

MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS

I. CALL TO ORDER: November 4, 2010, at 4:04 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. – Absent

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 stated that Bruce Reinhart would be appearing telephonically as he was participating in a trial. He disclosed that he would be leaving at 5:30 p.m. due to a prior commitment, and that vice chair Manuel Farach would facilitate the remainder of the meeting. He reminded everyone to either turn off or silence their cell phones.

IV. APPROVAL OF MINUTES FROM OCTOBER 7, 2010

Judge Rodgers asked that the corrections of the October 7, 2010, minutes be facilitated by Alan Johnson, Commission on Ethics (COE) Executive Director (ED).

Mr. Johnson read the following corrections:

- Page 4, top of page, first bullet, the wording, "Mr. Johnson had no knowledge..." was changed to, "He had no knowledge..."

IV. – CONTINUED

- Page 12, top of page, first bullet, the wording, “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 interest in the outcome” was changed to, “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.”
- Page 12, bottom of page, last bullet, the wording, “The issue with 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” was changed to, “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.”
- Page 13, bottom of page, last paragraph, the wording, “Mr. Fiore asked whether the response to the advisory opinion...” was changed to, “Dr. Fiore asked whether the response to the advisory opinion...”
- Page 24, bottom of page, third paragraph, the word “Dr. Reinhart” was changed to “Mr. Reinhart.”
- Page 31, fourth paragraph, middle of page, the wording, “Judge Rodgers clarified that the request would be to direct Mr. Johnson to investigate further and ask Ms. Baker whether she would state under oath the nature of her complaint” was changed to, “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.”
- Page 31, seventh paragraph/second to last paragraph, bottom of page, the wording, “Judge Rodgers stated that the motion was related to Ms. Baker’s statements. Should that conversation produce further leads, then they could be explored, he stated” was changed to, “Judge Rodgers stated that the motion was related to Ms. Baker’s statements. Should that conversation produce further leads, and they could be explored, he stated.”

IV. – CONTINUED

MOTION to approve the minutes of October 7, 2010, with the changes read by Alan Johnson. Motion by Dr. Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

Mr. Farach stated that on page 6, his first name was cited as Manual and should be spelled with an “e,” Manuel.

MOTION to approve the minutes of October 7, 2010, to reflect the proposed change by Manuel Farach. Motion by Ronald Harbison, seconded by Dr. Robin Fiore, and carried 4-0. Bruce Reinhart absent.

Judge Rodgers stated that public comment cards were submitted for Complaint (C) C 10-004. Mr. Johnson added that the complaint corresponded with item VII. on the COE meeting agenda.

V. PROCESSED ADVISORY OPINIONS

Mr. Johnson stated that:

- Rule 2.5 of the Code addressed processing advisory opinions (AO). Some AO could be directly answered by the Code while others had to be interpreted.
- Currently, several AO and outside employment (OE) requests had been received. It was anticipated that the number of requests would increase significantly once the municipalities signed the interlocal agreement with the COE. The rules of procedure stipulated that the COE chair or vice chair was authorized to release the AO without the opinion being discussed before the entire COE.
- Direction was needed from the COE whether to omit the AO from the agenda, or group the AO into a consent agenda item, and discuss only sections that were pulled by the COE or members of the public.

Dr. Robin Fiore stated that:

- She was concerned that the Code would be used to directly answer requests. In the past, COE members based their responses to requests on the interpretation of facts. The Code only answered the question formulated, and the correct question was not always posed.

V. – CONTINUED

- The consent package could be provided to the COE before the information became official, and if there were no objections, the COE could approve the package.

Mr. Johnson said that currently, AO packages were compiled and published to the COE Web site a week before a meeting. A specific consent agenda item could be compiled and published as well; however, the AO were not being provided to the media, the League of Cities, or any other entity at this time, he stated.

Mr. Farach stated that if a consent agenda process were implemented to preserve time during COE meetings, staff could recommend a procedure where sufficient disclosure was received in advance of the meeting by direct release, as opposed to compelling the public to access the COE Web site for the information. He believed that the release of information process should be informal and expedited, he added.

Mr. Johnson explained that AO were processed until the Friday before the COE meeting.

Judge Rodgers recommended that the consent agenda be published in advance so that interested parties could prepare to comment at the next COE meeting.

Mr. Johnson stated that:

- Consent agenda items would be published in the same format as the proposed AO, and the procedure for reviewing and voting on the item would occur in one vote.
- The issue of press releases was on today's COE agenda and could be tabled until item IX.b. was discussed later in the meeting.
- Consent agenda items could be discussed individually by the COE or by members of the public.
- Direction was sought from the COE as to whether the consent agenda format was suitable for reviewing proposed AO.

