

MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS (COE)

I. CALL TO ORDER: February 3, 2011, at 3:08 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 - Arrived later
Dr. Robin Fiore
Ronald Harbison
Bruce Reinhart, Esq.

STAFF:

Alan Johnson, Esq., COE Executive Director
Mark Bannon, COE Investigator
Gina Levesque, COE Administrative Assistant
Megan Rogers, COE Staff Counsel
Benjamin Evans, COE Intern
Sean Moody, COE Intern
Elizabeth Sans, COE Intern
Sydone Thompson, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Judge Edward Rodgers asked everyone to turn off or silence their cell phones. He recognized attendee Karen Erickson of The Erickson Institute.

Judge Rodgers stated that the Commission on Ethics (COE) would recess to discuss item V.a., C10-006, and item V.b., C10-007 in an executive session that was closed to the public. He said that the public meeting would resume in chambers at approximately 4:00 - 4:30 p.m.

IV. APPROVAL OF MINUTES FROM JANUARY 6, 2011

MOTION to approve the minutes of January 6, 2011. Motion by Robin Fiore, seconded by Bruce Reinhart, and carried 4-0. Manuel Farach absent.

RECESS

At 3:11 p.m., the COE recessed for an executive session.

V. EXECUTIVE SESSION

V.a. C10-006

V.b. C10-007

(CLERK'S NOTE: See below for further comments on the executive session.)

RECONVENE

At 4:53 p.m., the COE reconvened with Judge Rodgers, Manuel Farach, Dr. Robin Fiore, Ronald Harbison, and Bruce Reinhart present.

V. CONTINUED

Judge Rodgers stated that a complaint involving Commissioner Burt Aaronson was heard in the executive session and he read as follows the report. He said that copies of the report would be available at today's meeting:

"PUBLIC REPORT AND FINAL ORDER, WITH ISSUANCE OF A LETTER OF INSTRUCTION.

Complainant Alan S. Johnson, Executive Director of the Commission on Ethics, filed the above-reference complaint on December 15, 2011, [sic] alleging a possible ethics violation involving Respondent Burt Aaronson, Palm Beach County Commissioner.

The complaint alleges that on September 11, 2010, Burt Aaronson knowingly accepted a gift in excess of \$100 from a principal or employer of a lobbyist. Pursuant to Chapter 2, Article V, Division 8, Section 2-258(a) of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the County Code of Ethics.

Knowingly accepting any gift with a value of greater than \$100 from any person or business entity that the recipient knows is a lobbyist or a principal or employer of a lobbyist is prohibited pursuant to Article XIII, Section 2-444(a) of the Palm Beach County Code.

V. – CONTINUED

On December 13, 2011, [sic], the Complaint was determined by staff to be legally sufficient. The matter was investigated and presented to the Commission on Ethics on January 6, 2011, with a recommendation that probable cause exists that a Code of Ethics violation occurred. At that time, the commission conducted a hearing. The commission reviewed and considered the investigative report, documentary submissions, recommendation of staff, written response of the Respondent, as well as oral statements of the Respondent and Advocate.

At the conclusion of the hearing, the Commission on Ethics continued the probable cause hearing until February 3, 2011. After further review of the facts and circumstances of the alleged offense, the matter was again presented to the Commission on Ethics on February 3, 2011, with a recommendation that although there may be probable cause to believe there was a Code of Ethics violation, the facts and circumstances warrant a dismissal with a letter of instruction to the Respondent.

At that time, the commission conducted further hearing in the matter. The commission reviewed and considered the investigative report, documentary submissions, recommendation of staff, written response of the Respondent, as well as oral statements of the Respondent and Advocate. The commission also reviewed Article V, Section 2-260.3 of the Commission on Ethics Ordinance.

At the conclusion of the hearing, the Commission on Ethics determined that the alleged violation was inadvertent and unintentional. The commission based this determination on the following factors:

- 1) Respondent received a gift of two tickets to the Business Development Board gala valued at \$400.
- 2) The total ticket value of \$400 is in excess of the \$100 limit imposed by Section 2-244(a).
- 3) The gift was given by George Elmore, a well-known businessman within Palm Beach County, who is also a personal friend of the Respondent.

