

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

**JUNE 7, 2012**

**THURSDAY  
1:37 P.M.**

**COMMISSION CHAMBERS  
GOVERNMENTAL CENTER**

**I. CALL TO ORDER**

**II. ROLL CALL**

**MEMBERS:**

Manuel Farach, Esq., Chair  
Robin N. Fiore, Ph.D., Vice Chair  
Daniel T. Galo, Esq.  
Ronald E. Harbison, CPA – Present via telephone  
Judge Edward Rodgers – Absent

**STAFF:**

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

**ADMINISTRATIVE STAFF:**

Julie Burns, Deputy Clerk, Clerk & Comptroller's Office (Condensing)  
Paula Wilson, Deputy Clerk, Clerk & Comptroller's Office (Recording)

Commission on Ethics (COE) Executive Director Alan Johnson noted that Commissioner Ronald Harbison was appearing by telephone. He said that although Judge Edward Rodgers was not present, three present commissioners constituted a quorum.

### **III. INTRODUCTORY REMARKS**

Commissioner Manuel Farach requested that cell phones be turned off. He added that for those wishing to speak, comment cards could be filled out and provided to Executive Assistant Gina Levesque.

### **IV. APPROVAL OF MINUTES FROM MAY 3, 2012**

**MOTION to approve the May 3, 2012, minutes. Motion by Robin Fiore, seconded by Daniel Galo, and carried 4-0. Judge Edward Rodgers absent.**

### **V. SCHEDULING UPDATE (C11-027)**

Mr. Johnson stated that:

- In May 2012, C11-027's proposed negotiated settlement before the COE had failed.
- Brian Seymour, Esq. was now retained by the Respondent. He had received discovery earlier in the week and was unable to adequately counsel his client for today's meeting so a July continuance was requested.
- The pro bono advocate had stated that since he was unavailable for a September final hearing, it needed to be moved to the last two weeks in August or the first two weeks in October.

Ms. Levesque clarified that the pro bono advocate was unavailable the last two weeks in September, and the Respondent's attorney was unavailable September 3-4 and September 11-14.

Commissioner Robin Fiore advised that she was unavailable September 3-7.

Mr. Johnson said that:

- Under the COE's Rules of Procedure, issuing a final order was within the one-year timeframe.
- The COE could wait until July to schedule the final hearing, which probably needed two full days in the first two weeks of October.

## **V. – CONTINUED**

- Discovery was expected to take approximately two months. Two tentative final hearing dates could be scheduled, with continuance obtained if discovery was incomplete by those set dates.

Commissioner Daniel Galo stated that due to a conflict, he would be abstaining from consideration of C11-027.

Commissioner Harbison commented that he was unavailable from approximately the middle to the end of October.

Commissioner Farach said that the COE should defer to staff and move discussion of the final hearing's schedule to July's agenda.

Board consensus was that in the interim, staff could contact all the parties and witnesses to ensure their availability for the first two weeks of October, then subsequently book two dates for the Board of County Commissioners' (BCC) chambers.

Responding to Commissioner Farach, Mr. Johnson said that once dates were tentatively scheduled, they could be placed on the COE's Web site, then publicly noticed at the July meeting. Ms. Levesque clarified that meetings held in the BCC chambers were also publicly noticed.

## **VI. RECONSIDERATION OF PRIOR OPINION**

### **VI.a. Request for Opinion (RQO) 11-060**

Mr. Johnson stated that:

- RQO 11-060 came before the COE on September 1, 2011, regarding the status of municipal pension board trustees (trustees) being officials and/or advisory board members.
  - The initial requested opinion regarded the County's Code of Ethics' (Code) applicability to municipal pension boards, particularly regarding trustees' duties and responsibilities related to seminars and conferences.

## **VI.a. – CONTINUED**

- After issuance of RQO 11-060's opinion, staff subsequently received a letter from the Boca Raton Police and Firefighters' Retirement System Board's (BRPFRSB) counsel requesting a reconsideration. The counsel's position was that the trustees were advisory board members, not officials.
- Individuals appointed to any type of board by a governmental entity were within the County's and the COE's Code jurisdiction, and were considered officials.
- The advisory board's definition for the trustees was more nuanced. He recalled that the COE's vote on the opinion letter was close due to some disagreement or dissension.
- As officials, the trustees were still subject to all the County Code's conflict-of-interest provisions. Gift law provisions prohibiting acceptance of a gift valued over \$100 annually in the aggregate from lobbyists or vendors applied only to advisory board members and not officials.

Commissioner Fiore said that she did not recall any COE contention; only a request for extensive clarification.

Mr. Johnson continued:

- After publishing RQO 11-060's opinion letter, staff had received information that the trustees were considered State-reporting individuals; therefore, the opinion letter was incorrect in stating whether they did or did not have gift-reporting obligations.
  - The only local Code requirement was that a copy of the State's gift-reporting form be filed. Any other County Code requirements did not apply to State-reporting individuals.
  - The gift-reporting obligation issue was cleared up in a subsequent advisory opinion letter regarding another municipal pension board issue.

## **VI.a. – CONTINUED**

- Advisory boards were defined as any advisory or quasi-judicial boards created by the County or a municipality. The question remained whether the BRPFRSB was created by the City of Boca Raton (Boca Raton) or by State statute.
  - The BRPFRSB's counsel had distinguished between local and chapter retirement plans in State law.
  - Local plans were established by municipal ordinance; chapter plans were created by State law and adopted by municipalities.
  - The BRPFRSB's counsel had reasoned that since local plans were established by municipal ordinance, it was created by municipality; therefore, the trustees should be advisory board members.
  - Staff had opined that the BRPFRSB was not considered an advisory board since it was separate and apart from the municipality in that it had different staff, the trustees were not paid by the municipality, nor were they under the same health or pension plans, supplies were bought separately, and vendors were separate. Advisory boards were normally considered an arm of a municipality; the BRPFRSB was independently structured.
- The issue of whether dependent taxing authorities were within the COE's jurisdiction may be significant.
- If the COE decided to reverse its initial opinion and find that pension boards were advisory boards within the County's Code regarding local plans, staff would rewrite the advisory opinion based on the COE's direction.
  - A motion to reconsider RQO 11-060 would be necessary.
  - Staff would bring the advisory opinion back to the COE at a public hearing.
  - Renewed discussion would occur whether to replace RQO 11-060 with an updated opinion.

