertisements. The police were called to the scene and Commissioner Santamaria asked that Mr. Schaller be removed from the premises because Commissioner Santamaria was the owner of the mall in the City of Wellington where the forum was being held.
- An offense report was filed and Commissioner Santamaria never used his title when addressing the police. However, he argued with police and said that he knew the Palm Beach County Sheriff Ric Bradshaw. The officer asked Commissioner Santamaria whether he was trying to use Mr. Bradshaw's name, at which time the commissioner walked away.
- The alleged violation of Florida Statute, chapter 112, part III, s.112.313 (6) classified a misuse of public position to secure a special privilege, benefit, or exemption for himself, herself, or others without the need for financial gain. The Code had no such language.
- Staff had to determine whether a financial benefit existed and whether Commissioner Santamaria used his official position. Based on the facts provided in a sworn police report, the recommendation was that count two be dismissed as legally insufficient.
- It was believed that someone affiliated with Commissioner Santamaria had called the police to the mall where the forum was held.

Mr. Schaller interjected and stated that he wanted to provide assistance on the issue.

Judge Rodgers advised Mr. Schaller that the committee had given him an opportunity to speak at the beginning of the meeting.

VII.b. – CONTINUED

Mr. Schaller added that he could assist the COE with getting a correct record because he disputed some of the comments made by Mr. Johnson. Judge Rodgers stated that the COE would ask for his input if the need arose.

Mr. Johnson stated that:

- He had no knowledge that Commissioner Santamaria's name was used in the call to the police. Whether or not Commissioner Santamaria used his official title in calling the police, the commissioner had the right as landlord of the mall to secure his property.
- In the opinion of the staff, there would be insufficient financial nexus to warrant further investigation.
- There were differences in the State regulations and the Code as they related to s. 2-443(a), misuse of office or financial gain. Throughout the Code, financial gain determined whether a violation had occurred.
- Violations involving abuse of authority could be substantiated only when the element of financial gain was present.

**MOTION to approve accepting staff's recommendation on count two for C 10-005.
Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 5-0.**

Manuel Farach suggested that the Ethics Implementation Committee be asked to consider modifying the language of the ethics ordinance to include instances where an official violated the Code but had not received financial gain. This would allow the COE to have jurisdiction in the future.

Mr. Johnson said that the language in the State statute addressed securing a special privilege, benefit or exemption, and had not specifically addressed financial gain. Once the referendum was passed in November 2010, he would recommend that the drafting committee make modifications to the language of the ordinance, he said. He suggested that jurisdictional issues be discussed later in the meeting with agenda item IX.

(CLERK'S NOTE: After a brief discussion, it was the consensus of the board to table the discussion until agenda item IX.)

VII.b. – CONTINUED

Mr. Johnson said that:

- Count three of the complaint involved a public records request that was made by the complainant in reference to State statute 119.07 (1), the public records requirement statute.
- The justification of the complaint was not in the jurisdiction of the COE. Therefore, staff recommended that the complaint be dismissed, lacking legal sufficiency.
- Every recommendation of dismissal would be sent to the State's Commission on Ethics and the State Attorney's Office.

MOTION to approve accepting staff's recommendation on count three for C 10-005. Motion by Dr. Robin Fiore, seconded by Bruce Reinhart, and carried 5-0.

Mr. Johnson stated the following:

- Count four of the complaint involved a campaign sign that could have been in violation of State statute 106.143, which was within the jurisdiction of the elections commission, and not the COE.
- It was recommended that there was no legal sufficiency.

MOTION to approve accepting staff's recommendation on count four for C 10-005. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 5-0.

Mr. Johnson explained that:

- Count five of the complaint involved a 2007 zoning hearing, and it was alleged that the respondent, Commissioner Santamaria, violated County rules and procedures in a quasi-judicial hearing involving a Callery-Judge Grove zoning application.
- Pursuant to Chapter 2, Article V, Division 8, Section 2-260.6 of the Palm Beach County Code, the COE had jurisdiction only after the effective date of the Code which was May 1, 2010. Count five, therefore, was deemed legally insufficient.

**MOTION to approve accepting staff's recommendation on count five for C 10-005.
Motion by Ronald Harbison, and seconded by Dr. Robin Fiore.**

Mr. Farach asked whether it was an ex post facto problem to review items that occurred prior to the adoption of the Code.

Mr. Johnson replied affirmatively and added that the allegations would be sent to the State.

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

Mr. Johnson said that:

- Count six of the complaint was divided into two parts relating to allegations of improper procurement in violation of a County policy and included:
 - The first part pertained to business cards and the allegations predated May 1, 2010. Subsequently, there was a recommendation of dismissal as legally insufficient that predated the Code, and it was noted in count five of the complaint.
 - The second part pertained to locks that were changed in the City of Belle Glade. It was alleged that the actions were not vetted through the procurement process. Staff reviewed the facts that were presented, and the recommendation of staff was that the allegations could not substantiate a violation of the Code. There was no allegation that financial benefit had occurred. The actions surrounding the lock change were transparent through emails that were sent to the Palm Beach County Sheriff's Office, staff, and County Administrator Robert Weisman.
 - A violation of a County policy was not synonymous with an ethics violation. Regardless of the facts in the complaint, there was no validity to the allegations.

**MOTION to approve accepting staff's recommendation on count six for C 10-005.
Motion by Manuel Farach, seconded by Bruce Reinhart, and carried 5-0.**

VII.b. – CONTINUED

Mr. Johnson stated that:

- Count seven of the complaint alleged that Commissioner Santamaria was a convicted felon, and the supporting documentation was one page of a judgment in the name of Jesus R. Santamaria from 1991 with no other information provided.
- The complaint stated that Commissioner Santamaria “is,” not, “was,” a convicted felon. Staff found the allegations disingenuous and frivolous, and recommended that the count be dismissed as not legally sufficient.

