

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

APRIL 2, 2015

**THURSDAY
1:30 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 – Absent
Michael F. Loffredo
Carmine A. Priore

STAFF:

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

ADMINISTRATIVE STAFF:

Barbara Strickland, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Commission on Ethics (COE) Chair Salesia Smith-Gordon stated that a quorum existed despite Commissioner Clevis Headley's absence. She requested that mobile devices be silenced.

IV. APPROVAL OF MINUTES FROM MARCH 5, 2015

Commissioner Michael Loffredo pointed out a scrivener's error under Item IX., paragraph two. He said that the year 2015 should be corrected to 2014.

MOTION to approve the March 5, 2015, minutes as amended. Motion by Carmine Priore, seconded by Michael Kridel, and carried 4-0. Clevis Headley absent.

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

V.a. Request for Opinion (RQO) 15-008

V.b. RQO 15-009

V.c. RQO 15-010

MOTION to approve the consent agenda. Motion by Michael Kridel, seconded by Michael Loffredo, and carried 4-0. Clevis Headley absent.

VI. ITEMS PULLED FROM CONSENT AGENDA – None

VII. PROPOSED ADVISORY OPINIONS

VII.a. RQO 15-007

Christie E. Kelley, COE Staff Counsel, stated that:

- The Human Resources Administrator for the City of Delray Beach (City) asked whether a conflict of interest would exist for the Special Operations Coordinator (SOC) of the City's Fire-Rescue Department if the department used Dive Gear Express (the company) as an active vendor, while the SOC's brother was employed by the company.
- The SOC currently had ultimate authority over the equipment procurement and sustainment for the City's Fire-Rescue Department, and oversaw the contracts and transactions for equipment purchases.

PROPOSED ADVISORY OPINIONS – CONTINUED

VII.a. – CONTINUED

- The Code of Ethics (Code) prohibited public employees from using their official positions to provide special financial benefits to a sibling's employer. The term "financial benefit" was broadly defined under the Code and it included any money or contract.
- A conflict of interest would arise for the SOC if the Fire-Rescue Department used the company as a vendor and entered into any contract or transaction with that company because the SOC would be giving the employer of his brother a special financial benefit.
- The company held contracts with the City approximately five years ago, but the current SOC did not hold that position during past contracts.

MOTION to accept proposed advisory opinion letter RQO 15-007. Motion by Michael Kridel, seconded by Michael Loffredo, and carried 4-0. Clevis Headley absent.

VII.b. RQO 15-011

Ms. Kelley stated that:

- A captain with the City of West Palm Beach (City) Police Department (PD) asked whether the Code prohibited the PD chief from writing a letter on official letterhead stating that the West Palm Beach Police Foundation (Foundation) was the only charitable organization that shared a partnership with the PD.
- Staff submitted that, because it was to be a generic letter that would be provided to any member of the public asking for Foundation information, such a letter was similar to a recommendation letter.
- The State Commission on Ethics previously determined that an elected official was not prohibited from writing a letter of recommendation using official letterhead, as long as no quid pro quo went to the elected official in exchange for the recommendation.

PROPOSED ADVISORY OPINIONS – CONTINUED

VII.b. – CONTINUED

- The Code would not be violated if the PD chief wrote the letter on official letterhead stating that the PD shared a partnership with the Foundation.

Chair Smith-Gordon recalled that the COE considered whether a fire-rescue member could properly wear a uniform while seeking donations. She queried whether a document requesting financial gain held any similarity to wearing a uniform for the same purpose.

Steven P. Cullen, COE Executive Director, stated that a guiding principle was that using one's position to corruptly secure a special benefit was prohibited under the Code. He said that each situation deserved individual consideration.

Ms. Kelley said that:

- The PD chief was not asking for donations, but merely mentioning a partnership with the Foundation.
- The generic letter was not addressed and mailed to individuals in the City. It merely verified the partnership's existence.
- The letter was not yet written at the time that the COE considered its merits.

Chair Smith-Gordon expressed her preference for less ambiguity to ensure more consistency in COE opinion reviews.

MOTION to table discussion until the next meeting at a time certain. Motion by Carmine Priore.

MOTION DIED FOR LACK OF A SECOND.

MOTION to accept proposed advisory opinion letter RQO 15-011. Motion by Michael Kridel, seconded by Michael Loffredo, and LOST in a tie vote. Clevis Headley absent.