V. – CONTINUED

- 4) One of George Elmore's companies, Coconut Northlake, LLC, employs lobbyists and is registered in Palm Beach County as a principal/employer of the lobbyists.
- 5) Over many years, Mr. Elmore has employed lobbyists for various land use issues that have come before County advisory boards and the County Commission, including one significant and high-profile matter several years ago.
- 6) The Respondent received the gift from a long-time personal friend.
- 7) Although the donor was listed as George Elmore, the purchaser of the tickets was Hardrives, Inc., another company owned by Mr. Elmore. Hardrives, Inc., does not currently employ lobbyists.
- 8) The Respondent contends the gift was from Hardrives, Inc., although his original sworn gift report names only Mr. Elmore as donor.
- 9) The Respondent did not attempt to hide the transaction, and promptly submitted the gift on his quarterly report on State Form No. 9.
- 10) In previous instances, the Respondent has requested advisory opinions from the Commission on Ethics and has demonstrated his commitment to following the Code of Ethics.
- 11) The gift at issue is \$400, and a permissible gift would have been \$100. While the commission does not find the amount in question to be insignificant, based on all the facts and circumstances, it does find the alleged violation to be insignificant within the meaning of Section 2-260.3.
- 12) The Respondent has voluntarily returned the prohibited portion of the gift to the donor.

V. – CONTINUED

- 13) Further, based upon the statements of the Respondent at the initial probable cause hearing, the proactive steps taken by the Respondent to ensure compliance with the Code of Ethics in the past, the fact that no attempt was made to hide the transaction as the Respondent made proper disclosure of the gift as required by state law, and the nature of the facts and circumstances surrounding the alleged violation, the commission finds that the alleged violation was inadvertent and unintentional.

Therefore, it is:

Ordered and adjudged that the Complaint against Respondent Burt Aaronson is hereby dismissed and a letter of instruction is to be issued in this case.

Done and ordered by the Palm Beach County Commission on Ethics in public session on February 3, 2011.

Signed, Edward Rodgers, Chair.”

Judge Rodgers next read the Letter of Instruction, and he said that copies of the document would be available as well:

“LETTER OF INSTRUCTION

The Executive Director of the Commission on Ethics filed the above-captioned Complaint against Burt Aaronson for violating Article XIII., Section 2-444(a) (gift law) of the Palm Beach County Code of Ethics. The Complaint alleges that Respondent, while a Palm Beach County Commissioner, accepted a prohibited gift from the principal or employer of a lobbyist.

Facts: Respondent is and has been a county commissioner since 1992. He is a reporting individual as defined by Section 112.3145(1)(a) required to submit a quarterly gift disclosure Form No. 9 listing any and all gifts in excess of \$100 subject to specific statutory exclusions.

V. – CONTINUED

On October 25, 2010, Respondent signed a quarterly gift disclosure listing a gift from George Elmore valued in the amount of \$400. The gift comprised two tickets to the Business Development Board Gala event held on September 11, 2010. A review of the county paid lobbyist registration records, maintained by the Palm Beach County Administrator's Office through the Office of Legislative Affairs, established that one of George Elmore's companies, Coconut Northlake, LLC, employs registered lobbyists who lobby Palm Beach County.

The purchaser of the tickets to the gala event was Hardrives, Inc., another company owned by Mr. Elmore. Subsequently, on January 13, 2011, Respondent filed an amended gift report listing Hardrives, Inc. as the gift donor. As of May 1, 2010, Hardrives, Inc., no longer employed registered lobbyists in Palm Beach County. Coconut Northlake, LLC employment of lobbyists is ongoing.

Holding: No county commissioner, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than \$100 from any person or business entity that the recipient knows is a lobbyist or any principal or employer of a lobbyist.

Respondent did accept a prohibited gift from the employer of a lobbyist. However, the Commission on Ethics has reviewed the facts and circumstances surrounding this alleged violation and has determined the actions of the Respondent were unintentional and inadvertent. Although Hardrives, Inc. no longer employed lobbyists at the time of the gift, one of Mr. Elmore's companies, coconut Northlake, LLC, is the employer of registered lobbyists.

In addition, the COE acknowledges the fact that George Elmore is a longtime personal friend of the Respondent and that the Respondent considered the gift tickets as being from Mr. Elmore in connection with Hardrives, Inc.

V. – CONTINUED

Among the additional significant circumstances noted by the COE, the Respondent has previously requested advisory opinions from the COE and in doing so has demonstrated his commitment to following the Code of Ethics. Lastly, the COE is mindful of the fact that Respondent in no way attempted to hide the acceptance of this gift and the premises therein as he fully complied with state gift reporting requirements, and further, that he has voluntarily returned the prohibited portion of the gift to the donor.

In light of the facts and circumstances known to the Commission on Ethics, the matter is disposed of by way of dismissal with this Letter of Instruction. Respondent is now advised that the filing of Ethics Complaint C10-006, along with this Letter of Instruction is to serve as notice of the consequences of not following gift law requirements under the Code of Ethics. While the COE finds that any alleged violation was inadvertent and unintentional, Respondent is therefore instructed to be more diligent in the future about investigating the source of any gift and to conform his activities to this Letter of Instruction and to the requirements of Section 2.-444(a) to avoid any future enforcement action.

