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# News Release

For Immediate Release

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## Summary of Commission on Ethics Meeting Held on August 4, 2011

The Commission on Ethics took the following actions at its monthly public meeting held on August 4, 2011.

- Eleven (11) Advisory Opinions were approved by the Commission. Two advisory opinions were discussed and tabled and will be considered at the next COE meeting. The full opinions are published and available at <http://www.pbcgov.com/ethics/opinions.htm>
- **RQO 11-040 Frank Babin:** A Delray Beach employee asked whether he may accept dinner on two consecutive nights purchased by two different vendors of Delray Beach while at a conference and whether the Code of Ethics distinguishes between a vendor that provides goods or services to an employee's department as opposed to a vendor that has no nexus to an employee's position or department.

The COE opined as follows: The Code of Ethics does not distinguish between vendors and departments within a governmental entity. An employee may not accept anything of value as a quid pro quo or in exchange for the past, present or future performance of their job. Otherwise, employees may accept up to \$100 in the aggregate over the course of the calendar year from a vendor, lobbyist, principal or employer of a lobbyist. While accepting these gifts may not violate the code, per se, the COE opined that an appearance of impropriety may exist where an employee who recommends vendors to the city commission and city management accepts gifts of any value from those vendors, regardless of the fact that the employee may not be the ultimate decision maker.

- **RQO 11-042 Mike Shuey:** A Greenacres employee asked whether his part-time employment and his spouse's full-time employment with Publix created a prohibited conflict of interest where his public employment required him to purchase items on behalf of his municipality from Publix.

The COE opined as follows: First, the Code of Ethics prohibits employees and officials from using their public position to give their outside employer or their spouse's outside employer a financial benefit. Therefore, the municipal employee may not use his official position to benefit his outside employer and/or his spouse's employer by purchasing their goods or services. Second, because he works in a department that transacts business with his outside employer, he is not eligible for a part-time employment waiver and may not maintain both employments without violating the contractual relationship section of the code. Because Publix is not a sole source provider within the municipality, the employee could purchase these items from another store which would avoid the conflict of interest, and if so, he may then be eligible for a part-time employment waiver.

- **RQO 11-043 Edward Lowery:** The director of the Palm Beach County Housing and Community Development Department asked whether a conflict of interest exists where a nonprofit recipient of community redevelopment and emergency shelter grant dollars leases two properties from its executive director.

The COE opined as follows: The COE has jurisdiction over public employees, officials and advisory board members throughout Palm Beach County, however, that jurisdiction does not extend to officers or directors of charitable organizations. The COE cannot opine on matters that involve individuals and transactions that do not come within its jurisdiction.

- **RQO 11-044 Glenn O'Cleary:** A county employee asked whether co-workers may agree to switch shifts and in return, may one employee provide additional financial compensation directly to their co-worker for working a midnight shift as compared to her regularly scheduled evening shift.

The COE opined as follows: So long as an employee does not use his or her official position to influence their co-worker in a manner "inconsistent with the proper performance" of his or her public duties, there is no prohibition within the Code of Ethics preventing co-workers from switching shifts. The COE cannot opine as to internal county or department procedure regarding such a shift change arrangement.

- **RQO 11-046 Darlene Kostrub:** The chief executive officer for the Literacy Coalition of Palm Beach County, a registered non-profit corporation, asked whether the coalition, which is a vendor of West Palm Beach and Boynton Beach, could continue to host its annual Mayors' Literacy Luncheon.

The COE opined as follows: There are exceptions to the gift law limitations as they relate to "public events, appearances or ceremonies" which involve a "ticket, pass, or admission" furnished by a nonprofit sponsor organization. Here, because this event is not open to the public and tickets are only distributed to public officials and staff, this gift law exception is not applicable. The coalition is not prohibited from hosting the luncheon, however, as a vendor of West Palm Beach and Boynton Beach, it may not give, nor may an official or employee from those municipalities accept, tickets valued at more than \$100.

- **RQO 11-048 Shelley Vana:** A Palm Beach County commissioner asked whether she could accept an award for civic achievement and attend the associated awards luncheon. The sponsor of the event, a nonprofit association, does not employ lobbyists in Palm Beach County. While two nonprofit co-sponsors of the event are vendors of the county, attendance at the event is free and the value of the luncheon is less than \$100.

The COE opined as follows: Consideration of the gift in the context of the gift law prohibitions is not required. The definition of "gift" specifically excludes awards for professional and civic achievement. As such, the commissioner is not prohibited from accepting a civic achievement award and attending the associated awards luncheon.

- **RQO 11-058 Tammy Fields:** An assistant county attorney asked whether county employees, if otherwise eligible, could receive purchase-assistance or rehabilitation mortgages from a county program funded by the United States Department of Housing and Urban Development.

The COE opined as follows: The Code of Ethics prohibits county employees from using their public position to give themselves a special financial benefit. Similarly, county employees may not enter into contracts for goods or services with the county unless the facts and circumstances of the transaction come within an exception to this prohibition. The Code of Ethics specifically excludes situations where employees receive and contract for the same benefit as eligible members of the general public. Therefore, so long as an employee follows all procedures required of the general public and does not use their position in any way to obtain a special financial benefit, employees are eligible to receive mortgage or grant funding from the government they serve.