## **VI.a. – CONTINUED**

Megan Rogers, Esq., COE staff counsel, commented that the State's COE had determined that when a municipal employee also served as a pension board employee, the pension board was a separate agency for purposes of the contractual relationship's prohibition; therefore, the pension board was not defined as an advisory board under the municipality's control.

## **BOARD DIRECTION:**

Commissioner Farach requested that Mr. Johnson advise the BRPFRSB's counsel that his request had not been reconsidered by the COE members.

## **VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)**

### **VII.a. RQO 12-042**

### **VII.b. RQO 12-047**

**MOTION to approve the Consent Agenda. Motion by Robin Fiore, seconded by Daniel Galo, and carried 4-0. Judge Edward Rodgers absent.**

## **VIII. ITEMS PULLED FROM CONSENT AGENDA – None**

## **IX. PROPOSED ADVISORY OPINIONS**

Mr. Johnson stated that since RQO 12-034, RQO 12-043, and RQO 12-044 contained public comment, staff was requesting that they be presented at this time.

Commissioner Fiore said that comment cards were filed on RQO 12-036, RQO 12-037, RQO 12-044, and RQO 12-046.

Mr. Johnson clarified that RQO 12-037 and not RQO 12-034, had public comment, and he requested that it be presented first.

## **IX. – CONTINUED**

### **IX.f. RQO 12-037**

Mr. Johnson said that:

- Staff was asked whether a County employee could benefit from gifts given to her husband that were unrelated to her County employee status, and if so, whether the gift values were reportable pursuant to the County's Code.
- The issue was whether gifts given to her husband could be attributed to her as half of the gifts or whether they were considered gifts to the husband and not to the wife.
- According to Florida Statute, section 112.3148(7), the gifts related to the husband's status and not the County employee's status; therefore, the County employee was not bound by Florida law and the Florida Administrative Code (FAC).
- Staff's recommendation was based on the previous opinion letter, RQO 11-022.
- Every COE decision contained a factual basis. In the scenarios of RQO 11-022 and RQO 12-037, if it was considered a gift that was only based on the husband's status, unless facts indicated otherwise and were according to State law, the County employee would not be "gaming" the system since her status was not involved.

Commissioner Fiore said that the COE should not be in the position of determining how much of the gift benefited the husband and how much benefited the wife. She added that the gifts should be reported, and if they were prohibited, they could be donated to charity.

Mr. Johnson clarified that in this or in any other circumstance, if the gift was over \$100 or in the aggregate exceeded \$100, it was prohibited, and that portion of the gift should be paid back or not accepted.

## **IX.f. – CONTINUED**

Jennifer Ashton, Esq., League of Cities (League) assistant general counsel, said that:

- The opinion did not consider that the gift being given to the husband had nothing to do with his wife's public employment.
- The League was requesting that the COE follow State law regarding this situation, and that RQO 11-081's opinion and reasoning in RQO 12-037 be rescinded since a prior opinion contradicted RQO 11-081's language.
- Donations to ministers were not considered traditional gifts but more akin to salaries, benefit packages, or tips for jobs well done.
- The League was requesting that the COE follow the FAC requirements regarding indirect gifts.

Mr. Johnson clarified that RQO 11-081 involved a public offer, and that the opinion was geared toward the public exception rather than toward Florida Statute, section 112.3148(7).

Ms. Ashton commented that although the County Code's gift law section referred to indirect gifts, the meaning of indirect gifts was not defined.

League Executive Director Richard Radcliffe stated that it was usual and customary for pastors or ministers to be paid through gifts, and that the COE had previously carved out the usual and customary language regarding gifts to certain types of employees.

Commissioner Galo commented that continuity regarding how the COE evaluated matters and advised people was important. He added that he supported reviewing the issue on a case-by-case, fact-by-fact basis.

Commissioner Farach said that since there may be insufficient facts to make a factual determination, answering the requested advisory opinion without getting into the facts may be the best approach.

Mr. Johnson said that:

- Staff could revise the proposed advisory opinion to state that the COE could not opine on speculative facts and circumstances, and absolutely no nexus between the County employee and the gift giver should exist.

#### **IX.f. – CONTINUED**

- The COE could table the proposed advisory opinion, and staff could bring back a redrafted opinion.

**MOTION to approve proposed advisory opinion letter RQO 12-037 as written.**  
**Motion by Robin Fiore.**

**MOTION DIED FOR LACK OF A SECOND.**

**MOTION to table proposed opinion letter RQO 12-037 until the next COE meeting so that staff could review the letter and Mr. Johnson's suggested language as discussed. Motion by Daniel Galo, seconded by Ronald Harbison, and carried 3-1. Robin Fiore opposed. Judge Edward Rogers absent.**

#### **IX.h.            RQO 12-041**

Ms. Rodgers said that:

- A City of Riviera Beach (City) Planning and Zoning Board (Board) member asked whether she had a conflict of interest if an attorney for the Singer Island Civic Association (SICA), a nonprofit organization in which she served as a director, appeared and advocated a position on a matter before the Board.
  - In June 2011, the City council placed a moratorium on the development of residential rehabilitation facilities based on new federal disability guidelines.
  - When the moratorium came before the Board, the Board member mentioned to City staff that local civic organizations may be of help in shaping the issue and developing an appropriate citywide ordinance.
  - The Board member met with a local attorney to discuss his assisting the City on behalf of SICA to draft the ordinance. The SICA then retained the attorney.