Dr. Fiore requested that the AO be categorized according to other employment, gifts, and other topics.

V. – CONTINUED

Mr. Johnson explained that outside employment would be categorized as OE, which would be placed at the end of the RQO number, and would serve to differentiate that item. Other issues could be catalogued in content order, he added.

MOTION to table the issue of press releases until agenda item IX.b. was discussed. Motion by Manuel Farach, seconded by Dr. Robin Fiore, and carried 4-0. Bruce Reinhart absent.

Mr. Johnson requested that the COE consider voting on item V. in its entirety because AO were reviewed by the chair, Judge Rodgers, and would be distributed to the respective parties pending today's meeting.

MOTION to approve accepting items V.a. RQO 10-027-OE, V.b. RQO 10-028-OE, V.c. RQO 10-029-OE, and V.d. RQO 10-031-OE, as discussed. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

VI. PROPOSED ADVISORY OPINIONS

VI.a. RQO 10-030

Mr. Johnson stated that one AO was new while another was a revised opinion. He reported that:

- Item RQO 10-030 involved Rachel Ondrus, Executive Director of the Palm Beach County Legislative Delegation, who relocated to the county. While searching for a home to purchase, she temporarily rented a condominium that was owned by a woman whose husband was a lobbyist for the State legislature.
- The rental price of \$1,100 was the average cost for the size and location, as per www.rentometer.com, a Web site purporting to calculate fair market values for local rentals.
- In comparison, a slightly larger condominium with an extra bathroom was in the same building as Ms. Ondrus' rental that was being leased for the same amount. Although it was owned by the non-lobbyist spouse, the property owner and her husband, a lobbyist, shared equally in the asset.

VI.a. – CONTINUED

- The issues presented in this inquiry correlated with section 2.444 of the Code of Ethics (Code) – prohibition from accepting a gift from a lobbyist at greater than \$100. One of the questions posed was whether the Code would prohibit a gift by a lobbyist who did not lobby an employee’s governmental entity.
- Ms. Ondrus later decided not to rent the apartment, and she removed herself from the process. However, as per the rules of the COE once submitted, AO requests could not be withdrawn.
- The second issue was, if a gift was given to Ms. Ondrus, would the person giving the gift be the wife, or her husband, or both parties.
- The third issue was the fair market value of the rental in relation to Florida State Statute (F.S.S.) 121.3148. In a prior AO, the Code and the COE used F.S.S. 121.3148 as a guide to determine the value of a gift and the offset for receiving that gift. Any increment in excess of \$100 would be considered a gift. A determination would need to be made as to the offset of the rental property’s worth, had it been assessed at \$1,500. If that was the case, then Ms. Ondrus would have received a net gain of \$400, which would have constituted a prohibited gift from a lobbyist.
- Based on the facts given, the sufficiency of the evidence indicated that the rental price was at fair market value based on comparables, and it appeared that no residual gift had been received.
- The letter contained an additional admonishment that if at any time the rent was reduced or the value of the property increased, the employee would have an ongoing responsibility to comport with the Code.

Judge Rodgers commented that the COE reviewed a scenario that did not exist. He recommended that in response to the request, Mr. Johnson could respond that the request was withdrawn due to that fact.

Dr. Fiore said that it was worth noting that Ms. Ondrus withdrew the request in the middle of the process because of the information that was being developed; and that a review of the request had fulfilled an educational purpose.

Ronald Harbison concurred and added that the review would also provide guidance on similar future requests.

VI.a. – CONTINUED

Mr. Johnson stated that Ms. Ondrus was cooperative and provided further information even after withdrawing her request for AO. He said her actions were not inappropriate.

MOTION to approve accepting staff's recommendation for RQO 10-030. Motion by Dr. Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

VI.b. RQO 10-020 (Revised)

Mr. Johnson stated that:

- The complaint involved Ruth Moguillansky-DeRose, a County employee who worked as a Principal Planner for the Office of Community Revitalization (OCR). She volunteered for Rebuilding Together of Palm Beaches (RT), a non-profit organization that rehabilitated houses for low-income families, the disabled and elderly citizens.
- During the processing and posing of the questions received from Assistant County Attorney Leonard Berger regarding the AO it was believed that Ms. Moguillansky-DeRose had already been appointed to the RT board.
- When the opinion letter was published after the last COE meeting, Ms. Moguillansky-DeRose responded through her supervisor that the opinion portrayed her as violating the Code by being on the RT board. She said that the request had been sent to determine whether she could serve on the RT board.
- While the actual opinion of the request was not changed, the revised version of the opinion underscored that Ms. Moguillansky-DeRose had come forward before taking the step to join the RT board.