- **RQO 11-061 JoAnn Forsythe:** A municipal employee from Tequesta asked whether her department could attend a symposium sponsored by a vendor, where admission was free to attendees and lunch was valued at less than \$30 per person.

The COE opined as follows: Tequesta employees are attending the symposium in accordance with their duties and job responsibilities and may attend the event so long as the cost per person does not exceed \$100 and is not accepted as a quid pro quo for official action or in exchange for the past, present or future performance or non-performance of a legal duty or an official public act.

- **RQO 11-029 Kimberly Mitchell (re-submitted from July 7, 2011):** A West Palm Beach city commissioner asked whether, as an elected official, she could serve on the board of directors of a local non-profit organization and if she could continue to fund-raise on behalf of the organization. The COE discussed the request on July 7, 2011 and tabled the matter for August 4, 2011.

The COE opined as follows: The commissioner may not use her elected office to give a special financial benefit to a non-profit organization while serving as an officer or director of the charity. Using one's official title in solicitations on behalf of a charity while serving as an officer or director would constitute a violation of §2-443(a)(7) of the misuse of office section of the code. She may either resign her position with the charity or not use her official title in soliciting, directly or indirectly, on behalf of the charity. When soliciting donations on behalf of the non-profit, she must keep a detailed log of any solicitation of donations from vendors or lobbyists/principals of West Palm Beach in excess of \$100. The log must be submitted to the COE within 30 days of the charitable event, or if not associated with an event, within 30 days of the solicitation. Lastly, she may not solicit a donation in exchange for any special consideration on her part as a city commissioner.

- **RQO 11-039 Keith Davis:** A village attorney asked whether a municipality may hold a charity fund raising event on behalf of a non-profit that benefits public safety officers, using off-duty firefighters and certain on-duty municipal staff to solicit and run the event. A municipal employee and a village council member serve on the board of this non-profit and donations will be solicited from vendors of the municipality. The event will include raffles, door prizes and silent auctions. All money raised will be deposited into the non-profit's account; however, 75 % of the funds raised will be redistributed to other local non-profits approved by the village council.

The issue was tabled and will be resubmitted at the next regularly scheduled meeting of the COE.

- **RQO 11-041 Edward Rodgers:** The chair of the Palm Beach County Commission on Ethics asked whether he was prohibited from accepting an award for professional achievement, attending the accompanying awards event and what, if any, obligations existed concerning solicitations made by a non-profit organization in association with the event.

The COE opined as follows: The commissioner is not prohibited from accepting an award for professional achievement, nor is he prohibited from accepting tickets from the non-profit organization and attending the accompanying awards reception. Awards for professional and civic achievement are not considered gifts under the gift law provisions of the Code of Ethics. The nonprofit sponsor is not prohibited from using his name, in reference to his years of service as a judge, civil rights leader and advocate, in the written materials promoting the award and the event, so long as they submit a record of all solicitations made, and pledges and donations received in excess of \$100 from vendors, principals and employers of lobbyist who lobby the Commission on Ethics or the department that is subject to the commission's authority, in accordance with the transparency requirements of the Code of Ethics.

- **RQO 11-051 Vice Mayor Bill Greene:** A Juno Beach town councilmember asked whether as a director of a Florida nonprofit corporation, he was permitted to solicit donations and hold fund-raising events for the nonprofit while serving on the town council. The councilmember also anticipated eventually receiving compensation from the nonprofit.

The issue was tabled and will be resubmitted at the next regularly scheduled meeting of the COE.

- **RQO 11-059 Mark Hall:** The chief of police for the Village of Palm Springs asked whether employees of Palm Springs may participate in a nonprofit event fund-raiser. To the best of his knowledge, no member of his staff, village staff or village officials are officers or directors of the nonprofit.

The COE opined as follows: Village employees and officials may participate in the nonprofit event, but they may not solicit contributions from vendors, lobbyists, or principals or employers of lobbyists of Palm Springs while on duty. If employees elect to solicit from vendors, lobbyists, principals or employers of lobbyists in their personal time, they must keep a log detailing the name of the charity, the person or entity who solicited the event for which the funds were solicited, and the amount pledged. This log must be submitted to the Commission on Ethics within 30 days of the event.

- The Commission on Ethics discussed extending the official law enforcement overtime or extra duty detail outside employment waiver exemption to fire rescue uniformed extra duty details of a similar nature.
- The Commission on Ethics held a general discussion on issues related to government vendor discounts offered to public employees and officials.
- The Commission on Ethics discussed the second opinion received from the Florida Attorney General regarding non-financially based abstention or disqualification issues where bias, prejudice or affinity may create an appearance of impropriety. Currently, Florida law prohibits a local official from abstaining from a vote on any issue that does not involve financial benefit or conflict.
- The Palm Beach County Ethics initiative received the 2011 Achievement Award for Innovation in government from the National Association of Counties (NACo) at its annual meeting in Multnomah County, Oregon on July 17<sup>th</sup>.

A detailed explanation of all agenda items is available at <http://www.pbcgov.com/ethics/meetings.htm>

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