(This space intentionally left blank.)

## **IX.h. – CONTINUED**

- Staff had recommended that:
  - While officials were prohibited from using their official position or from voting on matters that would give a civic organization that they served as an officer or a director a financial benefit in a manner which they knew or should have known with the exercise of reasonable care would result in a special financial benefit, there was no prohibited special financial benefit under the specific facts and circumstances.
  - Prohibited conduct and voting conflicts turned on whether the financial benefit was shared with similarly situated members of the general public. Since the proposed ordinance was uniform and citywide, no special financial benefit existed to SICA.
  - If SICA advocated a plan that provided a targeted quality of life or property value benefit unique to its members, a potential special financial benefit and a prohibited conflict of interest would arise.
- The City had an unwritten policy that it generally did not work with outside counsel unless the counsel was retained for a particular purpose.

Ms. Rogers said that the City matter referenced by Commissioner Fiore regarded a zoning variance that would be applied throughout the City; the only matter currently before the Board was where rehabilitation centers could be located.

Marie Davis, who requested the advisory opinion, said that it was never SICA's intent to advocate a position.

**MOTION to approve proposed advisory opinion letter RQO 12-041 as written.  
Motion by Robin Fiore, seconded by Daniel Galo, and carried 4-0. Judge  
Edward Rodgers absent.**

(This space intentionally left blank.)

## **IX. – CONTINUED**

### **IX.i. RQO 12-043**

Ms. Rogers said that:

- A City of Lake Worth (Lake Worth) Commission (Commission) elected official asked about her obligations under the County's Code as a company owner that did business with other nongovernmental entities within the municipality.
- Staff had submitted that:
  - Elected officials were prohibited from using their office to give special financial benefits not shared with similarly situated members of the general public to themselves, their outside businesses, or customers or clients of their outside businesses.
  - Voting on a customer's or a client's proposal, participating in conversations, or attempting to influence staff or fellow Commission members constituted a misuse of office.
  - The prohibition extended not only to elected officials but anyone using elected officials' positions on their behalf. Additionally, elected officials may never use their official position to secure any benefit, whether financial or anything of value, for themselves or others as a quid pro quo or with a wrongful intent in a manner inconsistent with the proper performance of their public duty.

Mr. Johnson stated that some previous advisory opinions had addressed when a public official, who was on a board or was an elected official, should abstain from participating or voting if he or she had a financial interest.

Commissioner Farach expressed his agreement with Mr. Johnson that Pamela Triolo, Lake Worth mayor, and the party requesting the advisory opinion were "getting ahead of the curve" in attempting to ensure that everything was performed in a fashion that would affect Lake Worth's credibility and its Commission.

Responding to Commissioner Fiore's question, Mr. Johnson stated that although Ms. Triolo's request did not contain a factual but, instead, a hypothetical scenario, an RQO would still be issued since staff, at times, provided a general advisory opinion on the state of the law.

#### **IX.i. – CONTINUED**

Commissioner Fiore suggested that advisory opinion letters continue to contain the statement, This applies to the facts and circumstances submitted, or similar wording.

Mr. Johnson said that proposed opinion letter RQO 12-043 was considered the exception rather than the rule since Ms. Triolo was asking the general question of what her obligations were as an elected mayor and as a local business owner. He clarified that RQO 12-043 contained only facts and not circumstances.

Commissioner Fiore suggested that the statement, This applies to the facts submitted, could be placed in the second to last paragraph that began, This opinion construes.

Mr. Johnson requested that staff replace RQO 12-043's second to last paragraph with the second to last paragraph in RQO 12-044. He read the revised language as follows:

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

Commissioner Galo requested that the word, Ordinance, be added after the verbiage, State of Florida Commission on Ethics, and by consensus, the COE members agreed.

**MOTION to approve proposed opinion letter RQO 12-043 as amended to include the changes as discussed. Motion by Daniel Galo, seconded by Robin Fiore, and carried 4-0. Judge Edward Rodgers absent.**

#### **IX.j.            RQO 12-044**

Ms. Rogers stated that:

- A County employee asked whether County employees, in their official capacity, could host a chili cook-off and solicit supplies, ingredients, and raffle prizes from vendors to fund a County-sponsored event held in conjunction with the Palm Beach County School Board to benefit school children countywide.

## **IX.j. – CONTINUED**

- Staff had submitted that when acting in their official capacity, County employees were not prohibited from soliciting and accepting donations from County vendors, lobbyists, principals, and employers of lobbyists on behalf of the County, provided the donations were accepted solely by the County and used for a public purpose.

**MOTION to approve proposed opinion letter RQO 12-044. Motion by Robin Fiore, seconded by Daniel Galo, and carried 4-0. Judge Edward Rodgers absent.**

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

### **IX.a.           RQO 12-032**

Mr. Johnson stated that:

- RQO 12-032 was tabled from the COE's May 2012 meeting. A City of Boynton Beach (Boynton Beach) commissioner questioned whether the County's Code regulated or prohibited him, as an elected official, from receiving a monthly expense allowance, which was established by Boynton Beach resolution and contained in its policy manuals, to cover travel and expenditures made in the performance of his official duties.
- The commissioner also asked whether each Boynton Beach commissioner should submit a record of expenditures for transparency purposes. Lastly, he asked whether he could use a portion of the expenses to make charitable contributions supporting community nonprofit organizations, including the school that employed his wife.
- Based on conversations at the COE's May 2012 meeting, it was not staff's and the COE's intention to dictate what a municipality could or could not do, or to dictate how it should craft an ordinance.
- To the extent that guidance to the officials was nonexistent regarding the definition of an official duty or a public purpose and that no expenditure transparencies existed for the public, there was no requirement to return the expense allowance money if it was unspent.
- It was perilous for an official to spend or to keep the expense allowance since a complaint could be lodged.