This Letter of Instruction is issued by the Palm Beach County Commission on Ethics in public session on February 3, 2011.

Signed, Edward Rodgers, Chair.”

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VI.a. Request for Opinion (RQO) 10-038 OE

VI.b. Request for Opinion (RQO) 11-001

Alan S. Johnson, Esq., Commission on Ethics (COE) Executive Director, stated that RQO 10-038 OE and RQO 11-001 were presented together as the consent agenda.

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

MOTION to reorder the agenda to consider item VIII. Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 5-0.

VIII. WORKSHOP ITEMS

VIII.a. Proposed Code Revision: Sec. 2-444 Gift Law

Concerning Sec. 2-444 (a)(1) Mr. Johnson stated that:

- Section 2-444 contained wording that required gift recipients to know that the gift's donor was a lobbyist, principal or an employer of a lobbyist.
- He suggested that since proof of violations required clear and convincing evidence, the Code of Ethics (Code) language concerning misuse of office could be used as follows:

No County commissioner, County employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly any gift with a value of greater than \$100 from any person or business that the recipient knows...; and,

...knows or should know with the exercise of reasonable care either lobbyist or principal or employer of a lobbyist.

Mr. Johnson said that:

- Staff requested the COE's consideration on the proposed gift law Code language revisions for the ordinance drafting committee (drafting committee).
- The lobbying activity mentioned in the lobbyist ordinance applied to the actions that occurred before a particular government entity or official that the employee or official represented.
- The lobbyist ordinance would not apply to county commissioners and State lobbyists who had not registered to lobby in the County.
- County lobbyists that were not registered to lobby before officials in the Village of Royal Palm Beach would not be affected by the ordinance.

VIII.a. – CONTINUED

Bruce Reinhart stated that the drafting committee should be mindful that certain types of conduct could be prohibited while other types could be allowed, if they were disclosed.

Mr. Johnson said that:

- The drafting committee would create clearer definitions for routine use, and that he welcomed additional discussion at the next COE meeting.
- The exercise of reasonable care indicated to elected officials that they had a responsibility to learn the business and political backgrounds of gift donors.
- General Code language prohibited activities and criminal penalties that would apply to willful Code violations, and would result in criminal prosecution.
- He recommended adding the Code language, “knows, or should know with the exercise of reasonable care.”

MOTION to approve a recommendation that the ordinance drafting committee adopt the proposed amendments to item VIII.a., Sec. 2-444 (a)(1). Motion by Robin Fiore, seconded by Ronald Harbison, and carried 5-0.

Concerning Sec. 2-444 (a)(2) Mr. Johnson stated that:

- The proposed Code revision resulted from Ronald Harbison’s opinion that gift donors were not culpable of Code violations even when they were lobbyists, or they had knowingly employed lobbyists, who gave gifts to County employees, officials, or elected officials.
- Code sections that discussed persons other than officials included:
 - Section 2-447: indicated any person who retaliated or interfered with an investigation;
 - Section 2-443(g): prohibited a person from submitting false documents to obtain County employment or a County contract; and,

VIII.a. – CONTINUED

- Section 2-443(f): prohibited any person from obtaining a contingency fee based on action or inaction of a body.
- Precedence in the Code expanded its reach when it was relevant and pertinent. The Code language was limited to persons in official positions such as an officer, partner, or director of a principal entity.
- Prohibited gifts furnished by lobbyists or principles and employees of lobbyists were subject to the jurisdiction of the COE.

Dr. Robin Fiore suggested adding the language, “or should know with reasonable care” to Sec. 2-444 (a)(2).

Mr. Johnson stated that:

- A \$500 fine could be imposed by the code enforcement board to a non-governmental employee who engaged in a prohibited action.
- Any valid contract with that employee could be voided, and any willful violation of the Code could be deemed criminal.
- The Inspector General’s powers were to advise, report, and make recommendations concerning violations.
- The COE had the power to make recommendations to the board.

Mr. Reinhart stated that it should be communicated to the drafting committee that resource limitations impacted the COE’s actions. He added that the actions of recipients and donors of prohibited gifts should be scrutinized equally.

MOTION to approve a recommendation that the ordinance drafting committee adopt the proposed amendments to item VIII.a., Sec. 2-444 (a)(2), and that the ordinance drafting committee acknowledge the Commission on Ethics’ resource limitations. Motion by Bruce Reinhart, and seconded by Robin Fiore.

VIII.a. – CONTINUED

Mr. Johnson suggested adding the language, “lower-level employees knew or with the exercise of reasonable care should know” to Sec. 2-444 (a)(2) of the Code.

