



Palm Beach County
Commission on Ethics
2633 Vista Parkway
West Palm Beach, FL 33411
561.233.0724
FAX: 561.233.0735
Hotline: 877.766.5920

E-mail:

ethics@palmbeachcountyethics.com

Commissioners

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

Executive Director

Alan S. Johnson

Staff Counsel

Megan C. Rogers

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Gina A. Levesque

Senior Investigator

Mark E. Bannon

Investigator

James A. Poag, Jr.

News Release

For Immediate Release

Contact:

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Alan Johnson, Executive Director
(561) 233-0736

Summary of Commission on Ethics Meeting Held on January 4, 2012

The Commission on Ethics (COE) took the following actions at its monthly public meeting held on January 4, 2012.

Five (5) complaints were heard in executive session. All documents pertaining to these complaints are published and available on the COE website at <http://www.palmbeachcountyethics.com/complaints.htm>.

The COE took the following action:

C11-021, C11-022, C11-023, C11-024 and C11-025 were dismissed for lack of legal sufficiency. Twelve (12) advisory opinions were approved. One (1) advisory opinion was 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 11-104 Janet Whipple: A municipal employee asked what procedures must be followed for holding a silent auction fundraiser for the Palm Beach County Municipal Clerk's Association (MCA) to raise funds to be used for the continued professional education and professional certification of municipal clerks.

The COE opined as follows: The professional certification derived from funds solicited by and for individual members of MCA is for the personal benefit of each member who receives them. Any funds solicited by a public employee, or any other person or business entity on his or her behalf, from vendors, lobbyists, principals or employers of lobbyists who lobby, sell or lease to any of the MCA member governments, are prohibited gifts under the Code of Ethics. Gifts solicited from non-vendors or lobbyists are not prohibited, provided they are not accepted because of the past, present or future performance of an official act or a legal duty. If an employee receives funds for education from MCA in excess of \$100, the gift must be reported as required under the code.

RQO 11-106 Carl Erickson: A county employee asked whether he and other department staff members were prohibited from accepting a tuition waiver for a future training class provided by IBM (a vendor of the county). The tuition waiver was offered in return for employee assistance in a product evaluation survey.

The COE opined as follows: The Code of Ethics prohibits employees from accepting employment-related travel expenses (which includes registration fees, travel and meals) from any vendor of the government they serve without a waiver from the governing board, in this case the Board of County Commissioners (BCC). Because IBM is a vendor of the county, in order to accept this fee waiver the BCC must waive the prohibition by majority vote. Further, other than properly waived travel expenses,

county employees may not accept any gifts in excess of \$100, annually in the aggregate, from a vendor, lobbyist, principal or employer of a lobbyist, who sells, leases to, or lobbies Palm Beach County.

RQO 11-107 Anna Yeskey: A part-time staff member of the Palm Beach County Intergovernmental Coordination Program asked whether members of the Countywide Intergovernmental Coordination Program (CICP) are subject to the Palm Beach County Code of Ethics.

The COE opined as follows: The Countywide Intergovernmental Coordination Program was not created solely by the BCC or a municipality but by inter local agreement. Therefore, it is not an advisory board within the meaning of the Code of Ethics. However, members of CICP's three boards are considered officials, so long as they are appointed by the county or one of the 38 municipalities subject to the jurisdiction of the Commission on Ethics. Employees who are on these boards as required by their government employer are subject to the Code of Ethics as employees of their government employer.

RQO 11-111 Christopher Yannuzzi: A town police chief asked whether members of a municipal police department may accept a \$50 gift card from a town resident, who is not a vendor or lobbyist of the town, as a holiday gift.

The COE opined as follows: A holiday gift of gift cards to all police department employees is not prohibited provided it is not given in exchange for the past, present or future performance of a *specific* official act or a legal duty. However, because the official acts of police officers are of a discretionary nature and the officers have the power and authority to sanction or detain citizens under the law, gifts such as these may create an appearance of impropriety. Therefore, municipalities may have policy and procedural rules banning such gifts. While holiday gifts such as these may not be prohibited under the code, officers and department personnel must take great care to not take an official action, or perform, fail to perform or violate a legal duty because of a gift accepted by them or on their behalf.

RQO 11-112 Christopher Yannuzzi: A town police chief asked whether an officer and director of a public safety support group, a 501(c)3 charitable organization, who is also an employee of a municipal police department, may solicit donations from the residents of their municipality for the benefit of the department and its employees and if so, in what manner may they solicit such donations.

The COE opined as follows: Town employees are prohibited from using their official position to give a special financial benefit not shared with similarly situated charitable organizations in the community, to a non-profit organization of which they are an officer or director. Lending one's name and official title to a fundraising effort would per se constitute using their employment to specially financially benefit the support group. Therefore, in order for an employee or official to use their official title to solicit donations on behalf of a charitable entity they serve as an officer or director, they would need to resign their position with the charity. In the alternative, should an employee or official remain as an officer or director, any solicitation would need to be in their name without any reference to their public title, including in the organization's letterhead.

In addition, because town employees stand to receive a personal financial benefit from the support group, an employee may not solicit a gift of any value from a vendor, lobbyist, principal or employer of a lobbyist who sells, leases or lobbies the town. This applies to all town employees, as well as anyone indirectly soliciting on their behalf.

RQO 11-113 Lydia Littlefield: A county employee asked whether the Code of Ethics prohibited an employee from giving a vendor a gift as an expression of appreciation.