## **IX.a. – CONTINUED**

- If a commissioner gave some expense allowance money to a charity and called it a public purpose and the charity employed the commissioner's wife or husband, that would be a clear violation of the County's Code.

Commissioner Fiore requested that RQO 12-044's revised, paragraph language also be inserted into the last paragraph of RQO 12-032.

Mr. Johnson asked staff to replace RQO 12-032's last paragraph with the second to last paragraph in RQO 12-044 that began, This opinion construes.

Commissioner Fiore also requested that the word, it, be inserted in the amended paragraph between the words, but, and, is not applicable to.

Commissioner Farach expressed his concern that in attempting to balance the hypothetical aspect of RQO 12-032, the COE may be leaning more on the hypothetical side. He also expressed concern regarding the language contained in the paragraph that began, Where there is no guidance, as well as the following paragraph.

Commissioner Fiore suggested that the entire paragraph that began, Where there is no guidance, be eliminated since it did not offer any guidance.

Mr. Johnson recommended:

- eliminating the first sentence in the paragraph that began, Where there is no guidance;
- eliminating the first sentence in the paragraph that began, Under the current City Resolution; and,
- revising the last sentence in the paragraph that began, Under the current City Resolution" to begin, While the COE cannot speculate as to facts and circumstances not presented, based on the facts and circumstances you submitted. A number of issues arose from this advisory opinion process that were not based on specific facts and circumstances; therefore, the COE could not opine on those issues.

## **IX.a. – CONTINUED**

In the paragraph that began, In Summary, Commissioner Fiore suggested eliminating the sentences that began, Likewise, and, This is compounded.

Mr. Johnson requested the COE's consensus if they wanted to address whether an ordinance contained a flaw regarding the County Code's application and how the Code could impact an ordinance and its coexistence with the County's Code.

Commissioner Fiore said that she believed that the person seeking advice was asking about his particular situation and not about Boynton Beach's ordinance so she only wanted to answer his specific questions.

Commissioner Farach commented that he understood Mr. Johnson's concern regarding how staff should approach the issue whether application of Boynton Beach's ordinance may lead to a County Code violation. He suggested that under those circumstances, the proposed opinion letter should state, An application of the ordinance, as written, may lead to a violation of the Code of Ethics.

Commissioner Galo said that the COE need not provide any further advice other than to state, This is the Code, and assume that the Code's text is contained in each and every one of the ordinances. He added that what has been presented was not consistent with Boynton Beach's ordinance; however, the County's Code filled that gap.

Commissioner Farach said that staff's approach should be to view whether an ordinance itself violated the County's Code "on its face" or as applied.

Mr. Johnson said that:

- The monthly expense allowance was considered an advanced, taxable stipend.
- Boynton Beach's ordinance did not mention unused or unspent funds; only that the funds be spent for official purposes or duties.
- The following proposed opinion letter changes were suggested:
  - Striking the last two lines on page 58, starting with the word, Likewise.

## **IX.a. – CONTINUED**

- Striking the first line of page 59 up to the word, unspent, and inserting the verbiage:

for example, unspent expenditure stipends are not required to be returned. Retaining these funds for personal use would appear to constitute a special financial benefit.

The rest of RQO 12-032's language would then be included.

- Implementing these changes would eliminate criticism for the lack of transparency.
- The Boynton Beach commissioners could fashion their ordinance to eliminate an accounting of the monthly expense allowance and to provide better direction for not violating the County's Code.

Commissioner Fiore said that inserting the words, for example, on the first line of page 59 was unnecessary.

Mr. Johnson read the revised language:

In Summary, while an elected body has great discretion as to how public monies are spent, and similar discretion in determining the public purpose of expenditures arrived at through a transparent legislative process, the individual actions of an official are subject to Code of Ethics scrutiny. Unlike a salary, an expenditure stipend designated for the performance of official duties is regulated as to use. Where a process is in place that provides upfront stipends for expenditures for official duties but fails to specify the nature of those official duties, there is a risk that an interpretation by an official is not in compliance with the Palm Beach County Code of Ethics. Unspent expenditure stipends are not required to be returned.

Mr. Johnson suggested that the words, under your ordinance, be inserted after the word, returned. He continued:

Retaining these funds for personal use would appear to constitute a special financial benefit to the official, and potentially be a violation of the misuse section of the Code of Ethics.

## **IX.a. – CONTINUED**

Commissioner Fiore suggested replacing the words, these funds, with the words, unspent funds. She added that she was agreeable to inserting the words, for example, in the first line of page 59.

Commissioner Galo commented that inserting the words, for example, illustrated one example in a series of examples.

Mr. Johnson clarified that the revised sentence in the first line of page 59 would read:

For example, retaining the funds for personal use would appear to constitute a special financial benefit to the official and potentially be a violation of the misuse section of the Code of Ethics.

Commissioner Fiore said that the language should read: retaining the unspent funds. Mr. Johnson reread the sentence accordingly.

Commissioner Harbison said that he questioned whether the language should state: funds unspent for the designated purpose. Mr. Johnson responded that the sentence, as read, contemplated a year-end reserve.

Commissioner Fiore suggested that the sentence could read: retaining the funds not spent on travel and expenditures. Mr. Johnson clarified that the language should align with the County Code's language to read: retaining the funds not spent in the performance of their official duties.