AMENDED MOTION to approve a recommendation that the ordinance drafting committee adopt the proposed amendments to item VIII.a., Sec. 2-444 (a)(2), that the ordinance drafting committee consider adopting the proposal acknowledging the Commission on Ethics’ resource limitations, and the language proposed by Mr. Johnson. Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 4-1. Manuel Farach opposed.

MOTION to approve a recommendation that the ordinance drafting committee adopt the proposed amendments to item VIII.a., Sec. 2-444 (b)(2). Motion by Bruce Reinhart, seconded by Robin Fiore, and carried 5-0.

Concerning Sec. 2-444 (c) Mr. Johnson stated that:

- A conflict was identified in the Code and State statutes pertaining to the gift law.
- The State law stipulated that employees or officials who were required to file quarterly gift reports were prohibited from any form of solicitation.
- The Code language stipulated that an employee could not solicit or accept a gift from a lobbyist in excess of \$100.
- The proposed amendment would import the State’s rule into the Code.

MOTION to approve a recommendation that the ordinance drafting committee adopt the proposed amendments to item VIII.a., Sec. 2-444 (c). Motion by Bruce Reinhart, seconded by Ronald Harbison, and carried 5-0.

VIII.b. Proposed Code Revision: Public Records Exemption for Initial Complaints – Sec. 2-260(f)

Mr. Johnson said that:

- The original statute exempted the complaint and investigation materials from public records. When the Code was initially adopted, only the whistleblower statute applied.
- In July 2010 the State expanded the non-disclosure rule from statewide COE to all local ethics commissions.
- The proposed amendments to the Code were reflective of recent modifications to the State law under Sec. 112.3188 concerning whistleblowers, and Sec. 112.324 concerning ethics commissions.
- The whistleblower section of the Code prohibited the name of the reporting party from being disclosed.
- The deleted language in Sec. 2-260(f), “With the exception of the initial complaint filed in a matter”, stipulated per State law that the initial complaint was exempt. The updated language modifications brought the Code into compliance with State law.

MOTION to approve a recommendation that the ordinance drafting committee adopt the proposed amendments to item VIII.b. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 5-0.

VIII.c. Proposed Code Revision: Mandatory Setting of Public Hearings – Sec. 2-260(c)

Mr. Johnson stated that:

- The Code stipulated that once a probable cause determination was made by the COE, the respondent had 30 days in which to request a hearing, or the COE could request a hearing. If neither party made the request however, the case would not be resolved until a probable cause determination was made by the COE.
- The drafting committee suggested that once a probable cause determination was made, a final public hearing should be scheduled immediately to resolve the case.

VIII.c. – CONTINUED

- Staff recommended that the public hearing be scheduled within 120 days of the probable cause determination.
- Code language encouraged staff to ratify negotiated settlements on cases.

MOTION to approve a recommendation that the ordinance drafting committee adopt the proposed amendments to item VIII.c. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 5-0.

VIII.d. Rules of Procedure Amendments 4.11 and 4.12 (Self-Initiated Complaints) – Tabled

VIII.e. Rules of Procedure Amendments 4.31 and 4.32 (Advocate Conflicts of Interest) – Tabled

(CLERK'S NOTE: The numeric order of the agenda was restored.)

VII. Executive Director Compensation

Mr. Reinhart said that no update on Mr. Johnson's compensation was available, and data relating to County employee salaries were circulated to each COE member through Mr. Johnson.

Mr. Harbison stated that:

- Based on the data set of County attorneys, the average salary was \$129,465 and the median was \$135,244.
- The average salary for the Attorney II position was \$87,988 and the median salary was \$86,913.
- The average salary for the title of Attorney III was \$108,607 and the median salary was \$106,421.
- The average salary for the title of Senior Assistant Attorney was \$143,936 and the median salary was \$142,775.

VII – CONTINUED

- There was no salary distinction under the Chief Assistant County Attorney title because all employees under this title earned \$178,780 annually.
- Based on the data collected for County Directors, the average salary was \$129,047 and the median salary was \$128,019.
- Based on the data collected for County Executive Directors, the average salary was \$102,079 and the median salary was \$95,819.

Judge Rodgers recommended that the matter be tabled and discussed at the next COE meeting in March 2011. The COE members concurred.

VIII. Pages 8-13

IX. EXECUTIVE DIRECTOR COMMENTS

IX.a. Referendum Committee Update

Mr. Johnson stated that there were no updates at this time on the referendum committee.

IX.b. Introduction of Staff Counsel

Mr. Johnson introduced staff counsel, Megan Rogers, and Palm Beach Atlantic University interns Sean Moody and Elizabeth Sans.

X. PUBLIC COMMENTS – None

XI. BOARD COMMENTS – None

XII. ADJOURNMENT

At 6:13 p.m., the chair declared the meeting adjourned.

APPROVED:



Chair/Vice Chair