MOTION to approve accepting staff’s recommendation on count seven for C 10-005. Motion by Ronald Harbison, seconded by Bruce Reinhart, and carried 5-0.

Mr. Johnson said that:

- Count eight of the complaint involved signature petitions that were distributed at a public forum.
- The complaint noted that Assistant County Administrator Brad Merriman and the COE’s executive director (ED) were at the forum at the mall owned by Commissioner Santamaria. The forum took place monthly and had been an ongoing event for the past four years. He believed that the last forum took place in April 2010 at 7:00 p.m. The allegation did not allege that the County’s time was being used, and there was no sufficient nexus of financial gain to move forward with an investigation. Staff recommended dismissal of the complaint.

Bruce Reinhart stated that the incident date predated the ordinance. Mr. Johnson responded affirmatively and stated that the incident date of April 21, 2010, predated the ordinance. He said that the memorandum would be amended to reflect a lack of legal sufficiency because the incident occurred prior to the Code of Ethics enactment on May 1, 2010.

MOTION to approve accepting staff’s recommendation on count eight for C 10-005 as amended to include the changes as discussed. Motion by Bruce Reinhart, seconded by Dr. Robin Fiore, and carried 5-0.

VII.b. – CONTINUED

Mr. Johnson explained that count nine of the complaint restated count one with the addition of a third email. He said that staff recommended that the complaint be dismissed as legally insufficient.

MOTION to approve accepting staff's recommendation on count nine for C 10-005. Motion by Ronald Harbison, seconded by Bruce Reinhart, and carried 5-0.

Mr. Johnson stated that:

- Count 10 of the complaint involved Mr. Lipp, and not Commissioner Santamaria.
- Staff reviewed the information that was alleged to determine whether a violation of the Code had occurred, and to advise the complainant on filing another complaint.
- The Code was examined with respect to dual employment, in which an individual worked for another government and the County at the same time. A conflict of interest would exist if Mr. Lipp received a financial benefit.
- The recommendation of no legal sufficiency was based on the fact that the complaint involved a third party respondent that was not Commissioner Santamaria.

Dr. Robin Fiore suggested that:

- The complaint should be referred to the Inspector General (IG) Sheryl Steckler because there could be systematic issues that needed to be addressed with respect to dual employment.
- The IG could investigate whether the email sent at 12:01 p.m. by Mr. Lipp was an appropriate action. She recommended that as a matter of standard, similar complaints should be forwarded to the IG and the State Ethics Committee.

MOTION to approve accepting staff's recommendation on count ten for C 10-005. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 5-0.

VII.b. – CONTINUED

**MOTION to approve forwarding a copy of C 10-005 to the Inspector General.
Motion by Dr. Robin Fiore, seconded by Manuel Farach, and carried 5-0.**

Mr. Johnson stated that:

- He was certain that the IG had received the complaints as well. He stated that he would ensure that the IG would be made aware that the COE wanted further investigation into the complaint.
- The complaints were made under oath and the complaints would be held liable for making false statements.

Dr. Fiore recommended fast-tracking complaints that occurred prior to May 1, 2010, the effective date of the Ethics Ordinance, as it would reduce the number of complaints that the COE reviewed. She said that the tracking would prevent the committee from being used as a forum for posting accusations.

Judge Rodgers recommended that when the ED gave lectures he could educate the public about the ex post facto law. He said that the ED could convey that retroactive punishments could not be imposed when actions were not illegal prior to a law's enactment.

Mr. Johnson stated that:

- All complaints had to be provided to the COE to be considered for dismissal. Advisory opinions could be reviewed with the chair, and they would not need to be presented before the COE.
- During election campaigns, frivolous complaints could be made.
- The Code would be reviewed to determine whether the rules of procedure could be modified to authorize the ED to write a response letter for complaints that occurred before the COE was formed.

(CLERK'S NOTE: Item V. was discussed.)

V. PROCESSED ADVISORY OPINIONS

V.a. RQO (Request for Opinion) 10-016

Mr. Johnson stated that:

- The advisory opinion requested was whether Angelo DiPierro, a manager at the Office of Financial Management and Budget (OFMB), could seek part-time employment as an adjunct professor at Palm Beach State College.
- The vendor had no contracts involving the OFMB, and it was recommended that his request for outside employment be granted.

MOTION to approve the recommendation on processed advisory opinion RQO 10-016. Motion by Ronald Harbison, seconded by Bruce Reinhart, and carried 5-0.

V.b. RQO 10-022

Mr. Johnson stated that:

- Pursuant to the rules of procedure, Section B 2.4(f), an advisory opinion request could not be withdrawn once it was submitted.
- Mr. Shawn Wilson was employed with Housing Trust, L.L.C, and served as a member of the Palm Beach County Emergency Shelter Grant Program Advisory Board. His company initially had no contracts with the County; however, at some point his company became involved with the sale of the Westgate Community Redevelopment Agency property, and a conflict of interest was presented.
- The recommendation would have been to instruct Mr. Wilson to obtain a waiver from the Board of County Commissioners; however, he resigned before the matter could be brought before the COE.

Mr. Reinhart suggested that the third full paragraph in RQO 10-022 which began, "In SUM, according to the facts and circumstances you submitted, once your outside employee entered into a contract," that the word, "employee," be changed to, "employer."