Chair Smith-Gordon announced the tie, with her vote and Commissioner Priore's vote in opposition.

PROPOSED ADVISORY OPINIONS – CONTINUED

VII.b. – CONTINUED

Commissioner Carmine Priore recommended that the COE request that staff send the chair a copy of the letter under discussion for the COE to revisit at the next meeting.

Chair Smith-Gordon said that a review of the item would be scheduled.

VIII. DISCUSSION RE: DEFINITION OF “ACTIVE VENDOR”

Mr. Cullen stated that:

- While discussing RQO 14-033, a question arose as to whether the commissioner in that case received a gift from an active vendor.
- The opinion was given to Chief Assistant County Attorney Leonard Berger for input on whether a vendor was an “active vendor.”
 - The COE adopted the opinion that the vendor did not meet the definition of “active vendor” under the Code because it did not conduct business with the County for several years.
 - The Code did not define “active vendor,” so it was suggested that the COE Drafting Committee (Committee) refine the vendor language.
 - The handout materials contained staff’s suggestions for language defining “active vendor.”

Concerning the names of vendors for the past 24 months, Mr. Cullen said that:

- The County-maintained vendor database may not contain the precise information sought, and many municipalities did not maintain vendor databases.
- The last action between the vendor and the County was a payment of \$169.50 in March 2010. The opinion was rendered in 2014.

DISCUSSION RE: DEFINITION OF “ACTIVE VENDOR” – CONTINUED

VIII. - CONTINUED

- The drafted language was available to any new Committee members. New appointments would be discussed at the April 7, 2015, Board of County Commissioners (BCC) meeting.

(CLERK'S NOTE: The agenda was reordered to take public comment.)

XII. PUBLIC COMMENTS

Richard Radcliffe, Palm Beach County League of Cities (LOC) Executive Director, said that:

- The existing Committee consisted of Bill Thrasher, Mo Thornton, Trela White or her designee, and the LOC's attorney, Jennifer Ashton. They were given direction and were prevented by the Sunshine Law (Law) from discussing it with one another.
- Ms. Ashton shared concerns with Mr. Radcliffe about the proposed language and the Law.
 - The established process indicated that additional matters should not be assigned to the Committee at this time.
 - The LOC members could not talk about Committee matters. A separate group could be formed to discuss them.
- He requested that the COE clarify the issue for elected officials who were LOC members, but refrain from discussing vendor dealings since Ms. Ashton was unable to attend today.

Commissioner Priore explained that:

- The LOC met only once a month. Members had not yet viewed or voted on proposed vendor language changes.
- Committee members were prevented from discussing the matter because they did not receive direction from the LOC's board of directors. Until then, the Law barred discussion.

PUBLIC COMMENTS – CONTINUED

XII. – CONTINUED

Mr. Radcliffe commented that Ms. Ashton should be consulted prior to moving ahead with vendor language discussions.

Mr. Cullen said that:

- The LOC may have appointed its members to the Committee, but the BCC would appoint two more at its April 7, 2015, meeting.
 - A new Committee was not in place at this time.
 - The COE's executive director was a Committee member, by ordinance, but the Committee was not completely formed until the BCC made its choice.

Commissioner Priore commented that the COE could make its recommendations directly to the BCC for it to decide whether bring back the Committee to consider the items under discussion today. The Committee's creation was a direct responsibility of the BCC, not of the COE, he added.

Chair Smith-Gordon stated that a timeframe defining a "current" vendor should be established, since it was ambiguous as written.

Mr. Radcliffe said that legal counsel recognized ambiguous language in the Code that needed refining. He added that the LOC would choose several members to review the Code for contradictions and inconsistent language.

Mr. Cullen said that:

- The Committee would propose language changes for the BCC's review and vote.
- The COE had the option to recommend one or more changes to the BCC.

PUBLIC COMMENTS – CONTINUED

XII. – CONTINUED

- The BCC's April 7, 2015, meeting agenda contained the following item titled, "Commission on Ethics Ordinance Drafting Committee":

Staff recommends motion to approve: appointment of two of the following individuals to the Commission on Ethics (COE) Ordinance Drafting Committee: David Baker, Alan Johnson, Bruce Lewis.