Commissioner Farach suggested that page 58, the last paragraph that began, In Summary, should contain one additional sentence to possibly read: Likewise, spending public funds for anything other than a public purpose may constitute a violation of the Code of Ethics.

Commissioner Fiore suggested inserting the words, Palm Beach County, before the first use of the words, Code of Ethics on page 58, in the paragraph that began, In Summary.

Commissioner Galo recommended that the words, official duty, replace the words, public purpose, in Commissioner Farach's suggested additional sentence.

Commissioner Harbison stated that the scenario described in RQO 12-032, on its face, created County problems for the Boynton Beach commissioners.

## **IX.a. – CONTINUED**

**MOTION to approve proposed advisory opinion letter RQO 12-032 as amended to include the changes as discussed, and RQO 12-044's revised paragraph language as reflected on the overhead screen. Motion by Daniel Galo, seconded by Robin Fiore, and carried 4-0.**

## **RECESS**

**At 3:44 p.m., the chair declared a recess.**

## **RECONVENE**

**At 4:00 p.m., the meeting reconvened with Manuel Farach, Robin Fiore, Daniel Galo, and Ronald Harbison present.**

### **IX.b.            RQO 12-033**

Ms. Rogers said that:

- A vice president of marketing and development for a local corporation asked whether members of a company's executive chain were required to register as lobbyists if they met with elected officials or County and municipal staff from time to time.
- The advisory opinion letter's definition of a lobbyist read:

A lobbyist is any person who is employed, and receives payment, or who contracts for economic consideration for the purpose of lobbying on behalf of a principal and shall include an employee whose principal responsibility to the employer is overseeing their employer's relationships with government or representing the employer in its contacts with the government. Whether or not a particular individual is captured within this definition is determined by the specific facts and circumstances surrounding the person's status and the nature of the contact between that individual and public employees and officials. However, when an owner or employee of a business lobbies directly on behalf of his business or his employer and not on behalf of a principal of another business and lobbying is not their principal employment responsibility, the owner or employee is not required to register as a lobbyist.

## **IX.b. – CONTINUED**

- At the May 3, 2012, COE meeting, staff had reviewed third-party lobbyists who were hired by a company to lobby on behalf of Company “A.”
- In RQO 12-033’s situation, the individuals were members of a company who worked for a company whose principal employment responsibility was marketing or financial management.

Commissioner Fiore stated that at the May 3, 2012, meeting, she recollects that the question was left open whether owners or principals were lobbyists. She added that to the extent that the owners or principals were soliciting with government officials on behalf of their businesses, they were engaging in lobbying.

Ms. Rogers said that:

- Commissioner Fiore’s recollection was specific to the context of a third party being hired as a lobbyist for a principal.
- The May 3<sup>rd</sup> scenario had involved a registered lobbyist and his staff, who also may be required to register as lobbyists based on their involvement with the government staff or with officials.
- In RQO 12-033’s situation, company employees were not hired to lobby but from time to time, and not as their principal responsibility, they may be involved in lobbying activities. Under this scenario, they were not required to register as a lobbyist.
- The COE should determine whether the vice president’s principal responsibility was not lobbying and, therefore, she was not required to register as a lobbyist.

Mr. Johnson stated that the word, principal, was being used in two different contexts; principal employment and whether someone represented a principal. In RQO 12-033’s context, the vice president was representing her own company.

Mr. Farach commented that although it could not be rewritten by the COE, the lobbyist registration ordinance probably needed refinement.

Commissioner Fiore requested that, as referenced in RQO 12-032, RQO 12-044’s revised paragraph language also be inserted into the last paragraph of RQO 12-033.

## **IX.b. – CONTINUED**

Mr. Johnson requested that staff replace RQO 12-033's last paragraph with the second to last paragraph in RQO 12-044. He said that when pertinent, RQO 12-044's cut and pasted language was normally placed in subsequent advisory opinion letters. He read the revised paragraph:

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

**MOTION to approve proposed advisory opinion letter RQO 12-033 as amended to include the changes as discussed. Motion by Robin Fiore, seconded by Daniel Galo, and carried 4-0. Judge Edward Rodgers absent.**

## **IX.c.            RQO 12-034**

Ms. Rodgers said that:

- A municipal employee was president of her professional organization, which would be hosting a statewide organizational conference in the City of Boca Raton (Boca Raton).
- After organizing the conference and making appropriate reservations, she was provided with hotel points.
- In her public capacity as a Town of Jupiter employee, she would also be attending the conference.
- Staff had submitted that:
  - A public employee, who was an officer or director of a professional organization, must take great care not to use their public position to give a special financial benefit to themselves or their organization.
  - Public employees were not prohibited from attending conferences and being reimbursed by their public employer while in their public capacity, provided the attendance was for government purposes and was approved by the employees' supervisor.

## **IX.b. – CONTINUED**

- If the municipal employee had attended the conference in her public capacity, she would have been prohibited from accepting the points that she had received since they were paid for by her public employer and were considered a tip.
- Commercial rewards points offered by the hotel for planning the conference associated separately with the professional organization could be accepted. The points would not be a reportable gift since they were in consideration for arranging conference accommodations in her private capacity.

**MOTION to approve proposed advisory opinion letter RQO 12-034 as amended to include RQO 12-044's revised paragraph language as reflected on the overhead screen. Motion by Daniel Galo, seconded by Robin Fiore, and carried 4-0. Judge Edward Rodgers absent.**

## **IX.d.            RQO 12-035**

Mr. Johnson said that:

- A City of Lake Worth (Lake Worth) commission candidate asked whether he could participate in a Request For Qualifications (RFQ) with Lake Worth and ultimately enter into a contract with Lake Worth. The candidate further asked if he were elected, would a conflict exist should the contract be ongoing.
- The County's Code defined an official as someone who was a member of a local municipal governing body so the Lake Worth commission candidate would not be considered an official.
- If elected, he may not enter into a contractual relationship with Lake Worth. If he assumed office and had won an award prior to assuming office, the existing contract could continue, provided that no changes, alterations, or renewals existed.