V.b. – CONTINUED

Mr. Johnson stated that the published copy of the advisory opinion would reflect “employer.”

Judge Rodgers expressed his objection to parties not being allowed to withdraw advisory opinions.

Mr. Johnson stated that to his recollection, Mr. Wilson resigned after he asked additional questions relating to the advisory opinion.

MOTION to approve the recommendation on processed advisory opinion RQO 10-022. Motion by Bruce Reinhart, seconded by Dr. Robin Fiore, and carried 5-0.

V. PROPOSED ADVISORY OPINIONS

VI.a. RQO 10-013

Mr. Johnson stated that:

- This advisory opinion had been brought before the COE in September 2010. The Palm Beach International Airport maintained operations with revenue generated from services, rentals, surcharges, and taxes.
- There were 585 stationed and itinerant aircrafts making approximately 250,000 flights annually. An indeterminate number of aircraft types that used fuel services at the airport.
- Airports Deputy Director of Business Affairs, Ms. Laura Bebe, disclosed that Herbert Kahlert, a member of the Aviation and Airports Advisory Board (AAAB) had obtained approximately 300-400 gallons of fuel monthly for a personal aircraft. The fuel usage was insignificant when compared to the average aircraft that used 80,000 gallons of fuel per month.
- Staff decided that no conflict of interest existed because Mr. Kahlert had not benefited out of proportion to the other aircrafts owners.

VI.a. – CONTINUED

Mr. Reinhart stated that:

- He was troubled because the person whose conduct was in question had not requested the advisory opinion; and the third-party who made the request had no stake in the outcome.
- Allowance of such inquires could open the door for any member of the public to request an opinion on the behavior of another party.
- The main objection with the advisory opinion was not the analysis given to the ordinance, but to the fact that Ms. Bebe was provided with an opinion based on Mr. Kahlert's actions.

Mr. Johnson stated that:

- The Code allowed anyone within its jurisdiction to make requests for advisory opinions. Given Ms. Bebe's position as Airports Deputy Director of Business Affairs, she was qualified to make the request under the Code.
- Initially, it appeared that the request pertained to multiple members of the AAAB. The finding was that no unique circumstances were limited to the facts presented in the request.
- The COE could set a threshold for jurisdiction issues relating to advisory opinions. Most requests were being made by supervisors on behalf of their staffs.

Mr. Reinhart stated that:

- He had no objections to a supervisor asking whether they could allow a subordinate to perform a particular duty. Once a supervisor allowed a subordinate to engage in unethical behavior, then the supervisor could be held liable.
- The issue was that Mr. Kahlert was a third-party advisory board member who had not worked for Ms. Bebe, and she had no authority to stop his actions.

VI.a. – CONTINUED

Mr. Reinhart asked whether any person within the jurisdiction of the COE could request an opinion on anyone else.

Mr. Johnson said that Ms. Bebe was the County staff member who administered the AAAB, and there was a nexus between her and the officials on the board. He had processed advisory opinions where there was a connection between the person making the request and an advisory board, he explained; and, it was determined that there was a sufficient link in this instance to warrant that a decision be made on the opinion.

Mr. Reinhart reiterated his previous objection on the matter. He suggested that the COE not process third-party requests because the accused party could be adjudicated without getting an opportunity to respond to the allegation.

Mr. Johnson stated that since the September 2010 COE meeting, the party whom the inquiry related to was asked to submit the request for an advisory opinion. He said that the recommendation on RQO 10-013 was approved with a change; and that requests for advisory opinions were not sworn statements.

Mr. Reinhart stated that if Mr. Kahlert wanted to come forward and adopt the question that Ms. Bebe tendered, then he would be willing to respond. Otherwise, he was uncomfortable with giving an answer to Ms. Bebe about Mr. Kahlert's behavior, he added.

Mr. Johnson said that:

- Mr. Reinhart was correct in referencing the Code's language that stipulated that any person within the jurisdiction of the COE, when in doubt about the applicability or interpretation of any provision within the COE jurisdiction to himself/herself in a particular context, may submit a written statement of facts to the COE.
- The request was processed because staff could be affected by the actions of other parties that violated the Code if they knowingly allowed unethical actions to take place.

Dr. Fiore asked whether the response to the advisory opinion could be generalized so that it would have nothing to do with Mr. Kahlert. Mr. Reinhart reiterated his objections.

VI.a. – CONTINUED

Mr. Johnson suggested that the following language could be changed to RQO 10-013:

YOU ASKED in your capacity as Deputy Director, Airports Business Affairs, and on behalf of Aviation Airports Advisory Board (AAAB) members whether a conflict of interest exists on the part of members voting on fuel flowage fee.

Dr. Fiore and Mr. Reinhart suggested adding language to reflect that Ms. Bebe was authorized by the AAAB members to make the request.

Dr. Fiore suggested that only authorized individuals should make requests in the future.

Mr. Johnson stated that:

- Dr. Fiore's suggestion could be taken as a directive for future requests and that the COE was not required to vote on the directive.
- The language revision to RQO 10-013 would read:

YOU ASKED in your capacity as Deputy Director, Airports Business Affairs on behalf of Aviation and Airports Advisory Board (AAAB) members in your email of August 4, 2010, whether a conflict of interest exists on the part of AAAB members voting on a fuel flowage fee at General Aviation (GA) Airports when board members own aircraft and purchase fuel at these airports.

(THIS SPACE LEFT BLANK INTENTIONALLY.)

