



Palm Beach County Commission on Ethics

Commissioners

Manuel Farach, *Chair*
Robin N. Fiore, *Vice Chair*
Ronald E. Harbison
Daniel T. Galo
Patricia L. Archer

Executive Director

Alan S. Johnson

In Re: Victoria McCullough

C12-016

PUBLIC REPORT AND FINAL ORDER OF DISMISSAL

COMPLAINANT, Alan S Johnson, Executive Director of the Commission on Ethics, filed the COMPLAINT on November 19, 2012, alleging a possible ethics violation involving RESPONDENT, Victoria McCullough, principal of a registered lobbyist for the Village of Wellington.

The COMPLAINT alleges that on July 22, 2012, RESPONDENT, Victoria McCullough, a principal of a lobbyist who lobbies the Village of Wellington knowingly provided a gift in excess of one hundred (\$100) dollars to an elected official who serves the Village of Wellington.

Pursuant to Chapter 2, Article V, Division 8, Section 2-258(a)¹ of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. A lobbyist, principal or employer of a lobbyist that lobbies the county or a municipality shall not knowingly give, directly or indirectly, any gift with a value greater than one hundred (\$100) dollars to a person who the lobbyist or principal knows in an official or employee of that county or municipality.²

On December 11, 2012, the COMPLAINT was determined by staff to be LEGALLY SUFFICIENT. On October 19, 2012, the Commission on Ethics (COE) staff received copies of two (2) State of Florida Quarterly Gift Disclosures (Form 9) filed by Robert Margolis, Mayor of the Village of Wellington. Listed on these gift disclosure forms were four separate entries indicating that Margolis had received funds for his legal defense fund concerning a re-count for his election as Mayor and pursuant to COE Rule of Procedure 4.1.3 a preliminary inquiry was commenced. After obtaining sworn statements from material witnesses and documentary evidence sufficient to warrant a legally

¹ Article V, Division 8, section 2-258. Powers and duties, (a) The commission on ethics shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The commission on ethics shall be empowered to review, interpret, render advisory opinions and enforce the;

(1) County Code of Ethics;
(2) County Post-Employment Ordinance, and
(3) County Lobbyist Registration Ordinance.

² Section 2-258(2) of the Code of Ordinances, Palm Beach County, West Palm Beach, FL 33411 561.233.0724 FAX: 561.233.0735

sufficient finding a MEMORANDUM OF LEGAL SUFFICIENCY was filed and an investigation commenced pursuant to Article V, Division 8, Section 2-260(d).

The matter presented to the Commission on Ethics on January 10, 2013 with a recommendation that PROBABLE CAUSE exists to believe there was a code of ethics violation. At that time, the Commission conducted a hearing. The Commission on Ethics reviewed the COMPLAINT and memorandum of inquiry and requested that staff obtain additional information and the matter was tabled.

On February 7, 2013 a Supplemental Memorandum of Investigation was presented to the Commission with a recommendation that PROBABLE CAUSE exists to believe there was a Code of Ethics violation. However, the facts and circumstances warrant a DISMISSAL with a LETTER OF INSTRUCTION to the Respondent. The Commission reviewed and considered the Memoranda of Inquiry, Supplemental Investigation and Probable Cause, recommendation of staff, as well as oral statements of the RESPONDENT and ADVOCATE. The Commission also reviewed Article V, §2-260.3 of the Commission on Ethics ordinance.³ At the conclusion of the hearing the Commission on Ethics dismissed the case with a LETTER OF INSTRUCTION because although there was PROBABLE CAUSE to believe that a violation had occurred, the alleged violation was inadvertent and unintentional.

Therefore it is:

ORDERED AND ADJUDGED that the COMPLAINT against RESPONDENT Victoria McCullough is hereby DISMISSED and a LETTER OF INSTRUCTION is to be issued in this case.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on February 7, 2013.

Palm Beach County Commission on Ethics,

By: _____
Manuel Farach, Chair

³ Section 2-260.3. Dismissal of Complaints

Notwithstanding any other provisions of this division, the commission on ethics may, at its discretion: (a) dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, or (b) dismiss any complaint at any stage of disposition and issue a letter of instruction to the respondent when it appears that the alleged violation was inadvertent, unintentional or insubstantial. In the event the commission on ethics dismisses a complaint as provided in this subsection, the commission on ethics shall issue a public report stating with particularity its reasons for the dismissal.