**MOTION to approve proposed advisory opinion letter RQO 12-035 as amended to include RQO 12-044's revised paragraph language as reflected on the overhead screen. Motion by Robin Fiore, seconded by Daniel Galo, and carried 4-0. Judge Edward Rodgers absent.**

## **IX. – CONTINUED**

### **IX.e. RQO 12-036**

Ms. Rogers said that:

- A Village of Palm Springs (Palm Springs) employee and program supervisor for its travel club asked whether she could accept a two-night stay at an Orlando resort in her official capacity, and if so, whether family members could accompany her on the official fact-finding trip.
- Staff had submitted that a public employee was not prohibited from accepting a two-night stay at the resort hotel as long as it was in the performance of her public duties and for a public purpose as program supervisor of Palm Springs' travel club.
- The municipal employee may not use her official position as an employee to provide a special financial benefit to her relatives as specified in the County Code's misuse of office section.
- If a family member accompanied the public employee on the trip, the family member or employee needed to reimburse the amount of value received by the family member within 90 days to eliminate the financial benefit.

Mr. Radcliffe expressed his concern regarding the proposed opinion letter's implication that the municipal employee's husband or spouse should reimburse his night's stay when no monetary value existed.

Commissioner Fiore commented that monetary value could exist if the room provided different rates for single or double occupancy.

Mr. Johnson said that two individuals were sharing the room's benefit, and according to State Code, half that room's value was attributed to the accompanying spouse.

Commissioner Galo commented that while staying in the room, the public employee was performing a public purpose or duty; however, exclusive public purpose no longer existed with the spouse's stay.

#### **IX.e. – CONTINUED**

**MOTION to approve proposed advisory opinion letter RQO 12-036 as amended to include RQO 12-034's revised paragraph language as reflected on the overhead screen. Motion by Daniel Galo, seconded by Robin Fiore, and carried 3-1. Manuel Farach opposed. Judge Edward Rodgers absent.**

**IX.f. Pages 7-9**

**IX.g. RQO 12-040**

Ms. Rogers said that:

- A municipal advisory board member and potential Northwood/Pleasant City Community Redevelopment Agency Advisory Board member asked whether the County's Code prohibited his outside employer, Chase Bank, from contracting with the City of West Palm Beach (City).
- Staff had submitted that:
  - Municipal advisory board members were not prohibited from having a contractual relationship with the municipality they served provided that the subject contract or transaction was disclosed at a public meeting of the municipal governing body, and that the advisory board provided no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.
  - Independent or dependent districts known as community redevelopment agencies (CRA) were not advisory boards as defined by the County's Code. These entities were independent of County and municipal government, and, as such, were not within the COE's jurisdiction.
  - Since a CRA advisory board member was appointed by the CRA itself and not a municipal governing body, the advisory board member was likewise not under the COE's jurisdiction.

**MOTION to approve proposed advisory opinion letter RQO 12-040 as amended to include RQO 12-044's revised paragraph language as reflected on the overhead screen. Motion by Robin Fiore, seconded by Daniel Galo, and carried 4-0. Judge Edward Rodgers absent.**

## **IX. – CONTINUED**

**IX.h.** Pages 9-10

**IX.i.** Pages 11-12

**IX.j.** Pages 12-13

**IX.k. RQO 12-045**

Mr. Johnson said that:

- A Village of Wellington councilman asked whether he could accept temporary housing from a personal friend who was the director of a civic organization that employed a lobbyist compensated by a third party, and, if so, whether the housing's value was reportable under the County's Code.
- As a State-reporting individual, his reporting obligation was controlled under State statute. His only requirement was to provide a copy of COE reports required on a quarterly basis.
- If the personal friend or donor was the director of a civic organization and that organization was the principal or employer of a lobbyist, the councilman was prohibited from accepting a gift from his friend in the aggregate over \$100 annually.
- The County's Code did not differentiate who paid for the lobbyist that represented a principal. If a lobbyist was compensated and represented a principal, he was considered a lobbyist under the Code.
- Since the lobbyist was also the civic organization's executive director, he possibly was not receiving compensation to represent and lobby for the civic organization.
- If the donor resigned from the civic organization's board, the donor would no longer be a board member that hired or employed a lobbyist; therefore, the gift was not prohibited.

Commissioner Farach expressed his concern that speculation may exist regarding the paragraph that began, If the Donor were merely a member and not a director of the organization.

## **IX.k. – CONTINUED**

Mr. Johnson clarified that it was not speculation since a member would not be prohibited under RQO 12-045's facts and circumstances.

Commissioner Farach said that removing the referenced paragraph could tighten the proposed opinion letter's language.

Mr. Johnson commented that after RQO 12-045's preparation, the donor was in the process of resigning from the civic organization's board. He added that if the paragraph was excluded, the councilman would have been unaware that the contemplated resignation eliminated the conflict.

Commissioner Fiore said that she agreed that the referenced paragraph should be removed.

Commissioner Farach commented that if the donor later resigned, staff could contact the requester to ask for a resubmitted request.

Commissioner Fiore said that the paragraph that began, Therefore, if the Alliance, should be changed to, Therefore, since the Alliance, since it was a conclusory statement and not a conditional statement.

Mr. Johnson commented that as far as the councilman was concerned, the donor was not being paid by the civic organization to lobby for them. He added that staff believed that the donor, however, could be receiving payment from the corporation described in RQO 12-045.