VI.a. – CONTINUED

- On August 4, 2010, an email was sent by Ms. Bebe to Assistant County Attorney Leonard Berger, who forwarded the email to the ED. The email read:

I am sure that you've received the message but we have a question. We have a question regarding a potential voting conflict. We are proposing increasing fuel flowage fees at our three general aviation airports. We had planned to have the Aviations Airports Advisory Board take up the matter at your meeting today. However, the issue came up whether or not there is a voting conflict because some of the members own aircraft and purchase fuel at the GA airports. I would appreciate it if you could let me know whether or not you believe these members would be precluded from voting on the matter.

- His interpretation of the email was that the AAAB had a discussion at their board meeting and did not vote on the fuel fees because they were concerned about a possible violation, and that the members asked Ms. Bebe to get some advice on the matter.

Mr. Reinhart asked that the ED clarify that his interpretation was accurate and that it was not County staff that had the initial concern and had not presented the information to the COE.

Mr. Johnson stated that before the opinion letter was sent, he would include an email in the file to explain how the original request originated. If it was determined that County staff was aware of the circumstances, then the opinion letter would not be forwarded, he concluded.

Dr. Fiore suggested that the position on the opinion letter would be that Mr. Johnson would revise it and ensure that Mr. Reinhart's concerns were addressed.

MOTION to approve the proposed opinion letter as amended to include the changes as discussed for RQO 10-013. Motion by Bruce Reinhart, seconded by Dr. Robin Fiore, and carried 5-0.

VI.a. – CONTINUED

Mr. Johnson explained that:

- On August 18, 2010, and August 19, 2010, Dr. Virginia Sayre contacted the COE and that she provided additional information on August 23, 2010, August 24, 2010, and August 31, 2010.
- Dr. Sayre was a veterinarian who worked for Palm Beach Animal Care and Control (PBACC). During off-duty hours, she worked at Paws Plus and Luv-A-Pet. Both companies had no contracts with the County, and provided that she had merit rule approval, there was no issue.
- Dr. Sayre had an outside business called Pet Wellness Station, and she used the utilized the premises of the Red Barn, an entity that had transactions with the County. the Red Barn provided emergency services for penicillin, hay or exotic pet food, and its total contract amount was approximately \$1,300 annually, from October 2009 to present.
- Dr. Sayre provided low-cost vaccinations for animals and aided the County in saving revenue on the service; the Red Barn also yielded a profit from the rabies tags that she issued.
- Dr. Sayre was not a paid employee, contractor, consultant or vendor of the company, and not an outside business as defined by the Code in section 2-442; therefore, the contract would not be prohibited.

Mr. Johnson said that he was in agreement with Mr. Harbison's assessment that perceived economic value existed to the Red Barn for Dr. Sayre's services for which she gained business by occupying space there.

Mr. Harbison remarked that it could be perceived that Red Barn's motivation in providing Dr. Sayer with complimentary space was to secure a larger annual contract with the County; and that other conclusions could also be drawn from the affiliation.

Mr. Reinhart stated that, assuming that Dr. Sayre received free rent as a gift, it did not suggest that it was given in return for any official conduct or act that she could perform that would benefit the Red Barn.

Mr. Johnson commented that there was no nexus between Dr. Sayre and the Red Barn's \$1,300 purchase order.

VI.a. – CONTINUED

Mr. Reinhart suggested that language be added to RQO 10-015 stating that although the free rent could be perceived as a gift, it would not necessarily implicate an ethical violation. It might implicate a reporting requirement depending on the value that Dr. Sayre gave to the gift, he said.

Mr. Johnson stated that:

- By adding the gift paragraph, the Code could apply to the extent that Dr. Sayre was receiving value of more than \$100. the Red Barn could not be a lobbyist and the gift would have to be reported.
- Dr. Sayre advertised her business with flyers and with local newspapers in the Western communities. She had not used her status as a veterinarian with PBACC to promote her personal business.
- In the event that Dr. Sayre had received a gift, she would not be required to file a report by November 2011. Whatever value she received, if it was not as an employee, it would have to be reported as a gift.

Mr. Reinhart stated that Dr. Sayre's receiving free rent could be construed as a gift; she should decide whether she benefited, and report it as a gift.

Dr. Fiore asked whether it was necessary for the County to lose money. She suggested that the proposed language in the opinion be clarified to denote that the information was not essential.

MOTION to approve the proposed opinion letter as amended to include acknowledgement of a possible gift relating to free rent by Dr. Sayre for RQO 10-015. Motion by Ronald Harbison, seconded by Bruce Reinhart, and carried 5-0.

(CLERK'S NOTE: Items VI.c. and VI.d. were discussed in tandem.)

VI.c. RQO 10-018 version 1

VI.d. RQO 10-018 version 2

Mr. Johnson stated that:

- Version 1 of the proposed opinion letter did not discuss indirect expenditure as opposed to direct expenditure, and an exception was carved out. Dr. Fiore had suggested that the opinion be clarified.
- A reportable expenditure or a gift to an individual or entity, whether whole or in part, could be deemed an indirect expenditure. A determination would be needed as to whether a gift was given with the intent to benefit the employee.
- Regarding a condolence gift, an exception could be drafted that a gift to the family of the deceased was deemed to be a reasonable exception as an indirect expenditure, and not specifically with the intent to benefit the employee.

Judge Rodgers suggested that a special section pertaining to condolences could be added to the Code. He expressed the opinion that receipt of a gift after an individual's death could not benefit the deceased party.

Mr. Johnson explained that if the family of a deceased employee received \$5,000 after the employee's death that the amount of the gift could be scrutinized and suspicions could be raised.