MOTION to approve accepting staff's revised recommendation for RQO 10-020. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

VII. COMPLAINTS

VII.a. C 10-004 (Continued)

Mr. Johnson explained that the amended letter would replace the initial letter, and the word “revised” would be stamped on the new version. He said that a hard copy of the original letter would be kept for public records purposes, and that the revised letter would be reflected on the COE Web site.

Mr. Johnson suggested that the chair take public comment on the item once the presentation by COE investigator Mark Bannon was completed. He said that:

- The complaint resulted in legal sufficiency and a motion to dismiss was recommended by staff due to a lack of probable-cause. It was the determination of the COE that additional information be requested from Deputy County Administrator Verdenia Baker, as well as her sworn testimony.
- After conferring with Mr. Bannon, a thorough investigation was conducted and sworn statements were taken from a number of persons who were present at the event in question. The parties included respondent Commissioner Priscilla Taylor, District 6 secretary Dennis Lipp, Director of Human Resources (HR) Wayne Condry, OCR Director Houston Tate, Palm Beach State College professor Dr. Jay Matteson, and Commissioner Shelly Vana.

Judge Rodgers recommended that public comments be made following the presentation of the ED’s findings.

In presenting the investigative report, Mr. Bannon disclosed that:

- Seven people were interviewed, but only six of them sat at the same table during the County function with Commissioner Taylor, Mr. Tate, and Ms. Baker.
- Of those interviewed, Commissioner Vana, Mr. Lipp, and Dr. Matteson denied seeing any political writing or literature, and did not hear any conversation in that regard. Their statements were of little value to the investigation.
- Mr. Tate’s sworn statement was previously taken by Mr. Johnson, and the details of that interview were reviewed.

VII.a. – CONTINUED

- Ms. Baker’s statement taken under oath conveyed that:
 - While seated at the table, Commissioner Taylor asked Ms. Baker whether political literature was permitted at County functions. Ms. Baker looked at the literature from Vincent Goodman, who was a candidate running for Commissioner Taylor’s seat on the board. Ms. Baker asked Mr. Tate to take care of the matter because she expected directors under her charge to handle the administration of their County departments.
 - Ms. Baker later received a draft copy of Mr. Tate’s summary about the incident. At a subsequent meeting, Ms. Baker stated that Mr. Tate had processed the matter through the County’s human resources department and had followed appropriate guidelines for policy and merit rules.
- During Commissioner Taylor’s interview she disclosed seeing political advertisements on several tables upon entering the room at the County. It was at her table that political literature was found. She handed it to Ms. Baker, and asked, “Is this allowed?” Ms. Baker then gave the literature to Mr. Tate.
- Commissioner Taylor further reported that the only other conversation about the incident occurred when she asked Ms. Baker whether the situation had been resolved. Commissioner Taylor explained that since the policy had been violated at a County function during an election campaign, she wanted to make sure that the party who distributed the literature had not created an unfair advantage.
- Mr. Condry was not at the table, and as human resources director, he met with Mr. Tate to discuss whether the reprimand fell within the guidelines of the merit rules.
- At no time did the parties interviewed indicate that Commissioner Taylor or anyone else directed them how to handle the situation or dictated the punishment to be administered.
- It was not within the scope of the investigation to determine whether the punishment was correct because the evidence determined that Commissioner Taylor had not interfered with the process.

VII.a. – CONTINUED

- Mr. Tate was sworn in when he gave a statement to Mr. Johnson. Every other party interviewed provided a sworn statement with the exception of Dr. Matteson who was interviewed telephonically due to time constraints.

Mr. Johnson stated that:

- Staff's recommendation remained that the complaint be dismissed for lack of probable-cause. Throughout the investigative process, there was no conflicting evidence regarding the manner in which the information was brought to the attention of Ms. Baker or Mr. Tate. Based on the weight of the evidence, Commissioner Taylor had not committed an act of misconduct.
- The complaint was made by Chrystal Mathews, OCR Senior Planner. The incident took place at a hotel where the County Resident Education Action Program (REAP) held a graduation luncheon. OCR and Ms. Mathews planned the event where political literature was seen on one table.
- An internal investigation by the County determined that Ms. Mathews had violated a County policy regarding election campaigning at County functions.
- A memorandum issued by Mr. Tate stated that he did not believe Ms. Mathews intentionally placed the literature. However, she allowed it to be placed. As the designee in charge of the function, it was her duty to notify her father, who was running for political office, that distributing political literature at the function was prohibited.
- The County's rules and policy regarding campaign literature were vague, and this was an internal matter that the County would adjudicate.
- The nexus was that by securing political office, the associated salary would yield a financial benefit.
- In Ms. Mathews' complaint:
 - She never stated that she heard Commissioner Taylor direct anyone to act, and responded to Mr. Tate's verbal reprimand; and,

VII.a. – CONTINUED

- She assumed that the statements made were by Commissioner Taylor. However, the investigation revealed Ms. Baker had directed Mr. Tate to, “take care of,” or, “look into the situation.”