The COE opined as follows: The Code of Ethics prohibits municipal and county employees from soliciting or accepting anything of value in exchange for the past, present or future performance of an official act or a legal duty. Similarly, no gift from a vendor or lobbyist may be accepted (or given), if valued in excess of \$100, annually in the aggregate, from any vendor or lobbyist of an employee's government employer. However, the code does not prohibit an employee from giving personal gifts to a vendor or lobbyist.

RQO 11-114 Gary Brandenburg: A city attorney asked whether employees of a municipality may solicit donations from vendors and residents of the city in order to establish a fund to purchase gift cards, which would then be distributed to “the elderly that are in need.” This action is not part of any charitable group, or through an established 501(c)(3) charitable organization. The City Council supports this effort, but has taken no formal action which would allow the funds to be taken into the city revenue stream and distributed as a city expenditure. The employees and city staff would determine eligibility for distribution of the gift cards.

The COE opined as follows: City employees may not solicit donations valued at greater than \$100 from vendors or lobbyists who sell, lease or lobby the city for the purpose of obtaining gift cards to distribute to elderly residents in need. Because the solicitations are not being made on behalf of a non-profit charitable organization, as defined under the Internal Revenue Code, there is no recognized exception to this limitation. The code does not prohibit employees from soliciting donations of any amount from any person or entity that is not a city vendor, lobbyist, principal or employer of a lobbyist. However, no solicitation may be made, or donation accepted from any person or entity based on a quid pro quo or the past, present or future performance or non-performance of any public action or legal duty.

RQO 11-115 Lori LaVerriere: An interim city manager asked whether serving on the board of directors of the Schoolhouse Children’s Museum and Learning Centre (SCMLC) created a conflict of interest with her service to the City of Boynton Beach, and additionally, whether she could continue to fundraise on behalf of the museum. The city provides funding, staff and space to the SCMLC and an agreement entered into between the city and the centre provides that the city manager shall serve on the SCMLC’s board as a permanent voting member.

The COE opined as follows: While serving as an officer or director of the SCMLC, public officials and employees may not use their public position to give the centre a special financial benefit, not shared with similarly situated charitable organizations, even if the employee serves on the board by direction of their government employer.

As an officer or director of a charity, soliciting donations on behalf of that charity while using the employee’s official title would constitute a violation of the misuse of office section of the code.

If an employee or official resigns their position as an officer or director, or uses only their name and not their official title to solicit on behalf of the charity, they must keep a detailed log of any solicitation of donations in excess of \$100 from vendors or lobbyists of the city. A copy of the log must be filed with the COE within 30 days of the event or solicitation, if no event is held.

Lastly, the city is not prohibited from soliciting funds for the benefit of the centre, provided the City Commission designates continued support of the SCMLC to be a public purpose and donations are accepted and expended within the city revenue stream. In all instances, employees may not solicit any gift on behalf of the centre in exchange for any special consideration or other quid pro quo in their official capacity.

RQO 11-117 Larry Cellon: A municipal advisory board member asked for clarification of previously published RQOs 11-067 and RQO 11-076. These opinions addressed voting conflicts and abstention requirements in relation to municipal licensure boards.

The COE opined as follows: Advisory board members 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, not shared with similarly situated members of the general public. When faced with a conflict, a board member 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 their board, they are prohibited from working with dedicated board staff from that point forward. An advisory board member is not prohibited from working with non-board staff in their professional capacity before, during or after a conflict has arisen before their board.

Following final disposition of a matter by their board, a member is not prohibited from resuming work with board staff, so long as they do not use their official position in any way to obtain a special financial benefit for themselves, their client or their outside employer. The Code of Ethics does not prohibit a business associate or other individual from representing a client’s interests before a member’s board.

RQO 11-119 Debbie Blake: A county employee asked whether the Palm Beach County Division of Senior Services may accept donations, such as bakery items, from Publix to be used as prizes for bingo games. The donations will be exclusively used for the benefit of Senior Center clientele.

The COE opined as follows: The Code of Ethics does not prohibit public employees from soliciting or accepting gifts in their official capacity provided they are accepted for use by the county for a public purpose. Use of contributed gifts exclusively by county staff for the benefit of senior clients of the senior center for bingo prizes and general distribution to senior citizen clientele is therefore not prohibited.

RQO 11-122 James Hauser: A county librarian asked if it was permissible to accept a box of candy as a holiday “thank you” gift for assisting a library patron in the normal course of his duties over the course of the year.

The COE opined as follows: General holiday gifts of food are not prohibited so long as the gifts are not given as a “thank you” in exchange for a specific service, public action or legal duty performed or to be performed. The COE does not opine regarding any county department policy or procedure that may be more stringent than the Code of Ethics.

RQO 11-123 Bill Johnson: A county director asked whether county public safety employees are prohibited from accepting part-time employment with municipal police departments where the county employee has direct influence over financial and budgetary matters that could impact the municipal departments.

The COE opined as follows: The Code of Ethics specifically exempts other governmental entities from the definition of “outside employer or business.” Therefore, the prohibition against a public employee working for an outside employer who has contracts with their government employer does not apply to employees working part-time for other governmental agencies. However, the county or municipal government may apply more stringent conditions or regulations concerning outside employment by merit rule or other internal policy or procedure. At all times, a public employee may not use his or her official position in a corrupt manner or a manner that will result in a special financial benefit to him or herself.

A detailed explanation of all agenda items is available at the COE’s website:
<http://www.palmbeachcountyethics.com/ethics/meetings.htm>

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