Dr. Fiore stated that carving out an exception for condolences had no basis. She expressed discomfort with the judgment that condolences were somehow an acceptable exception.

Mr. Johnson explained that:

- The issue was reporting, and not a gift law violation. Section C of the Code stipulated that no gift of any amount could be accepted if it were used to influence an official's behavior. Section 2-443 (a) addressed misuse of office for financial benefit.

VI.c. and VI.d. – CONTINUED

- If a gift were given to ingratiate an official or employee, it would be a violation of the Code.
- If a gift were found to be a direct benefit to the employee, any lobbyist or vendor issuing one would be limited to \$100. Any excluded gift worth more than \$100 that was received from non-family members was reportable.
- To his knowledge, no opinions were found in the State Code of Ethics regarding condolences.

Mr. Reinhart suggested crafting of the opinion letter more narrowly so that it would read, "A condolence gift from a co-worker or a condolence gift from a joint employee fund." Then, perhaps the concerns of some COE members could be addressed, he said.

Mr. Johnson said that condolence gift were different from birthday gifts because they would be given directly to an employee and not to the family.

Judge Rodgers reiterated his earlier point that a condolence gift was of no benefit to the deceased. Dr. Fiore responded that a cash gift to an employee for reasons of bereavement would still constitute a gift to an employee.

Mr. Farach stated that caution should be taken to ensure that unscrupulous individuals could not use someone's death to take advantage of any exceptions to the Code.

Mr. Johnson said that if the COE voted by majority on the proposed opinion, a letter could be drafted indicating that gifts of less than \$100 would have no reporting requirements; however, any gifts of more than \$100, be it for value, personal use, or bereavement, would constitute a reportable gift by a County employee. Mr. Johnson said that that the revised opinion letter would be drafted once the COE gave the directive.

MOTION to amend the proposed opinion letter to indicate that gifts of more than \$100 would be reportable for RQO 10-018. Motion by Dr. Robin Fiore.

VI.c. and VI.d. – CONTINUED

Mr. Johnson expressed the following opinions:

- There was no urgency to report gifts at this time because the rule would go into effect on October 1, 2010, and would end on September 30, 2011. Once the COE voted, the letter could be drafted during the week of October 18, 2010.
- The lobbyist expenditure report was recently posted to the ED's web site. The gift reporting component would be added to the web site shortly.
- Presently, there were no concerns with condolence gifts. In looking at the broader picture, if a general exception for bereavement gifts were carved out, then an individual could give \$100,000 to the family of a deceased commissioner or other well-connected employee. Regardless of whether the gift was well meaning, that gift would not be reportable even if it were from a lobbyist as an indirect expenditure.

Mr. Farach suggested revisiting the gift issue at some point in the future to determine whether the families of deceased employees could receive support while maintaining the integrity of the Code.

Mr. Johnson suggested that as previously mentioned, the \$100 gift limit could be raised for bereavement gifts to an amount that was deemed appropriate, such as \$500; and that the proposed increase could be an amendment to the Code.

Mr. Johnson stated that third-party family member gifts were not reportable. He said that if a condolence gift were to be given to the family of the deceased employee, then the employee would be a part of that gift. However, the circumstances would be different if a gift were given to an employee's spouse, he concluded.

RESTATED MOTION to approve the proposed opinion letter as amended and rely on the gift limit, irrespective of the cause of the gift for RQO 10-018. Motion by Dr. Robin Fiore, seconded by Manuel Farach, and carried 4-1. Judge Edward Rodgers opposed.

VI.e. RQO 10-020

Mr. Johnson said that:

- The request was received from Ruth Moguillansky-DeRose, a principal planner for the County's Office of Community Revitalization (OCR). She served on the board of directors for Rebuilding Together (RT), a local affiliate of a national non-profit organization. She asked whether she could represent OCR on the board of directors for a (RT) that received grants and program funding from the County, and from national and local sponsors such as Home Depot and Sears.
- The issue in this instance was misuse of position as stipulated in section 2-443(a) (7) of the Code, an organization could not benefit from the use of an official position for which one was an officer or director. An employee would not be excluded from that prohibition.
- An employee who handled the procurement of grants to be on the board for RT, and obtained funds for that non-profit organization would violate the Code.
- Solicitations of donations from vendors who were lobbyists would not be permitted unless the gifts were valued at \$100 or less.
- Staff recommended that Ms. Moguillansky-DeRose work for the County without serving on a board of directors. Even if she were a board member, she could not solicit funds for a nonprofit from lobbyists or from employers of lobbyists.
- In summary, there was no prohibition against Ms. Moguillansky-DeRose, in her official position as principal planner at OCR, from participating in meetings or otherwise being involved with RT and the activities and programs it provided to County residents. One cannot do so as an officer or director of that organization, and additionally if one is a County employee, one may not solicit donations from County vendors who employed lobbyists, unless it was done on behalf of the County in the performance of one's official duties for use solely by the County in conducting official business.

VI.e. – CONTINUED

- The basis for the opinion in allowing Ms. Moguillansky-DeRose to be on the board as a representative of the County was her supervisor's directives. If she did not have a vote or a voice on if she were directed or approved by the County to be involved with that board, then that would not be a violation of the Code. In some instances, such as audit committees, an employee's duties could create conflicts. In this instance, her supervisor and her job required that she work in the community.

Mr. Farach stated that as a monitor, Ms. Moguillansky-DeRose would not be the best candidate for that role because someone who was not involved in the process would be objective and could create a structural barrier against fraud within the system. He said that his vote was to not allow her to serve as a monitor, and that an independent person could do so in her place as opposed to someone within the department. He said that he applauded her desire to remain involved in the community. He added that her involvement with an organization that received funding from the County concerned him.

