



Palm Beach County Commission on Ethics

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January 5, 2012

Anna Yeskey
Palm Beach County Intergovernmental Coordination Program
9835-16 Lake Worth Road, Suite 223
Lake Worth, FL 33467

Re: RQO 11-107
Jurisdiction/Officials and Advisory Boards

Dear Ms. Yeskey,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion and rendered its opinion at a public meeting held on January 4, 2012.

YOU ASKED whether members of the Countywide Intergovernmental Coordination Program (the Program) boards are subject to the Palm Beach County Code of Ethics.

IN SUM, the Program was not created solely by the Palm Beach County Board of County Commissioners (BCC) or by a municipal governing body. Therefore, it is not an advisory board within the meaning of the Code of Ethics. However, members of the Program's three boards are officials, as defined under the Code of Ethics, if they are appointed by the BCC or one of the 38 municipal governing bodies subject to the jurisdiction of the Commission on Ethics.

THE FACTS as we understand them are as follows:

You are a part-time staff member of the Palm Beach County Intergovernmental Coordination Program (the Program). The Program was established in Palm Beach County in the fall of 1992 through the execution of two inter-local agreements as authorized by Chapter 163, Florida Statutes. The Program was established as a means of addressing inter-jurisdictional plan amendment review and countywide issues of multi-jurisdictional significance and designed as a replacement for the Palm Beach Countywide Planning Council.

The Comprehensive Plan Amendment Coordinated Review (CPACR) Inter-local agreement creates two bodies: 1) an Executive Committee consisting of representatives appointed by the League of Cities, Board of County Commissioners, the School Board, the South Florida Water Management District and the Regional Chair or the Florida Association of Special Districts and 2) an Inter-local Plan Amendment Review Committee comprised of full-time planning directors from local government participants.

The Executive Committee (EC) prepares an annual budget for the Program, oversees collection and expenditures of member fees, prepares an annual report detailing the activities and results from the

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comprehensive plan amendments processed pursuant to the agreement, makes recommendations to the participants on ways to improve the coordination projects and oversees the operations of the various panels, committees and serves as a Clearinghouse created by the agreement.

The Inter-local Plan Amendment Review Committee (RC) is charged with the technical role in the comprehensive plan coordinated review process and is designed to provide planning staff notification of land use changes prior to the local government's public hearing to allow the opportunity to resolve conflicts prior to the hearing.

A second inter-local agreement establishes a Multi-Jurisdictional Issues Coordination Forum (Issues Forum) for participant governments to discuss issues of countywide significance and develop, through a consensus building process, a way to effectively identify and address these issues. Some of the issues addressed by this group include but are not limited to: affordable housing, industrial land use needs, school concurrency, a countywide water plan, aquifer storage and recovery, biosolids pelletization, hurricane shelter capacity, growth management reform, annexation, mediation, beach funding and population projects. For a municipality, the county or other entity to be a member of the Forum, they must first be a signatory to the CPACR. Each county or municipal member then appoints and designates a representative to exercise its responsibilities in the forum.

You serve as the only dedicated staff, part-time, as a contract employee of the Town of Lantana. The budget is set each year by the EC who determines the annual membership fee paid by all participant entities. In your experience as a staff member, there has only been one situation when the organization worked on a project in which outside consultants were used. In addition to the services described above, the day to day operations of the Program involve plan amendment distribution, monitoring countywide issues, and setting the agenda for quarterly meetings of these groups as well as any subcommittees that result from identified issues.

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

Section 2-442 defines *Advisory board* to mean "any advisory or quasi-judicial board created by the board of county commissioners, by local municipal governing bodies, or by the mayors who serve as chief executive officers... of local municipal governing bodies." The two inter-local agreements that form the basis for the Program create three boards, 1) Comprehensive Plan Coordinated Review Executive Committee, (EC) 2) the Interlocal Plan Amendment Review Committee (RC) and 3) the Multijurisdictional Issues Coordination Forum (Issues Forum). While the Program was entered into by local municipal governing bodies, the boards it establishes are not created independently by any one entity subject to the jurisdiction of the Commission on Ethics. As a result, the three boards created by these agreements are not advisory boards as defined by the Code of Ethics.