Mr. Harbison stated that he was not comfortable with the financial nexus relating to salary loss.

Dr. Fiore underscored that salary was not the only issue, because an elected official would receive significant benefits such as civil service credit, pension, and health benefits by maintaining their offices.

Judge Rodgers stated that public comment would be taken at this time.

VIII. PUBLIC COMMENT

a. DISCUSSED: C 10-004

PUBLIC COMMENT: Chrystal Mathews.

Ms. Mathews commented that:

- The COE should reconsider the ED’s recommendation of no probable-cause, because she believed that the actions of the respondent Commissioner Taylor were politically motivated. Ms. Mathews opposed the insinuation that she was acting as her father’s campaign manager, although the COE later determined that information to be false.
- A thorough investigation was not conducted and there were several inconsistencies in the sworn statements taken. The complaint was categorized as politically motivated, it was not taken seriously, and therefore condoned unethical behavior in County government.
- It was believed that any complaint with legal sufficiency and motive would be dismissed to the favor of the elected official. The complaint was made to correct an injustice that affected her professional career. The COE should also review the County’s policy and procedure manual (PPM).

VIII. – CONTINUED

Judge Rodgers asked whether it was proper for political advertisements to be placed on tables during County functions.

Ms. Mathews stated that:

- Political information was not placed on any tables at the function. Had the investigation been conducted appropriately, the investigator would have asked her or Mr. Goodman whether they had distributed literature to any individuals at the meeting.
- It was believed that Mr. Goodman handed one or two pieces of literature to a few individuals sitting at a table, and that these individuals were responsible for placing the information on the table at the function.
- A written reprimand was given to Ms. Mathews on July 29, 2010, which was approximately one-and-a-half-month after the event was held on June 12, 2010.
- Commissioner Taylor exercised her power by asking at a later date whether the issue had been handled, and this constituted a directive.
- The REAP was a civic engagement program that taught residents how to become active in County government. In the past, participants had engaged in mock commission meetings to learn about the process.
- For the last six years, the County commissioners and candidates who ran for elected offices were encouraged to attend REAP functions. Additionally, members of the board also signed certificates for program participants.
- It was impossible to dictate another individual's actions. In a room containing 200 people, it was unclear how only three people saw political literature. Seating charts and pictures had been submitted with the complaint as supplementary aids.

VIII. – CONTINUED

Mr. Harbison stated that:

- The question before the COE was whether Commissioner Taylor abused her power, which was a different issue than the reprimand that was given to Ms. Mathews.
- The issue hinged on whether a directive had been given by Commissioner Taylor. In reading the investigative report and applying the Code, it did not appear that Commissioner Taylor had violated the Code because she had made an inquiry and not a directive.
- Even if Commissioner Taylor had made a directive, it was questionable that there were grounds under the Code for dealing with such a directive. Otherwise, the Code would require that a nexus exist between a financial gain and the actions taken by Commissioner Taylor. Therefore, he was not prepared to make that assumption based on the grounds presented.

Ms. Mathews stated that the actions taken by the commissioner were politically motivated. She said that in the six years with the County as an exemplary employee, she was never reprimanded; and, her excellent work performance was even noted in the written reprimand. She said she believed that because Commissioner Taylor and Ms. Baker socialized outside of the office, then that relationship influenced the manner in which the situation was handled.

Mr. Harbison stated that he did not believe the evidence demonstrated that a directive had been given.

Dr. Fiore asked Ms. Mathews whether she believed the reprimand would have otherwise occurred.

Ms. Mathews responded that Mr. Tate said to her, “I don’t have any facts, but I was told to take care of this.”

VIII. – CONTINUED

Dr. Fiore stated that:

- From the COE's viewpoint, if there was literature on the table at the function that was not supposed to be there, it was within reason for personnel action to be taken. Even if no one had said anything about the literature, something in error reasonably should have been addressed.
- A different issue was being posed by Ms. Mathews' objection to the reprimand, but the COE could not insert itself into the County's personnel process unless there was some evidence that an ethics violation was implicated or explicit.
- The investigation did not establish that Commissioner Taylor misused her political office, nor did evidence exist that her actions resulted in Ms. Mathews' reprimand. It was likely that the reprimand resulted from the campaign literature being placed on the table at the function.
- The County had an established rule which stated that political literature should not be distributed at County functions. If Ms. Mathews wins her personnel grievance because the County's policy was unclear, that did not affect the COE's determination that Commissioner Taylor had not violated the Code.

Mr. Farach asked Ms. Mathews to identify the inconsistencies she recognized in the sworn statements.

