

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

MAY 1, 2014

**THURSDAY
1:36 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Salesia V. Smith-Gordon, Chair
Michael S. Kridel, Vice Chair
Clevis Headley
Michael F. Loffredo
Carmine A. Priore

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Senior Investigator
Anthony C. Bennett, COE Investigator
Steven P. Cullen, Esq., COE Executive Director
Christie E. Kelley, Esq., COE Staff Counsel
Gina A. Levesque, COE Intake Manager

ADMINISTRATIVE STAFF:

Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Chair Salesia Smith-Gordon said that mobile phones should be turned down or turned off and that comment cards were available.

IV. APPROVAL OF MINUTES FROM APRIL 3, 2014

MOTION to approve the April 3, 2014, minutes. Motion by Michael Kridel, seconded by Michael Loffredo, and carried 5-0.

V. SUNSHINE LAW PRESENTATIONS – BEST PRACTICES

V.a. Leonard Berger, Chief Assistant County Attorney

Leonard Berger, Chief Assistant County Attorney, said that:

- The State of Florida’s Sunshine Law stated that all meetings of public agencies where official actions were taken should be opened to the public to provide an opportunity to witness the deliberative process.
- Private meetings or phone conversations between two or more commissioners regarding an upcoming public meeting agenda item circumvented the Sunshine Law.
- The courts uniformly interpreted the Sunshine Law to cover all actions involving the decision-making process.
- Communication between two or more commissioners, including asking someone such as staff about another commissioner’s thoughts regarding an upcoming agenda item, violated the Sunshine Law.
- Other Sunshine Law regulations included:
 - reasonable notice of meetings;
 - meetings must be held in a public place; and,
 - meeting minutes were required.
- A knowing Sunshine Law violation was a second-degree misdemeanor with possible civil penalties.
- Agency decisions could be voided if linked to a Sunshine Law violation.
- Agencies would be required to pay attorney’s fees and costs to the prevailing party that alleged a Sunshine Law violation.

V. – CONTINUED

V.b. Daniel Funk, Assistant State Attorney

Daniel Funk, Assistant State Attorney, said that:

- The State Attorney's Office (SAO) worked with its public corruption unit, the Commission on Ethics (COE), and the Office of the Inspector General to address various countywide ethics issues.
- Two rules of thought existed for the commissioners' consideration.
 - The community could find out how the commissioners made their decisions regarding agenda items.
 - Issues requiring a decision-making process by the commissioners must be publicly held.
- The Sunshine Law required that any form of public record must be maintained.

Mr. Berger clarified that:

- Commissioners receiving an e-mail message from someone requesting a response should respond only to the sender and not to the other commissioners.
- Sunshine Law exceptions and statutory "carve outs," such as attorneys and governing bodies meeting privately to assess pending litigation, were often called "shade" meetings.

Mr. Funk commented that commissioners could avoid an appearance of impropriety by choosing not to meet other commissioners on a personal basis. He added that he would encourage discussions about the Sunshine Law's importance with students taking ethics classes.

Mr. Berger suggested that discussions about ethics cases should be limited to settled, and not pending, cases.

VI. PROPOSED ADVISORY OPINIONS (CONSENT AGENDA)

Steven Cullen, Esq., COE Executive Director, advised that the COE members could discuss or pull any consent agenda item.

VI.a. Request for Opinion (RQO) 14-007

Chair Smith-Gordon said that she was uncertain whether to refrain from voting on RQO 14-007 since she lived in the Town of Haverhill (Haverhill), and her husband was a Haverhill councilperson. She added that she had no financial gain in the item.

Mr. Cullen said that procedurally, if no financial gain existed, the COE would vote on the consent agenda opinions.

MOTION to approve processed advisory opinion letter RQO 14-007. Motion by Michael Kridel, seconded by Clevis Headley, and carried 5-0.

Commissioner Carmine Priore asked whether RQO 14-007 and RQO 14-008 were part of the consent agenda or were being pulled and voted on separately. He said that the consent agenda items would receive one vote.

Chair Smith-Gordon said that RQO 14-008 was yet to be discussed. She added that both items were being individually discussed since they were separately listed on the agenda.

Commissioner Priore said his understanding of the consent agenda was that all listed consent items would be accepted together and not individually.

Chair Smith-Gordon said that:

- The COE was reviewing substantive matters, and that she believed Commissioner Priore was referencing form over substance.
- A vote would be taken if there was no issue or discussion to remove RQO 14-008 from the consent agenda.
- Collectively voting on the consent agenda items could be discussed at a later date.

VI. – CONTINUED

VI.b. RQO 14-008

MOTION to approve processed advisory opinion letter RQO 14-008. Motion by Michael Lofreddo, seconded by Clevis Headley, and carried 5-0.

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. PROPOSED ADVISORY OPINIONS

VIII.a. RQO 14-009

Christie Kelley, Esq., COE staff counsel, said that:

- A County employee, who also worked as a sales representative for Schaeffer's Specialized Lubricants (Schaeffer's), asked whether he could sell the product to his County employer. The employee believed that the County's fleet maintenance department could benefit from using the product.
- Staff submitted that:
 - Best practices included refraining from using his official County position, title, and/or e-mail messages to sell the product to the County; however, he was not prohibited from selling it in his personal capacity and on his own time.
 - The County employee must follow all procedures that were available to any representatives who sold products to the County.
 - He must comply with the Code of Ethics' part-time employment section and obtain a conflict of interest waiver for his outside employment prior to the County entering into a contract with Schaeffer's.
 - The County employee did not have an ownership interest in the company, which differed from previously proposed advisory opinions.