SUMMARY: The Commission on Ethics (COE) requested the COE Ordinance Drafting Committee meet to consider the above referenced amendment at its meeting on March 5, 2015. The law currently provides that legally sufficient complaints proceed to a Probable Cause Hearing held by the COE. If the COE finds probable cause, the matter goes to full hearing which can be heard either by the full COE, or by three COE members selected by the Chair. The proposed amendment would allow the accused to opt to have a Hearing Officer preside over the final hearing. As proposed by the COE, hearing officers would be selected from a pool created by the Palm Beach County Bar Association.

Assistant County Administrator Brad Merriman said that:

- The process allowed two appointees to the Committee from the LOC in addition to its attorney, two appointees from the County, and COE Executive Director Steve Cullen.
- The Committee was given an issue to resolve, and its responsibility was to convene and proceed with its assignment.
- The same or a separate Committee could be given new issues to address.
- The Committee met only twice since the ordinance's inception, and should be allowed to complete its task, and then take up other matters at another time.

IX. DISCUSSION RE: "CONTEMPORANEOUS" FILING OF GIFT FORMS FOR STATE-REPORTING INDIVIDUALS

Chair Smith-Gordon stated that agenda items VIII. and IX. dealt with vendors and gift reports and went directly to the heart of complaints presented to the COE.

Commissioner Priore suggested that item IX. be discussed to agree on the action to be taken relative to the BCC.

Chair Smith-Gordon said that the item required elected officials to file gift reports with the State and with the COE at the same time, or contemporaneously.

Mr. Cullen stated that:

- The item resulted from a COE case heard in March 2015, when an elected official claimed that the ordinance did not specify precisely when a State-reporting individual was required to file a gift form.
- The COE regularly stocked gift forms and received completed forms from elected officials. The tendency was for them to be filed simultaneously, or contemporaneously, with the State.
- The COE could insert language clarifying the specified time and to prevent any future confusion concerning filing times.

MOTION to approve a recommendation that Item IX. concerning gift reports go before the Board of County Commissioners with a recommendation that it be presented to the Drafting Committee for review. Motion by Michael Loffredo, seconded by Michael Kridel, and carried 4-0. Clevis Headley absent.

MOTION to approve Item VIII. and for it to be reviewed by the Board of County Commissioners with a recommendation that proposed language changes go to the Drafting Committee. Motion by Michael Loffredo, seconded by Michael Kridel, and carried 4-0. Clevis Headley absent.

Commissioner Priore stated that a conflict may result because the BCC was already considering the probable cause issue concerning the three choices an individual would have. He said that adding a second issue may create confusion or delay a vote.

DISCUSSION RE: “CONTEMPORANEOUS” FILING OF GIFT FORMS FOR STATE-REPORTING INDIVIDUALS – CONTINUED

IX. – CONTINUED

Mr. Merriman said that:

- The BCC met every two weeks, and that the two issues could be placed on agendas two weeks apart.
- Since the LOC was meeting on April 22, and the BCC on April 21, the County could appoint its two Committee members on April 21 and the LOC could appoint its two members on April 22.

MOTION to request Board of County Commissioners consideration of the Commission on Ethics agenda items VIII. and IX. at its April 21, 2015, meeting. Motion by Michael Kridel, seconded by Carmine Priore, and carried 4-0. Clevis Headley absent.

X. EXECUTIVE DIRECTOR COMMENTS

Mr. Cullen stated that:

- Ethics Awareness Month events in March 2015 included circulation of posters, and proclamations from many municipalities, towns and cities.
- The second quarterly newsletter would be published very soon and would include today’s vote on matters being forwarded for the BCC’s consideration.

XI. COMMISSION COMMENTS

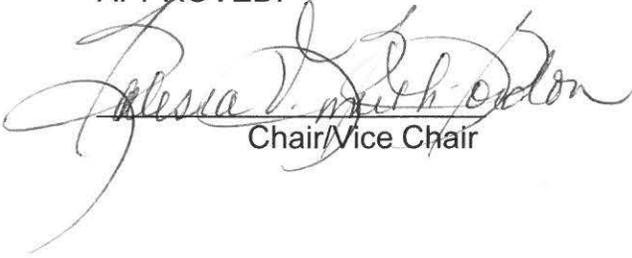
Commissioner Priore wished a Happy Easter and Passover season to all.

XII. PUBLIC COMMENTS – Pages 6 – 8.

XIII. ADJOURNMENT

At 2:44 p.m., the chair declared the meeting adjourned.

APPROVED:



Teresa L. McDonnell
Chair/Vice Chair