Ms. Mathews communicated the following:

- There was an instance where Ms. Baker stated that Commissioner Taylor asked once about the literature. However, in the statement that Ms. Baker made, Commissioner Taylor asked about the literature twice. The first instance was at the function, and the second inquiry was made a few weeks later in passing. Ms. Mathews could not recall any other inconsistencies but felt that more discrepancies could be found in the statements made by the other interviewees.
- She was unaware of any public policy set forth by County Administrator Robert Weisman in 2005 that prohibited politicking at County events.

VIII. – CONTINUED

- She had in her possession a copy of PPM CW-012, and stated that, “It is the policy of Palm Beach County Commissioners that all County officers and employees are citizens, and as such are afforded all the rights and privileges with respect to this nation’s democratic process as are enjoyed by citizens not in County employment. At no time may any County employee engage in any political activities during normal working hours, nor shall any public property equipment or funds be utilized in the conduct of such activities.”
- The event took place on a Saturday at the Airport Hilton Centre. The policy did not state anything about County events. She was a County employee but her father Mr. Goodman was not.

Mr. Farach communicated the following:

- Ms. Mathews’ objections were that sworn statements were not taken, and that when sworn statements were taken, there were inconsistencies.
- He asked whether the reprimand was improper because the County event was not held within normal working hours.
- The reprimand was a County personnel issue rather than an ethical one, because it involved Commissioner Taylor’s misuse of her office.
- In asking Ms. Mathews whether she had direct evidence that Commissioner Taylor misused her office, Mr. Farach said that he respectfully disagreed with Mr. Harbison’s opinion that no financial component existed.

Ms. Mathews concurred that the reprimand was personnel related, but she stated that a cause and effect issue presented itself. By Commissioner Taylor initially pointing out the information, directing staff to take care of the situation, and at a later date readdressing the issue, those actions constituted a misuse of office, she stated.

Mr. Farach and Mr. Harbison noted that Commissioner Taylor had not given a directive.

Dr. Fiore clarified that Ms. Baker had made the statement, “I’ll take care of it.”

VIII. – CONTINUED

Mr. Farach stated that Commissioner Taylor's statement, "was this proper," was in relation to the political literature.

Dr. Fiore stated that as the daughter of Commissioner Taylor's opponent Ms. Mathews' statements gave the impression that she was untouchable. She asked Ms. Mathews to explain whether there was anything improper about Commissioner Taylor's inquiry.

Ms. Mathews stated that it was evident that Commissioner Taylor's influence caused an action to occur. She said the reprimand was received on July 29, 2010, and the timeline was in sequence with the ethics process.

In response to Mr. Farach's inquiry, Mr. Johnson stated that according to section 2-260.8 of the Code, the statute of limitation for filing an ethics complaint was two years.

Mr. Farach commented that the complaint could have been made after the election had concluded.

Judge Rodgers asked whether any other parties had comments that were different from Ms. Mathews' statements. He said that the basis of the complaint stemmed from allegations that Commissioner Taylor abused her office. He asked the next public commentator whether she had been interviewed previously, and whether her statements could be sworn in.

PUBLIC COMMENT: Sylvia Sharps.

(CLERK'S NOTE: Judge Rodgers swore in Ms. Sharps at this time.)

Ms. Sharps stated that:

- For the past three years, she was the REAP master of ceremonies. In the past two years she had been asked to acknowledge politicians and people running for office. This year, however, she was told to acknowledge only the politicians whom she knew.
- She did not see anyone place political advertisements on the tables at the function. Those who were acknowledged included Commissioner Taylor, Commissioner Vana, Mr. Mathews, Mr. Tate, and others in positions of authority who were in attendance.

VIII. – CONTINUED

- Mr. Goodman was not acknowledged because Ms. Sharps did not know him. Ms. Mathews had not introduced him to her, and she was not informed that Mr. Goodman was running for office.

Judge Rodgers interjected by asking Ms. Sharps if she had any information pertaining to the complaint against Commissioner Taylor.

Ms. Sharps said that she did not hear Commissioner Taylor make any comments or say anything about political data, because she was on the podium.

PUBLIC COMMENTS: Antonio Mathews.

Mr. Mathews stated that:

- The event was held on June 12, 2010, and seven weeks later, Commissioner Taylor in passing inquired a second time of Ms. Baker if the problem had been addressed. It was then that Mr. Tate decided to write a reprimand for Ms. Mathews, which in his opinion should not have taken seven weeks.
- He did not see anything unusual occur at the event.

Judge Rodgers asked Mr. Bannon whether he asked during the course of the investigation, why the written reprimand was issued seven weeks later.