Commissioner Fiore expressed her belief that the COE could not come to a conclusion based on nonexistent facts.

Commissioner Fiore suggested that if staff was removing the paragraph that began, If the Donor were merely a member, then the second sentence in the paragraph that began, In Summary, should also be removed.

**MOTION to approve proposed advisory opinion letter RQO 12-045 as amended to include the changes as discussed. Motion by Robin Fiore and seconded by Daniel Galo.**

## **IX.k. – CONTINUED**

Mr. Johnson clarified that he had received an email from the councilman stating that the lobbyist was hired and paid through Solar Sports Systems.

**UPON CALL FOR A VOTE, the motion carried 4-0. Judge Edward Rodgers absent.**

(CLERK'S NOTE: Inclusion of RQO 12-044's previously discussed revised paragraph language as shown on the overhead screen was not addressed.)

## **IX.I. RQO 12-046**

Mr. Johnson said that:

- Staff had never received an advisory opinion regarding a volunteer's status within a municipality. The status was not a County issue within the first year; however, the County was utilizing community volunteerism when municipalities came under the COE's jurisdiction.
- The City of Lantana Police Department (Police Department) ran five different programs. The programs' administrator, Officer Nelson Barrios, asked whether the program volunteers were subject to the County's Code, and whether training was required.
  - The Unpaid Law Enforcement Explorers involved fourteen-to-eighteen-year-olds who rode with officers and spent the day learning their job.
  - The Unpaid Law Enforcement Junior Explorers involved eleven-to-fourteen-year-olds in civic police department activities.
  - The Unpaid Law Enforcement Cadets involved eighteen-to-twenty-one-year-olds who attended college and possessed an interest in a full-time or part-time law enforcement career. Cadets were similar to Explorers, but they were given more discretion such as parking enforcement.
  - Unpaid Citizens on Patrol were adults appointed as volunteers by the Police Department chief. The citizens had met prescribed qualifications, background checks, and training requirements. Duties included parking enforcement and community patrolling. A degree of discretionary governmental function existed.

## **IX.I. – CONTINUED**

- Unpaid Reserve Officers were qualified, volunteer police officers who were able to exercise supervised police authority and possessed a major discretionary governmental function.
- Unpaid interns directly related to course or program studies and hands-on learning activities supervised by the Police Department.
- Staff had recommended that if volunteers had no discretionary powers to act in an official capacity, they were not considered employee personnel under the County's Code. Once the potential to exercise discretionary powers in an official capacity existed, even without compensation, the volunteers became employee personnel and were obligated under the County's Code.

Commissioner Fiore suggested tighter language in the proposed opinion letter. She said that the second to last paragraph on page 91 referenced unpaid participants when the opinion letter only pertained to volunteer types listed in RQO 12-046.

Mr. Johnson suggested that the language could read: in your municipal police agency programs, or, in the Lantana.

Commissioner Fiore suggested that the paragraph could alternatively read: or in the ones that you personally supervise, since the Police Department may have volunteers not falling under Officer Nelson Berrios' administration.

Mr. Johnson said that:

- In speaking with Assistant County Attorney Leonard Berger regarding the meaning of the word, volunteers, Mr. Berger had responded that applicability of volunteers related to officials or volunteer board members and not employees.
- In the County's Code and the Commission on Ethics' ordinance, the term, employee, included County personnel, which could be defined as those individuals who had discretionary power to act in an official capacity.

Commissioner Galo commented that:

- He viewed personnel in the business context of an employee with whom an employer or entity had the capacity to terminate.

## **IX.I. – CONTINUED**

- A relationship should exist between the employer or entity and the personnel whose services he or she was utilizing.
- He was unsure whether discretion was the appropriate operative factor for consideration.

Commissioner Fiore said that the situation should be viewed from the perspective of:

- would the Police Department be employing people to perform these job activities if it did not have volunteers;
- should the volunteers be trained; and,
- should the County's Code be applied to them.

Mr. Radcliffe said that the League supported staff's recommendations.

Commissioner Farach said that the issue involved more than discretionary function; it was an inherently governmental function.

Mr. Johnson pointed out that the second to last paragraph on page 91 said, discretionary power to act in an official capacity, and that both functions were necessary.

Commissioner Farach said that the COE needed to define what an employee was since the County's Code only provided an illustration of the word.

Mr. Berger said that:

- The County's Code should be as stringent as the State's Code. The COE should review how the State's Code viewed employees, as covered under the County's Code.
- The word, unpaid, was referenced in RQO 12-046 because in certain context, unpaid individuals were covered under the State's Code.
- He doubted that the County Code's guideline, regarding a volunteer's discretionary power to act in an official capacity, was more stringent than the State Code's guideline.

## **IX.I. – CONTINUED**

Commissioner Harbison said that he believed that the discretion standard was appropriate as it applied to RQO 12-046.

### **MOTION to approve proposed advisory opinion letter RQO 12-046. Motion by Robin Fiore and seconded by Daniel Galo.**

Commissioner Farach clarified that staff would include RQO 12-044's additional language as shown on the overhead screen.

### **AMENDED MOTION to include RQO 12-044's revised paragraph language as reflected on the overhead screen. The maker and the seconder agreed.**

Commissioner Farach expressed concern that the advisory opinion's language could hamper future opinions. He suggested narrowing the language to state that other governmental functions may exist under the County's Code that was not covered in the opinion letter.

Mr. Johnson said that the language contained in the second to last paragraph on page 91 could read: In Summary, unpaid participants in the Lantana Police Department agency programs, or, In Summary, unpaid participants in the Lantana Police agency programs.

Commissioner Fiore suggested adding the words, described above, after the word, programs.

Commissioner Farach suggested deleting the next sentence that began with the word, However.