VIII.a. – CONTINUED

- The employee should not wear his County Fire Rescue uniform while soliciting the County.

Chair Smith-Gordon suggested that the proposed advisory opinion contain language regarding the uniform restriction.

Vice Chair Michael Kridel said he believed that it would be difficult for the County's fleet maintenance department to separate its relationship with the County employee from that of a sales representative.

Ms. Kelley commented that the fleet maintenance department should consider the product by itself.

Vice Chair Kridel stated that the proposed advisory opinion seemed to affect the prospective customer more than the County employee. He added that it was difficult to place individuals in a position where they needed to consciously remind themselves that sales representatives were not County employees influencing their buying decision.

Mr. Cullen said that the product purchase was not considered under a competitive Request for Proposal since it was a County employee requesting the opinion and not the County; and that staff based its opinion on the employee's Code compliance.

Ms. Kelley said that the third sentence under the paragraph entitled, "Answer" could be amended to read: "Best practices would include refraining from using your official position, title, County e-mail, or wearing your County uniform while pitching the Schaeffer's product to the County."

Commissioner Loffredo said that the issue would be moot if someone other than the County employee solicited the product.

MOTION to approve proposed advisory opinion letter RQO 14-009 as amended to include the change as discussed. Motion by Michael Loffredo, seconded by Clevis Headley, and carried 5-0.

IX. MODEL RULE POLICY

Mr. Cullen said that:

- Staff formulated a model rule policy based on RQO 14-001.
- A beneficial interest and disclosure of ownership form would be given to municipalities covered under the Code's jurisdiction.
- Persons appearing before boards or commissions would fill out the form disclosing all pertinent interest or ownership in a pending matter.
- Completing the form was voluntary, and presenting it was for informational purposes.
- The form was discussed with Richard Radcliffe, League of Cities (LOC) Executive Director.
 - The LOC would be an excellent vehicle to introduce the to the municipalities.
 - Making the form more user friendly was one element of the discussion.

Commissioner Kridel commented that listing on the form all persons or corporate entities holding a 5-percent or more ownership interest in a disclosed entity was a good threshold. He asked how the Florida statutes distinguished children from individuals since the form listed them as persons to be included.

Mr. Cullen stated that including a list of what constituted a person would encourage anyone who used the form to be as comprehensive as possible.

Commissioner Kridel said that listing children on the form could bring forth questions.

Mr. Cullen said that staff could incorporate his suggestion. He clarified that staff was requesting direction; therefore, no vote on the item was needed.

IX. – CONTINUED

BOARD DIRECTION:

Chair Smith-Gordon requested that staff disseminate the form to the municipalities.

Mr. Cullen said that staff would ask municipalities to voluntarily consider using the form with the idea that it would provide board and commission members the ability to screen for voting conflicts. He added that staff could add language stating that completing the form did not end the board and commission members' responsibility to ensure that a voting conflict did not exist.

Commissioner Priore said he questioned whether the 5-percent ownership interest could be voluntarily changed since filling out the form was voluntary.

Mr. Cullen explained that the 5-percent threshold was consistent with the Code.

X. EXECUTIVE DIRECTOR COMMENTS

X.a.

DISCUSSED: Legislative Session.

Mr. Cullen stated that:

- The legislative session ended May 2, 2014.
- Senator Joseph Abruzzo withdrew Senate Bill 1474 from further consideration after it passed the Senate Appropriations Committee. The companion bill was withdrawn by Representative Lake Ray.
- Both legislators held a press conference to suggest holding an August 2014 ethics summit for strengthening local ethics commissions.
- Senate Bill 846, which would change some elements of State law, was still pending.
- Discussion of legislative matters could be deferred until the next COE meeting, along with considering whether to recommend COE ordinance changes to the Board of County Commissioners.

X. – CONTINUED

X.b.

DISCUSSED: Ethics Training.

Mr. Cullen stated that:

- Ethics training outreach to the municipalities was completed.
- Updated COE contact cards were printed.
- Some municipal officials brought forth questions during the outreach. Staff provided them with materials and scheduled several live training sessions.
- No pending legislative bills impacted COE operations.

XI. COMMISSION COMMENTS – None

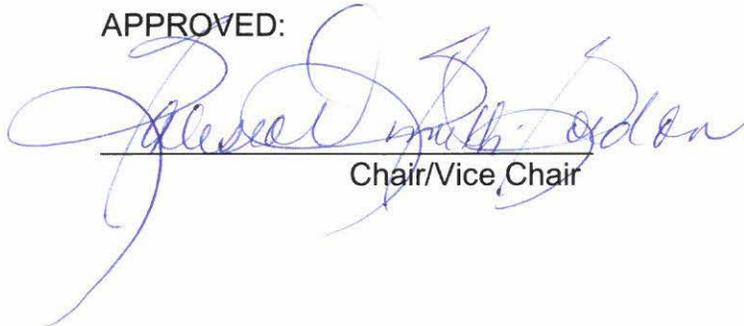
XII. PUBLIC COMMENTS – None

XIII. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Michael Kridel, seconded by Clevis Headley, and carried 5-0.

At 2:32 p.m., the chair declared the meeting adjourned.

APPROVED:



Chair/Vice Chair