Mr. Bannon stated that:

- He was told by Ms. Baker that Mr. Tate had been on vacation for two weeks, and that she required her staff to go through a process with HR. He had not inquired about the length of the HR process.
- A timeline for the second comment made by Commissioner Taylor could not be confirmed. The commissioner stated only that she had inquired of Ms. Baker a second time. Commissioner Taylor was interviewed after Ms. Baker so the question of the timeline was not posed.

VIII. – CONTINUED

Mr. Mathews interjected that:

- From the date of the event, June 12, 2010, until July 29, 2010, when Ms. Mathews received a written reprimand, Mr. Tate had not addressed the matter.
- Commissioner Taylor's second comment could have been an inquiry or an act of influence, and no actions transpired from June 12, 2010, until Commissioner Taylor initiated action by her comment that was made in passing.
- The investigator never interviewed Mr. Goodman to determine whether he had handed the political literature to Ms. Baker or Mr. Tate who, it was believed, had placed it on the table.
- The complaint was generated by an email that Ms. Mathews sent on May 26, 2010, to Assistant County Attorney Leonard Berger, who forwarded the email to Mr. Johnson, but Mr. Johnson never gave a response.

Mr. Johnson replied that his understanding was that Ms. Mathews withdrew her request, which was not formal. He said that Ms. Mathews had inquired whether she could work as a campaign manager for her father, but she had not made a formal request for an AO.

Judge Rodgers stated that the request had nothing to do with the current incident involving Commissioner Taylor.

Mr. Johnson recollected that he had started working on Ms. Mathews' request and was later informed that she had withdrawn her request because there was no conflict as long as she was not paid to work on the campaign. It was believed that the parameters of the request were reviewed during a previous COE meeting, he stated.

Judge Rodgers asked Mr. Bannon whether Mr. Tate had been asked why the written reprimand took so long to process. Mr. Bannon replied that he had not interviewed Mr. Tate.

VIII. – CONTINUED

Mr. Farach stated that the COE's role was not to sit as an appellate body for the County's personnel decisions, and that its focus had to be narrow to determine whether the Code had been violated. Although there was a six-week timeframe leading up to reprimand, it did not mean that Commissioner Taylor misused her office, he stated.

Judge Rodgers said that the complaint as presented did not address Ms. Mathews' punishment, and the question was whether Commissioner Taylor should be punished for some wrongdoing.

Mr. Mathews commented that the investigative conclusion could state, that seven weeks went by before Mr. Tate decided to document the incident, and it was not until after the, "in passing," that Mr. Tate decided to issue the written reprimand.

Mr. Harbison stated that the conclusions being drawn by Mr. Mathews were based on timeframe, and were a matter of speculation. He said that other assumptions could have easily been made regarding this matter.

Judge Rodgers inquired about any further comments bearing different information.

PUBLIC COMMENT: Vincent Goodman.

Mr. Goodman stated that:

- He telephoned Mr. Weisman and asked that his family be left out of the issue because the campaign was between him and Commissioner Taylor. Mr. Weisman agreed to look into the matter and get in touch with him.
- At the event, Ms. Baker greeted him, and he gave her a campaign card one of which he also handed to Mr. Tate. He did not place campaign cards on the tables at the event. He saw Ms. Baker take the card out of her purse and hand it to Commissioner Taylor.
- Subsequent to Ms. Mathews receiving her reprimand, he eventually canceled all election appearances and debates to protect his daughter.

Judge Rodgers said he thought the issue stemmed from a misunderstanding, but that Commissioner Taylor held a valid position that it was wrong to distribute campaign cards at County events.

VIII. – CONTINUED

Dr. Fiore stated that the grievance would likely be overturned when all the information contained in the investigation was revealed, and it appeared that the campaign cards were placed on the table by the persons who issued the reprimand.

Mr. Johnson said that:

- The issue of releasing documents would be discussed further in agenda item IX.b. A request would be made for the COE to amend the rules of procedure and add the release of documents.
- Normally the release of information process warranted that the COE call an executive session since information included in dismissal hearings and the investigation was not a part of the public record, unless the respondent released or agreed to release the investigative materials.
- In this instance, Commissioner Taylor waived any confidentiality from the statute, which was the reason that the matter could be discussed in public.
- A probable-cause hearing would not include the respondent. The complainant would be given an opportunity to make a statement. Witness statements would not be permitted.

Mr. Harbison commented that the Florida ethics commission adhered to the same procedures as found in probable-cause hearings. He said that executive sessions were confidential and would not be open to the public.

Mr. Johnson stated that the Code allowed the complaint to be included in the public record.

