



# Palm Beach County Commission on Ethics

## Commissioners

Edward Rodgers, *Chair*  
Manuel Farach, *Vice Chair*  
Robin N. Fiore  
Ronald E. Harbison  
Bruce E. Reinhart

## Executive Director

Alan S. Johnson

January 5, 2012

Mr. Larry Cellon  
JMW Construction Corporation  
4163 Artesa Drive  
Boynton Beach, Florida 33436

Re: RQO 11-117  
Voting Conflicts/Misuse of Office

Dear Mr. Cellon,

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 in your letter dated December 11, 2011 for clarification of RQO 11-076 and RQO 11-067 which addressed voting conflicts and the Boca Raton Community Appearance Board.

IN SUM, as an appointed official you are prohibited from using your official position as an advisory board member to give a special financial benefit, not shared with *similarly situated members of the general public*, for yourself, your outside business, or a customer or client of your outside business. Voting on a client's proposal, participating in conversations or attempting to influence CAB members would therefore constitute a misuse of office. The prohibition extends to you, or someone using your official position on your behalf. The financial misuse and voting conflicts sections of the Code of Ethics do not prohibit a member of your outside business from representing a customer or client provided that you *publicly disclose the nature of the conflict*, file the required state disclosure form, refrain from voting and do not participate in, or influence the process.

THE FACTS as we understand them are as follows:

You are a General Contractor with JMW Construction Corporation and have served on the Boca Raton Community Appearance Board (CAB) for 23 years. The CAB is a "licensure board" as permitted by state statute and requires its members to have certain professional licenses. After reading the Commissions' advisory opinions, RQO 11-076 and RQO 11-067, you requested further guidance regarding specific scenarios that you may be presented with while serving on the CAB. First, as a General Contractor all permits you apply for in your professional capacity will end up before the CAB. You noted that you understand that you cannot vote or participate on these matters and once your project comes before the board, you cannot work with CAB staff. However, because you will have separate permitting matters that go before other boards, you asked whether you may work with city staff on non-CAB matters to complete the permitting process and continue working with them after the matter before the CAB is concluded.

Additionally, when you have a large project that requires Community Redevelopment Agency authorization, that authorization process requires the applicant to come before the CAB on a preliminary basis. This review process requires the CAB to make comments on the project but no vote is taken. You asked for clarification as to whether you may present your project to the CAB where no vote is taken and/or if you are prohibited from working with CAB staff during the entire period between the preliminary non-voting meeting and the regular CAB voting meeting.

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

Section 2-443(a) prohibits you from using your official position to give yourself, your outside business, or a customer or client of your outside business a financial benefit, in a manner which you *know 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.* A customer or client is defined as a person or entity to whom your outside business has supplied goods or services in excess of \$10,000 over the previous 24 months.

Section 2-443(c) similarly prohibits you from voting on an issue or participating in a manner that would result in a special financial benefit attributable to yourself, outside business or customer as previously described. Essentially, the voting conflict section addresses the scenario whereby in voting you would violate the misuse of office prohibitions of the code. In such a scenario you are required to 1) disclose the nature of your conflict before your board discusses the issue; 2) abstain from any discussion or vote or otherwise participate in the matter; and 3) File a state voting conflict form (8B), submitting a copy to the CAB clerk and to the Palm Beach County Commission on Ethics (COE).

In this context, "participate" means that you may not present your client's project to the CAB or take part in any presentation or discussion regarding your client's project with your fellow CAB board members.<sup>1</sup> Accordingly, you are prohibited from presenting your client's project to the CAB board at any point in time.<sup>2</sup> You are prohibited from working with *CAB staff* once a matter has come before the CAB board no matter whether the matter will be revisited or whether it is at a preliminary review hearing.

However, this provision does not prohibit other owners or employees of your outside business from representing your client's interest in these matters. Once a matter before the CAB has been concluded and is no longer subject to its decision-making authority, you are not prohibited from working with CAB staff in the normal course of business and during construction.

Insofar as working with other non-CAB City staff, you are not prohibited from meeting with and presenting to Zoning staff and other related city advisory boards before or after a vote is taken by the CAB, so long as you do so in your professional and not official capacity. To use your official title or position to obtain any special financial benefit for yourself, your outside employer or customer or client would violate the misuse of office prohibitions of the code.

---

<sup>1</sup> RQO 11-067 ("participate" includes presenting a client's project to the CAB or taking part in any discussion regarding a client's project with CAB board members).

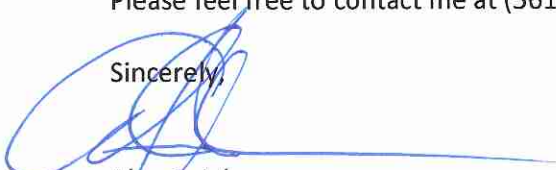
<sup>2</sup> Please note that contacting CAB members about a matter coming before the board may result in a Sunshine Law violation.

IN SUMMARY, based on the facts and circumstances presented, you may not use your appointed office to give yourself, your outside business or a customer or client of your outside business a special financial benefit, not shared with similarly situated members of the general public. When faced with a conflict, you must disclose the nature of that conflict, refrain from voting or participating and file the required conflict disclosure form 8b. Once a matter comes before the CAB, you are prohibited from working with dedicated CAB staff from that point forward. You are not prohibited from working with non-CAB staff in your professional capacity before, during or after the CAB approval process. Following final disposition of a plan by the CAB, you are not prohibited from resuming work with staff, so long as you do not use your official position in any way to obtain a special financial benefit for yourself, your client or your outside employer. The Code of Ethics does not prohibit a business associate or other individual from representing your client's interests before the CAB separate and apart from you or your official office. Again, you must abstain and not participate in the matter.

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