Mr. Harbison remarked that:

- He agreed with the opinion and viewed the other arguments for permitting Ms. Moguillansky-DeRose to remain on the board as advocacy.
- While this individual wanted to be an observer of how allocated funds were being used, he did not believe that to allow the individual to be a monitor of the program would be beyond the scope of the opinion.

Mr. Reinhart stated that Mr. Johnson's analysis of the Code was accurate, and that he agreed with Mr. Farach's evaluation that the issue was management-related. He suggested that the opinion be referred to the IG, who could review this case from a programmatic analysis standpoint. He concluded that the role of the COE was to apply the Code as written, which the ED had done, in his opinion.

MOTION to approve the recommendation on proposed advisory opinion RQO 10-020. Motion by Bruce Reinhart, seconded by Ronald Harbison, and carried 5-0.

VI.f. RQO 10-021

Mr. Johnson said that:

- Ms. Vianey Yurkovich, a senior aide program coordinator for the Palm Beach County Division of Senior Services, filed the request for an opinion. The County operated several senior centers and permitted non-profit organizations and vendors to provide services at open houses.
- The opinion was reversed because the division informed the seniors that they could host raffles in the facilities, after which, the ED's office was contacted for an opinion to determine whether the Code had been violated by allowing the raffles in County facilities.
- There was no language in the Code relating to raffles, and the ED could only advise them about the Code. Florida State Statute 849.0935 prohibited lotteries from taking place unless operated by the State or a 501(c)(3) non-profit organization.
- The opinion letter issued by the ED said, "You are not afoul of the Code by denying them."

Dr. Fiore asked for clarity on the conclusion paragraph of the opinion which stated, "to the extent that a raffle is permitted on County property." She said that it was an unusual lead-in since there were only two cases mentioned in which a raffle would be permitted.

Mr. Johnson recommended deleting the language noted by Dr. Fiore and replacing it with the language:

In conclusion, County employees may not benefit by permitting a lottery, nor may County employees accept gifts from vendors in exchange for any official public action, legal duty performed or legal duty violated by the employee. In addition, for-profit vendor lotteries are prohibited by State law. Lastly, limited vendor marketing on County property does not violate the Palm Beach County Code of Ethics or related ordinances.

MOTION to approve the proposed opinion letter as amended to include the changes as discussed for RQO 10-021. Motion by Bruce Reinhart, seconded by Dr. Robin Fiore, and carried 5-0.

VI.g. RQO 10-023

Mr. Johnson stated that:

- The opinion involved Dennis Koehler and his position as general counsel on the Westgate/Belvedere Homes Community Redevelopment Agency (Westgate CRA), and benefits that were being held on his behalf.
- The letter confirmed that the Code could not be changed for any cause or person. It stated that it was a violation to receive donations in excess of \$100 from vendors, lobbyists or their employers who lobbied the Westgate CRA and any related department.
- Mr. Koehler subsequently resigned from the Westgate CRA, rendering the decision moot. Pursuant to the rule of procedure, Section B 2.4 (f) stipulated that once submitted, an advisory opinion request could not be withdrawn by the submitting party.

Dr. Fiore stated that:

- She disagreed with the characterization of the proposed opinion as moot because Mr. Koehler's resignation followed the ED's response to the opinion with the attorney.
- Officials such as Commissioner Karen Marcus had advertised events and had used political titles.
- The opinion letter was important because it would address similar acts by officials.

Mr. Reinhart commented that Dr. Fiore was correct in her analysis because it clearly outlined that individuals who chose to serve on boards could not take money from a lobbyist, or host a fundraiser, or accept gifts in excess of \$100, or accept any donation from a lobbyist. Instead they would be required to step down from their public positions.

Mr. Farach remarked that Mr. Koehler had served the County for many years and had done so with a great deal of honor and integrity. Even now, he still acted with honor and integrity by complying with the rules and not requesting special exceptions for his case, he stated. Mr. Harbison concurred with Mr. Farach's statement.

VI.g. – CONTINUED

Dr. Fiore suggested amending the wording in the opinion letter on the last page which read, "We recognize the longstanding commitment and contribution," and that the following words be stricken, "and the appropriateness of the fundraiser," because the COE had no idea whether it was appropriate or in what sense it would have been appropriate or inappropriate. She said the sentence would read, "The ethics commission wishes every success to Mr. Koehler." Mr. Reinhart concurred with the changes proposed by Dr. Fiore.

MOTION to approve the proposed opinion letter as amended to include the changes as discussed for RQO 10-023. Motion by Dr. Robin Fiore, seconded by Bruce Reinhart, and carried 5-0.

VI.h. RQO 10-024

Mr. Johnson stated that:

- The request was received by Bob Nichols, Chief Executive Officer and Executive Director for the Grassy Waters Preserve. He inquired that the appropriateness of a fundraiser, "gala and golf classic," and asked whether vendor sponsors could invite County employees or officials as guests without violating the Code's gift prohibitions.
- The Code required that the donation and gift limit was \$100 from any: lobbyist; employer or employee of a lobbyist; or principal who lobbied the official's commission, board, or any department that was connected in any way within the authority of the board.
- The value of the gift was calculated based on the cost of the event to the public, and not the cost for hosting the event. Each table of 10 persons that was purchased by a vendor or lobbyist would cost \$1500, which meant that one seat cost \$150. The gala dinner cost \$75, but if another ticket were provided for a spouse or other guest, it would constitute an indirect benefit, as both seats would cost \$150.