MOTION to approve accepting staff's recommendation for C 10-004. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

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

IX. WORKSHOP ITEMS

IX.a. Email Domain Names/IT Security Issues

Mr. Johnson stated that:

- Mr. Farach requested that staff research non-governmental email domain names for the COE's review.
- Staff recommended using the same domain name as the COE Web site, www.palmbeachcountyethics.com. Other domain name options on the domain name list did not mention the County.
- The COE currently owned www.palmbeachcountyethics.com at a cost of \$20 annually. Plans were in place to purchase the www.palmbeachcountyethics.org domain name.

Mr. Farach recommended that domain names www.palmbeachcountyethics.net and www.palmbeachcountyethics.org be purchased in order to prevent misuse. He said that by purchasing other domain names, public funds would be put to good use.

Mr. Johnson suggested that the COE vote on using the domain name www.palmbeachcountyethics.com. He added that the COE's business cards and letterheads would be changed when the ED's office moved to another location.

MOTION to approve accepting staff's recommendation on COE domain names. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 3-0. Bruce Reinhart and Judge Edward Rodgers absent.

Mr. Johnson said that Sheryl Steckler, Inspector General (IG) intended to hire information technology staff, and offered to allow her employee to maintain the COE database. He explained that the COE database would be virtualized as a separate domain from the County's, and would not incur any additional expenditures. While awaiting additional information from the IG, he would proceed as authorized by the COE, he stated.

IX.b. Press Releases/ Releasing Documents to the Press

Mr. Johnson recommended that the COE decide on when a release should be provided to the press since press releases generally reported the hiring of staff, the training of advocates, or community events. He said that no press releases had been sent out for AO or complaints, because neither type of request had progressed to a final hearing.

Dr. Fiore suggested that the COE should wait until Judge Rodgers and Mr. Reinhart were present to discuss press releases.

Mr. Johnson commented that:

- Probable-cause and dismissal-hearing procedures could be drafted and discussed at the next COE meeting.
- A procedure that mirrored the COE's rules of procedure and the Code should be developed because the probable-cause determination was based on the investigation.
- As the respondent, Commissioner Taylor signed a waiver authorizing the public release of information in the complaint. Ordinarily, the respondent had a right to prohibit that release of information until a determination was made on a complaint. The COE would then hold an executive session, but would not publicize the disclosure until the executive session was concluded.
- The Code cited the policy for a release of information, but no written procedure existed where a meeting would be held without the public present. The details of the executive session would be confidential unless probable-cause was substantiated.
- The State's COE procedure prohibited the details of a complaint as opposed to the County's Code.
- Staff interpreted the plain language of the Code. Information would remain confidential until a determination was made by the COE in an executive session even if the language of the Code differed from the rules of procedure.

IX.b. – CONTINUED

Mr. Farach suggested that at the next COE meeting, staff should prepare proposed language for the rules of procedure. He said that bringing the COE in line with the State's COE through the amendment process could also be discussed.

Mr. Johnson stated that the ordinance drafting committee would be responsible for writing Code revisions.

Dr. Fiore commented that the State's COE was not a good model for revisions. She suggested that other resources be researched.

IX.c. Consideration of Code Revision to 2-443(a)

Mr. Johnson reported that:

- Code revisions were not urgent since they would be vetted by the ordinance drafting committee.
- Case law research was conducted regarding the addition of non-financial violations to the Code for misuse of office. Staff recommended that:
 - The standard of intent must be corrupt intent.
 - The definition for corruptly needed to be inserted in the definition section of the Code.
- Misuse of office prohibitions were criminal offenses in the Code. In the State's Code, none of those offenses were criminal if not for the word corruptly whose absence would make the prohibition unconstitutionally vague.

IX.d. Definition of Lobbyist

Mr. Johnson stated that:

- The definition of lobbyist only stated government and had not identified to which government the law had applied.

IX.d. – CONTINUED

- The lobbyist registration ordinance defined lobbyist as a governmental entity for which an employee or official worked, or elected. If the COE interpreted lobbyist in line with lobbying, then the issue would be simplified.
- The issue was whether an individual who was a State or federal lobbyist would be permitted to make a \$150 gift to a County employee since the employee was not a lobbyist before the County.
- Staff recommended amending the Code to include corrupt gifts given with the intent of influencing an individual being lobbied, and exclude lobbyists from other jurisdictions who were not lobbying the County although they were identified lobbyists.

Dr. Fiore asked David Baker, IG Implementation Committee chair, for his interpretation.

Mr. Baker commented that Mr. Johnson interpreted what was in the mind of the ordinance drafting committee. He said that the issue of countywide lobbying would present itself later when redefining the jurisdictional definition in the Code, but not necessarily in the lobbying ordinance.

