

# Palm Beach County Commission on Ethics

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November 4, 2011

Diana Grub Frieser, City Attorney  
City of Boca Raton  
201 West Palmetto Park Road  
Boca Raton, FL 33432

Re: RQO 11-076  
Voting Conflicts

Dear Ms. Grub Frieser,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion on October 6, 2011 and again on November 3, 2011, and rendered its opinion at a public meeting held on November 3, 2011.

YOU ASKED whether advisory board members whose appointment requires professional licensure pursuant to city ordinance are subject to the abstention and non-participation requirements of the Palm Beach County Code of Ethics where an exemption exists for these members in Florida State Statutes.

IN SUM, appointed officials are prohibited from using their position as advisory board members to give themselves, their outside business, or their outside customers or clients a special financial benefit not shared with *similarly situated members of the general public*. While the Florida Code of Ethics may contain exemptions and/or additional requirements that differ from the County code, voting on a client's proposal, participating in conversations or attempting to influence advisory board members would constitute a misuse of office under the Palm Beach County Code of Ethics. The prohibition extends to the official, or someone using their official position on their behalf.

THE FACTS as we understand them are as follows:

You are the City Attorney representing the City of Boca Raton. A member of the City's Community Appearance Board (CAB) contacted the Palm Beach County Commission on Ethics (COE) and asked whether a member of his outside business may represent a customer or client of his architectural firm in front of the CAB so long as he abstained from voting and did not participate in any aspect of the decision-making process.<sup>1</sup> In response to this request, the City provided additional information about the CAB Board, state statutes and Florida Commission on Ethics interpretation of state law. You requested an advisory opinion based on this information.

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<sup>1</sup> Proposed RQO 11-067 (when presented with a voting conflict, an official must abstain and not "participate" by discussing, presenting or personally attempting to influence members of their board. Advisory board members are not prohibited from meeting with and working with staff in their professional capacity prior to the matter coming before their board so long as they do not use their official position to influence staff decisions)

Pursuant to city ordinance, all CAB board members, except one, must be state-registered architects, state-registered landscape architects, state-registered professional engineers, planners, building contractors, or real estate salespersons or brokers. Under fact-specific scenarios, the Florida COE has opined that where a local ordinance requires an advisory board member to possess a registration or other professional credential, §112.313(7)(b), Florida Statutes, operates to waive an existing conflict of interest, similar to the conflict presented in proposed RQO 11-067.<sup>2</sup> That opinion is based upon the Florida Code of Ethics. The City suggests that because there is no express prohibition in the county code that mirrors the language of §112.313(7)(a), Florida Statutes, that state law controls and the exception created by §112.313(7)(b) would authorize a board member, who is appointed based upon professional licensure, to appear before and represent a client before his or her own board.

THE LEGAL BASIS for this opinion is found in the following relevant section of the Palm Beach County Code of Ethics:

The Florida Code authorizes governmental entities to adopt more stringent ethics standards under §112.326, Florida Statutes.<sup>3</sup> Section 2-443(a) of the Palm Beach County Code of Ethics prohibits any advisory board member, elected official or employee from using their official position to give themselves, their outside business, or a customer or client of their outside business a special financial benefit not shared with similarly situated members of the general public. In tandem with the misuse of office provision, §2-443(c) prohibits county and municipal officials from voting on, or participating in, any matter that would result in a special financial benefit attributable to themselves or one of seven prohibited entities outlined in §2-443 (a). These prohibitions are more stringent than state requirements as they encompass *all* conflict of interest provisions outlined in the state code of ethics.

Accordingly, advisory board members, regardless of licensure qualifications provided by City ordinance, must 1) disclose the nature of their conflict before their board discusses the issue; 2) abstain when the vote takes place *and not participate* in the matter; and 3) File a state voting conflict form (8B) submitting a copy to the clerk and the Palm Beach County COE.

The language of §2-443(c) is as follows:

*County and municipal officials...shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above...Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public...*

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<sup>2</sup>CEO 04-1 (Section 112.313(7)b operates to negate conflicts grounded in §112.313(7)a where an ordinance recognizes that professional credentials are so vital to the expertise and operation of a public board that while a prohibited conflict of interest exists, that interest must yield to the public purpose of a portion of the board's membership possessing professional training).

<sup>3</sup> FLA. STAT. §112.326, *Nothing in this act shall prohibit the governing body of any political subdivision, by ordinance, or agency, by rule, from imposing upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in this part, provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of this part.* PBC Code §2-441, *the purpose of this code is to provide additional and more stringent ethics standards as authorized by Florida Statutes, §112.326.*


In this context, "participate" means that an advisory board member may not present their own project, their employers project or as in the case presented in proposed RQO 11-067, a clients project, to their board, or take part in any presentation or discussion regarding that project before fellow board members. Advisory board members are not prohibited from meeting with and presenting materials to staff regarding a project provided such contact is in their professional capacity.<sup>4</sup> However, while advisory board members may submit and discuss their project with staff prior to the matter coming before their board, they may not use their official position to influence the process. To be clear, advisory board members are not prohibited from working with City staff in their professional capacity up and until the matter goes before their board, so long as it remains in their professional as compared to their official capacity as a board member. This provision does not prohibit other owners or employees of a board member's outside business or employer from representing a client's interest or a business's interest in these matters, so long as it is not done on behalf of the abstaining board member.

IN SUMMARY, state law permits local government to adopt more stringent standards of conduct than those specified in the Florida Code of Ethics provided those standards do not otherwise conflict with the state code. The Palm Beach County Code of Ethics does not ban the establishment of licensure requirements for local advisory boards, however, in certain instances it does more tightly regulate potential financial misuse of the office. Based on the facts and circumstances presented, advisory board members, regardless of any professional licensure requirements associated with their appointment, may not use their appointed office to give themselves, their outside business or a customer or client of their outside business a special financial benefit. When faced with a conflict, they must disclose, abstain, not participate and file the required conflict disclosure form 8b. The Code of Ethics does not prohibit a business associate or other individual from representing a client's interests before the official's board.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but 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.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson,  
Executive Director

ASJ/mr/gal

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<sup>4</sup> Please note that contacting CAB members about a matter coming before the board may result in a Sunshine Law violation.