VI.h. – CONTINUED

- The opinion letter cited s.112.3148, and the Florida Administrative Code, Rule 34-12.190 that provided guidance on indirect expenditures, and stated:

Where an expenditure is made to a person other than the agency official or employee by a lobbyist or principal, where the expenditure or benefit of the expenditure ultimately is received by the official, and where the expenditure is provided with the intent to benefit the official or employee, such expenditure will be considered a prohibited indirect expenditure to the agency official or employee.

- In summary, the advice of the commission would be that a \$75 ticket could be given as long as there was no benefit or violation of another section of the Code.
- There existed a Grassy Waters Preserve, a non-profit organization that administered the actual preserve; and a Grassy Waters Preserve that was operated by the County.
- It was not specifically disclosed that the sponsor was a lobbyist or other governmental entity. Some business entities were not required to register as lobbyists, so opinions served to cover all scenarios as applicable to the Code.

MOTION to approve the proposed opinion letter for RQO 10-024. Motion by Manuel Farach, seconded by Dr. Robin Fiore, and carried 5-0.

VI.i. RQO 10-026

(CLERK'S NOTE: Judge Edward Rodgers recused himself from the discussion and left the meeting due to a conflict of interest which involved his daughter-in-law.)

Mr. Johnson stated that:

- Mrs. Rodgers took care of property that was owned and titled in her sister's name, and she did not receive compensation for managing the family property. A prospective tenant had received grant funding for rental and utility assistance from the Resident Education Action Program (REAP). Mrs. Rogers asked whether she could sign paperwork for the REAP grant.

VI.i. – CONTINUED

- Mrs. Rodgers' sister worked with the Palm Beach County Division of Human Services which administered and operated the grant. Mrs. Rodgers worked for the Department of Community Services, which was not in the department that monitored the REAP. Mrs. Rodgers asked whether she could fill out the paperwork for her sister.
- The conduct component of the opinion would mean that Mrs. Rodgers could not be involved or get a benefit for herself or a family member. Since she was not involved with obtaining the grant or selecting the individual for the grant, the ruling was that she was in compliance with the Code and could complete the application.

Mr. Reinhart asked whether the analysis was in terms of the contract, and not the grant, since her sister would have the contract with the County, Mrs. Rodgers was not employed by her sister because she was not receiving compensation, so therefore Section 2-443 (c) would not apply.

Mr. Johnson remarked that had Mrs. Rodgers received compensation from her sister for managing the property, then her sister would be her outside employer; or, if she were in business with her sister, they would be considered as vendors with the County. He concurred with Mr. Reinhart that the absence of a compensation arrangement meant that there was no employee-employer relationship.

Dr. Fiore asked whether the REAP application would be approved by the division in which Mrs. Rodgers was an employee.

Mr. Johnson clarified that:

- The grant approval was in the department, but not the division in which Mrs. Rodgers worked.
- The first full paragraph on the second page of the opinion letter stated that if at any point Mrs. Rodgers became a personal party to the contract by signing the application, or if she started getting compensation and the REAP contract was ongoing, then she would be required to terminate employment with her sister.

VI.i. – CONTINUED

MOTION to approve the proposed opinion letter for RQO 10-026. Motion by Bruce Reinhart, seconded by Dr. Robin Fiore, and carried 4-0. Judge Rodgers abstained from the vote.

(CLERK'S NOTE: Judge Edward Rodgers rejoined the meeting.)

VII. COMPLAINTS

VII.a. C 10-004

Mr. Johnson stated that:

- A complaint was filed by a County employee who worked for the OCR. An off-site County event was held that involved graduates from the REAP. Elected officials, County staff, and the public were invited to the luncheon.
- Commissioner Priscilla Taylor's election opponent, Vincent Goodman, was also present at the function. His daughter, Crystal Matthews, was the complainant. She considered being his campaign chairperson, but changed her mind later.
- Commissioner Taylor and Houston Tate, the director for the Office of Community Revitalization, and Deputy County Administrator Verdenia Baker were seated at the same table. Ms. Matthews was reprimanded at the function by her supervisor, Mr. Tate. He told her that political literature was found at the table, and he was told to "take care of this."
- Ms. Matthews interpreted Mr. Tate's comment to mean that Commissioner Taylor directed Mr. Tate to address the matter with her. This could be an inappropriate use of her official position, she thought.
- An investigation was conducted. Mr. Tate was interviewed, and he said he could not remember who told him to do something about the literature. He said that no one told him to do anything, but that they just said to either take care of, or look into, the situation. Mr. Tate independently looked into the situation. He believed that Ms. Matthews should be reprimanded because she had a duty as per County policy to prevent campaigning at a County function. Further, she had a duty to tell her father to refrain from handing out his literature.

VII.a. – CONTINUED

- Ms. Baker was interviewed, and she recalled that Commissioner Taylor gave her the campaign brochure and asked whether it was permitted. Ms. Baker responded that it was not permitted, and stated that she would take care of it. There was directive from Commissioner Taylor, and the complainant had no knowledge of how the complaint originated.
- Staff recommended that the COE find no probable cause in this matter.
- It was proposed that the probable cause definition used by Miami-Dade Assistant Advocate Miriam Ramos be adopted into this opinion. The definition stated that:

Probable cause exists where there are reasonably trustworthy facts and circumstances for the Commission on Ethics to conclude that the respondent should be charged with violating the Palm Beach County Code of Ethics.

- After conducting the investigation, no reasonably trustworthy facts and circumstances were found. Therefore, it was requested that the claim be dismissed for lack of probable cause.