Mr. Johnson stated that:

- The Code would need to be reworded to include the municipalities, but the concept was that governmental entities would be lobbied.
- If someone lobbied before five municipalities, the County and the City of West Palm Beach (City) were essentially not the direct entities being lobbied; therefore, a City employee would not be conflicted to engage in those relations.
- The jurisdiction of the COE was finite. The municipalities that voted for the referendum would likely be subject to the jurisdiction of the COE within 90 days of January 1, 2011.
- Once the ordinance drafting committee met, they could vet the intent in the final referendum ordinances. At this time, AO would continue to be used and guidance would be sought on the definition of lobbyist with the gift prohibition as a key component.

IX.d. – CONTINUED

Dr. Fiore underscored that:

- The interpretation of lobbyist included any lobbyist irrespective of State or County.
- It was understood that the intent of the lobbyist definition was to prevent a climate in which corruption took place within the County; however, municipal lobbyists were a part of the system because they were interwoven into the business of the County. A need therefore was present to redefine the term lobbyist.
- The issue with receiving gifts from lobbyists was their intent to influence a current or future client in return for future favoritism.

Mr. Johnson stated that another issue involving lobbyists was an exception for families or demonstrated friendships with lobbyists.

Dr. Fiore said that as public officials, certain benefits would need to be forfeited even if they were warranted by long relationships. Public officials were required to meet a higher standard, she stated.

Mr. Johnson explained that under the current Code, a lobbyist was considered as such if they had affiliations with any governmental entity. He concluded that the matter would be readdressed when the entire COE was in attendance as Mr. Farach suggested.

X. EXECUTIVE DIRECTOR COMMENTS

X.a. BCC Waivers

Mr. Johnson commented that:

- At the recent Board of County Commissioners (board) workshop, the board proposed that waivers be eliminated.
- The board recommended that the COE vet the waiver requests before they were presented to the board. Currently, County staff made recommendations to the board for waivers.

X.a. – CONTINUED

Dr. Fiore highlighted that board members who were paid employees wanted to offload their responsibilities onto the COE's unpaid volunteers.

Mr. Johnson stated it was not believed that the COE had the time in a volunteer setting to execute the board's proposal, especially when the board had been advised by the COE not to change the waiver limits.

Mr. Harbison disclosed that he shared Dr. Fiore's opinion on the matter and added that the COE did not have the time or resources to provide assistance to the board.

Mr. Johnson stated that he would communicate the COE's position to the board.

Dr. Fiore suggested that the board appoint a special master who would fall under the ED's jurisdiction to review waivers.

Mr. Harbison stated that the issue could be addressed further when the COE was in full attendance.

X.b. Website Update

Mr. Johnson reported that:

- The COE's forms were now becoming available on the COE Web site and materials were being updated to ensure that public records were accessible.
- Training for employees and officials could now be accessed online at the ED's Web site. Many of the municipalities such as the City of Boynton Beach and the Town of Lantana had received live training. Their staff had also been directed to review ethics trainings online.

X.c. Municipalities Update

Mr. Johnson stated that:

- The ordinance drafting committee would develop the charter amendment ordinances for the COE and IG. While staff did not anticipate major substantive changes, the COE would be made aware of any changes so that they could make recommendations before the ordinances were approved.

X.c. – CONTINUED

- The ordinance drafting committee would consist of seven members. Two would be appointed by the board, two by the League of Cities (LOC), one by the County Attorney, the general counsel for the LOC or its designee, the ED or his designee, and the IG or her designee, for the IG ordinance. The initial ordinance drafting committee would determine by majority vote whether three additional members representing other governmental entities would be added to the ordinance drafting committee.
- The recommendation of COE staff was to maintain a seven-member ordinance drafting committee.
- The special taxing districts were not under the jurisdiction of the COE or the IG and would not be required to hold a seat on the ordinance drafting committee unless they signed the interlocal agreement. Currently, the Solid Waste Authority was the only taxing authority that had signed the agreement.
- Once the referendum became effective, the ordinance drafting committee was required to complete the final ordinances within 90 days. Otherwise the board could adopt the completed documents by majority vote. The board would also be required to ratify the ordinances at a regular meeting. It had different timeframes in which to process the ordinances.
- Although the public voted on the referendum on November 2, 2010, the COE had no legal sufficiency until the ordinance drafting committee crafted the Codes and presented them to the board for adoption.

Mr. Harbison stated that David Baker and Marty Rogol were ideal candidates for appointments to the ordinance drafting committee. Mr. Farach and Dr. Fiore said that they concurred.

MOTION to approve recommending the appointment of David Baker and Marty Rogol to the ordinance drafting committee. Motion by Ronald Harbison, seconded by Dr. Robin Fiore, and carried 3-0. Bruce Reinhart and Judge Edward Rodgers absent.

XI. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 3-0. Bruce Reinhart and Judge Edward Rodgers absent.

At 6:19 p.m., the vice chair declared that the meeting adjourned.

APPROVED:


Chair/Vice Chair