Mr. Johnson clarified that the sentence was added to reference the Police Department's five programs. He said that the specific program names could be listed in the sentence that began, In Summary, after the words, unpaid participants in the.

Commissioner Farach said that adding the verbiage, unpaid volunteers in the programs you described, after the words, In Summary, would suffice. He added that the next sentence could read: However, unpaid participant volunteers in the programs you described that delegate no such authority to its participants are not employees as defined by the Code.

## **IX.I. – CONTINUED**

**SECONDED AMENDED MOTION to include the changes as discussed. The maker and the seconder agreed, and the motion carried 4-0. Judge Edward Rodgers absent.**

## **X. EXECUTIVE DIRECTOR COMMENTS**

### **X.a.**

#### **DISCUSSED: Update RQO 11-121 and West Palm Beach (WPB) Resolution 103-12 (Sponsorship of City-Produced Events/Public Purpose)**

Mr. Johnson said that:

- RQO 11-121, issued in March 2012, regarded nonpublic, VIP (very important person) tent areas offered by the City of West Palm Beach (WPB) for its employees, officials, and their guests for the July 4, 2011, celebration.
- The COE had opined that the procedure for soliciting donations for the VIP tent area violated the County's Code since the benefit of the solicitation was received by WPB employees, officials, and their guests, and the tent area was not used solely by the City for a public purpose.
- Attached to the COE's agenda packet was a resolution drawn up several weeks ago by WPB.

(CLERK'S NOTE: Mr. Johnson read Resolution No. 103-12.)

Mr. Johnson continued:

- Resolution No. 103-12 previously ratified Resolution No. 150-98.
- Staff would continue to investigate legally sufficient complaints regarding corrupt misuse, depending on the facts and circumstances.

Commissioner Fiore said that another concern regarded exclusivity where an opportunity existed to meet with lobbyists and vendors without logging them in or complying with the Sunshine Law requirements. She added that a particular ordinance's applicability should govern.

**X.a. – CONTINUED**

Mr. Johnson said that staff was always tasked with interpreting the County's Code whether legal sufficiency existed in a complaint. He added that second guessing an ordinance or a municipality's decision should be avoided.

**X.b.**

**RECEIVED AND FILED:** Judge Edwards Rodgers' Resignation Letter.

Mr. Johnson stated that Mr. Radcliffe had received a resignation letter from Judge Rodgers. He added that according to the letter, as of July 1, 2012, Judge Rodgers would no longer be serving as a COE commissioner.

**MOTION to receive and file Judge Edward Rodgers June 1, 2012, resignation letter submitted by Mr. Radcliffe. Motion by Robin Fiore, seconded by Daniel Galo, and carried 4-0. Judge Edward Rodgers absent.**

**X.c.**

**DISCUSSED:** Commendations.

Mr. Johnson said that his staff wanted to thank Channel 20's staff and the audio department for performing an excellent job, and he thanked his staff for their hard work.

**X.d.**

**DISCUSSED:** Social Media Update.

Mr. Johnson stated that Ms. Rogers and Clerical Specialist Ben Evans were still developing a media policy, which was expected in July 2012.

**X.e.**

**DISCUSSED:** COE Training and Advisory Opinion Update.

Mr. Johnson said that approximately 200 live training sessions and 213 advisory opinions had been performed since the COE's inception almost two years ago.

## **XI. COMMISSION COMMENTS**

### **XI.a.**

#### **DISCUSSED:** Commendations.

Commissioner Harbison congratulated COE Investigator James Poag in passing his certified fraud examiner test, and in continuing his education to ably function in his position.

### **XI.b.**

#### **DISCUSSED:** Ethics Initiative Meeting.

Commissioner Farach stated that:

- He planned to attend the Ethics Initiative meeting on June 27, 2012.
- He would be attending as an individual and would not be making any public statements.
- Commissioner Harbison was very involved in the Ethics Initiative, and that he may possibly be attending.

### **XI.c.**

#### **DISCUSSED:** Center for Applied Business Ethics Project.

Commissioner Farach commented that Mr. Johnson and Ms. Rogers were assisting former City of Boynton Beach Administrator Kurt Bressner in his annotation of the County's Code and the COE's opinions for the Center for Applied Business Ethics project.

### **XI.d.**

#### **DISCUSSED:** E-mail Transmissions.

Commissioner Farach said that Mr. Johnson had been researching the placement of all COE e-mail transmissions online. He added that in going forward, staff should be mindful of the practical problems and associated cost issues.

**XI. – CONTINUED**

**XI.e.**

**DISCUSSED:** COE Complaints.

Commissioner Fiore said that she had recently read of a COE that did not accept complaints regarding candidates in the month before an election, and she asked whether the COE should discuss such a limitation at the next meeting.

Commissioner Farach said that the matter had not been noticed under the Sunshine Law, but it could be included on next month's agenda under COE member or public discussion.

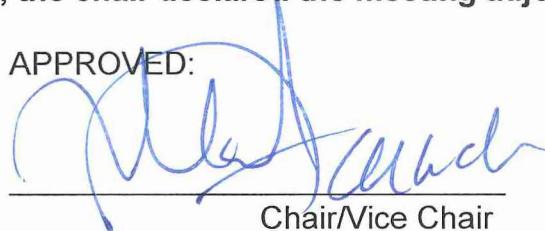
**XII. PUBLIC COMMENTS – None**

**XIII. ADJOURNMENT**

**MOTION to adjourn. Motion by Daniel Galo, seconded by Robin Fiore, and carried 4-0. Judge Edward Rodgers absent.**

At 5:49 p.m., the chair declared the meeting adjourned.

APPROVED:

A handwritten signature in blue ink, appearing to read "Mary Farach".

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Chair/Vice Chair