Mr. Reinhart suggested that the language, “the respondent attended the luncheon and was sitting at the table containing the offensive literature,” and that the word “offensive” be stricken from the recommendation memorandum, because the characterization of the literature was not appropriate.

Mr. Johnson stated that:

- He would modify the memorandum in response to Mr. Reinhart’s remarks.
- The complaint was made under oath and the complaint form was submitted with supporting materials that were used during the investigation. The complainant stated that she had not heard Commissioner Taylor direct Mr. Tate to speak with her regarding the election literature. However, given that the phrase, “look into it”, was used, it was determined that the matter should be investigated and statements taken.

VII.a. – CONTINUED

Mr. Farach stated that:

- Issues existed that related to the presence of sufficiency and probable cause. The matter should be investigated further, and a hearing held with the complainant in order to inform her that her statements would be taken under oath.
- If the complainant, without sufficient facts, delivered testimony that Commissioner Taylor directed Mr. Tate's actions, then the complainant's statements could be considered perjury.
- The allegations were sufficiently serious and needed to be advanced to the next level. The complainant should be notified that no one should use the COE for extracting political points or furthering political agendas.

Mr. Johnson remarked that:

- He respectfully disagreed with Mr. Farach's suggestion to hold a hearing on the matter because the complainant provided a memo that said:

Mr. Tate stated that if this was a major offense then she would have been suspended. He stated this was not something planned or intentional on my behalf or that of my father, but he was instructed to "take care of the situation."

- Mr. Tate agreed with the statement made by the complainant, but what he meant was that Ms. Baker asked him to look into the situation. He felt that he was following a directive from his supervisor, and not Commissioner Taylor. The complainant had no way of knowing the source of the directive.

Mr. Farach commented that unless public officials admitted that they made improper statements, the COE would not proceed on the matter. However, this situation warranted further investigation because it involved a sitting politician and an opponent, and this could be construed in several ways, he said. He stated that if a legal sufficiency test could be passed in such a high profile case, then the COE should look closely at holding a hearing.

VII.a. – CONTINUED

Mr. Johnson reiterated his earlier objection for not calling a hearing and added that:

- There was no probable cause to go forward, and there were only a few other persons at the table that were not interviewed.
- The statements made by Ms. Baker were not taken under oath.
- Assuming that Commissioner Taylor violated the Code, she would have had to actively instruct someone else to act on her behalf. This would constitute a misuse of office because of the financial benefit associated with her salary by retaining her job.

Mr. Reinhart stated that even if a hearing were held, a Code violation may not be determined in this instance.

Dr. Fiore suggested that Mr. Johnson ask that Ms. Baker's comments be made under oath.

Judge Rodgers clarified that the request would be to direct Mr. Johnson to investigate further and ask Ms. Baker whether she would make her statements regarding the incident under oath. He suggested that the matter be tabled prior to the COE's final determination.

MOTION to table the matter and that Mr. Johnson request Ms. Baker's statement in the complaint to be made under oath. Motion by Dr. Robin Fiore, seconded by Manuel Farach, and carried 5-0.

Mr. Johnson stated that there may have been other persons sitting at the table with Commissioner Taylor, and he asked the COE whether additional persons should also be interviewed.

Judge Rodgers stated that the motion was related to Ms. Baker's statements. Should that conversation produce further leads, and then they could be explored, he stated.

Mr. Farach asked whether there were agenda items that could not be tabled until the next meeting.

VII.a. – CONTINUED

Mr. Johnson stated that the remainder of the agenda could be tabled as non-critical. He suggested that public comments be entertained prior to the meeting's adjournment.

(CLERK'S NOTE: After a brief discussion, it was the consensus of the committee to table the remainder of the agenda with the exception of item VIII.)

VII.b. C 10-005 – Page 2-9

VIII. PUBLIC COMMENTS

VIII. A. DISCUSSED: Complaint C 10-005

PUBLIC COMMENT: Andrew Schaller.

Mr. Reinhart stated that the COE did not enforce the first amendment, and that the first amendment would not necessarily apply to an event that occurred at a private shopping mall. He asked Mr. Schaller to cite the provision of the Code that he wanted the COE to enforce against Commissioner Santamaria; and he asked Mr. Schaller if his intent was to make a political speech. He added that a personal financial benefit would need to be evidenced in order to justify a violation of the Code.

Mr. Farach remarked that to his knowledge, Commissioner Santamaria had waived his salary.

Mr. Johnson stated that he would include a copy of the sworn law enforcement officer's report read by Mr. Schaller into the complaint.

Mr. Reinhart stated that the public needed to be educated that the COE was a body that was charged with enforcing the Ethics Ordinance that was passed by the Board of County Commissioners. Although members of the public disagreed with actions taken by some elected officials, acts perceived as inappropriate would not necessarily constitute a violation of the Code, he concluded.

Mr. Harbison suggested that complainants be asked to indicate which section of the Code supported their claims.

IX. WORKSHOP ITEMS – Not discussed

- IX.a. Email Domain Names – Not discussed
- IX.b. Press Releases/Releasing Documents to the Press – Not discussed
- X. EXECUTIVE DIRECTOR COMMENTS – Not discussed
 - X.a. BCC Waivers – Not discussed
 - X.b. Consideration of Code Revision – Not discussed
 - X.c. Staff Update – Not discussed
- XI. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Bruce Reinhart, seconded by Ronald Harbison, and carried 5-0.

At 7:05 p.m., the chairman declared that the meeting was adjourned.

APPROVED:



Chair/Vice Chair