Section 2-442 defines "officials" as "... members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of (a) local municipal governing body, as applicable, to serve on *any advisory quasi-judicial, or any other board of the county, state or any other regional, local, municipal, or corporate entity.*"

First, members of the EC are appointed by the League of Cities, the BCC, the School Board, the South Florida Water Management District and the Regional Chair or the Florida Association of Special Districts. Of the appointing authorities, only the BCC is a governing body subject to the jurisdiction of the Code of

Ethics. Accordingly, only those members who are appointed by the BCC are subject to the jurisdiction of the Commission on Ethics, in their capacity as an official of the EC.

Second, members of the RC serve based upon their employment as a planning director with the county, municipality or other entity subject to the agreement. Therefore, municipal and county employees who serve on the RC are subject to the Code of Ethics as employees of their respective government entity *and* as officials if appointed by their governing bodies.

Third, once a local government or service provider has signed on to the CPACR, it may sign on to be a member of the Issues Forum. Each Forum member then designates a representative to exercise its responsibilities in the Issues Forum. Accordingly, those members appointed to the forum by the governing body of the county or municipality are considered officials as defined by the code of ethics.

Section 2-443 (a) *Misuse of office*, prohibits an official or employee from using their official position or influencing others to take or fail to take any action, that would result in a special financial benefit not shared with similarly situated members of the general public, for themselves, relatives, members of their household or dependants, their outside employer, a customer or client of their outside employer, a substantial debtor or creditor of theirs, their spouse or domestic partner or a non-profit organization of which he or she or his or her spouse or domestic partner is an officer or director.

Section 2-443(c) *Disclosure of voting conflicts*, requires a public official to abstain and not participate in any matter coming before his or her board or commission which would result in a *special financial benefit* to the persons or entities listed in the misuse of office section.

Section 2-443(b) *Corrupt misuse of official position*, prohibits an official or employee from *corruptly* using his or her office to obtain any benefit for any person or entity. *Corruptly*, means done with a wrongful intent, inconsistent with the proper performance of an official's public duties.

A number of additional code provisions apply to both employees and officials. Section 2-443(d) *Contractual relationships*, prohibits officials and employees from entering into contracts with the county or the municipal government they serve, unless one of several exceptions applies. Section 2-443(f) prohibits officials and employees from accepting travel expenses from a contractor, vendor, service provider, bidder or proposer of the county or the municipality they represent, unless they obtain a waiver from the governing body that appointed the employee or official to the board. Section 2-443(h) prohibits officials and employees from making false statements, submitting false documentation, or knowingly withholding information in an application for employment or to provide goods or services to any entity subject to jurisdiction of the code. Section 2-443(i) prohibits officials and employees from disclosing or using information not available to members of the general public for personal gain.

Application of the Gift Law §2-444

Section 2-444(g) defines a gift as the transfer of anything of economic value, including hospitality, food and drink. Section 2-244(a) prohibits a public employee from soliciting or accepting, directly or indirectly, "a gift with a value of greater than one hundred dollars \$100 in the aggregate for the calendar year from any person or business entity that ...is a vendor, lobbyist or any principal or employer

of a lobbyist who lobbies, sells or leases to the ... municipality.”¹ Section 2-442 defines a vendor as a person or entity who sells or leases goods or real or personal property to the government or a person or entity with a pending bid proposal or an offer to sell or lease goods or real or personal property. There is no such prohibition for “officials” who are not members of an advisory board or elected members of the county or a municipal body. However, permissible gifts of a value in excess of \$100 must be reported pursuant to §2-444(f) of the code.

Notwithstanding that the prohibitions of §2-443(a) may not apply to officials, officials as well as public employees are still subject to §2-444(e) in the performance of an official act or legal duty related to their status as an official or employee.

Section 2-444(e) states as follows:

No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:


- (1) An official public action taken or to be taken, or which could be taken;
- (2) A legal duty performed or to be performed or which could be performed; or
- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

IN SUMMARY, although boards created by the Program are not advisory boards as defined by the code, members appointed by the BCC or a municipal governing body are considered officials. Employees who serve as a result of their employment maintain their status as county or municipal employees and must comply with the Code of Ethics when acting in an official capacity for their government employer. Limitations and prohibitions relating to the solicitation or acceptance of gifts only apply to vendors, lobbyists, principals and employers of lobbyists who lobby, lease or sell to the appointing governments. Travel reimbursement from vendors of the County or municipality, as applicable, may be accepted provided the board member obtains a waiver from his or her appointing body. Any gifts in excess of \$100, not otherwise prohibited or excluded, must be reported as required under the code.

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

¹ §2-444(b) extends this prohibition to advisory board members, but not to officials appointed to boards that are not created by their governing body.