Palm Beach County Commission on Ethics

Commissioners

Manuel Farach, *Chair*
Robin N. Fiore, *Vice Chair*
Ronald E. Harbison
Daniel T. Galo
Patricia L. Archer

Executive Director

Alan S. Johnson

In Re: Victoria McCullough

C12-016

LETTER OF INSTRUCTION

The above-captioned complaint against Victoria McCullough (Respondent), alleging a violation of the Palm Beach County Code of Ethics, Article XIII, §2-444(a)(2) (Gift law) was filed by Commission on Ethics Executive Director Alan S. Johnson pursuant to the procedures outlined in the Commission on Ethics Ordinance, Article V, Division 8, §2-260(b)(2). The complaint alleges that Respondent, a principal of a lobbyist, knowingly gave a gift in excess of \$100 to a person who she knew to be an official of the Village of Wellington (the Village) in violation of the gift law.

- **Facts and analysis**

Respondent, Victoria McCullough, is a principal of lobbyists who lobby the Village. As such, Respondent is subject to the Palm Beach County Code of Ethics.

On July 22, 2012, Respondent gave a \$4000 donation to Village Mayor Robert Margolis for his legal defense fund regarding a voter recount in the mayoral race. According to state law, a donation to such a legal defense fund is considered a gift, not a political contribution. At the time of the gift, Respondent was the principal of several registered lobbyists who lobby the Village. The parties represented that an original donation was given in March, 2012, before Margolis took office on April 9, 2012, and before Respondent became a principal of lobbyists in late June, 2012. The Respondent represented that the original donation was lost and a subsequent replacement donation was tendered on July 22, 2012, after Respondent took office and Respondent became an employer of lobbyists.

Respondent maintains that she is not a regular employer of lobbyists within the Village and retained lobbyists on a single issue involving her personal property. Respondent represented she was under the mistaken belief that the Code applied only to lobbyists and not their principals.

- **Holding**

Sec. 2-444(a) Gift law, states in relevant part:

- (2) No lobbyist, vendor or principal or employer of a lobbyist that lobbies the county or a municipality shall knowingly give, directly or indirectly, any gift with a value greater than one hundred dollars (\$100) in the aggregate for the calendar year to a person who the vendor, lobbyist, or principal knows is an official or employee of that county or municipality. For the purposes of this subsection 2-444(a)(2), the term vendor also includes any person or entity that, because of the nature of their business, may respond to an invitation to bid, request for proposal or other procurement opportunity that has been published by the county or a municipality.

Sec. 2-260.3. Dismissal of complaints, states as follows:

Notwithstanding any other provisions of this division, the commission on ethics may, at its discretion: (a) dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, or (b) dismiss any complaint at any stage of disposition and issue a letter of instruction to the respondent when it appears that the alleged violation was inadvertent, unintentional or insubstantial. In the event the commission on ethics dismisses a complaint as provided in this subsection, the commission on ethics shall issue a public report stating with particularity its reasons for the dismissal.

There is probable cause to believe that Respondent gave a prohibited gift to a municipal official.

The Respondent intended to give the gift in March, 2012, prior to Margolis taking office and before she became a principal of lobbyists, and but for the fact that the original check was lost, the gift would not have been in violation of the Code. In addition, Respondent did not engage in any lobbying activities with Margolis prior to or after the replacement donation of July, 22, 2012.


In light of the facts and circumstances known to the Commission on Ethics, the matter is disposed of by way of dismissal with this Letter of Instruction. The COE believes that the alleged violation was inadvertent and unintentional and has determined that the public interest would not be served by proceeding further. However, Respondent is now advised that the filing of Ethics Complaint C12-016, along with this Letter of Instruction, is to serve as notice that actions taken by Respondent in giving a prohibited gift to an official of a municipality, when she employs lobbyists who lobby that municipality, will result in an actionable violation of the Code. Respondent has agreed to voluntarily donate the gift returned by Mayor Margolis to charity. Due to the unique circumstances of this transaction the matter is appropriately addressed through this letter of instruction.

Respondent is hereby instructed to be more careful in the future to not give a prohibited gift to municipal employees or officials of the Village when she is the principal of a lobbyist who lobbies the Village, whether or not the gift is given directly, or indirectly, so as to conform her activities to this Letter of Instruction and to the requirements of §2-444(a)(2) to avoid any future enforcement action.

This letter of instruction is issued by the Palm Beach County Commission on Ethics in public session on February 7, 2013.

Palm Beach County Commission on Ethics,

By:


Manuel Farach, Chair